

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

**First Amendment to Agreement between the City and County of San Francisco and Banc
of America Merchant Services, LLC and Bank of America, N.A.**

THIS AMENDMENT (this "Amendment") is made as of July 31, 2018, in San Francisco, California, by and between Banc of America Merchant Services, LLC and Bank of America, N.A (collectively, "Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below);
and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated September 25, 2013 between Contractor and City including the Merchant Processing Agreement ("MPA") attached thereto and incorporated therein, as amended by the Amendment to MPA between the parties dated October 7, 2017 ("MPA Amendment") together with this First Amendment dated - July 31, 2018.

1b. Contract Monitoring Division. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Term of the Agreement. Subject to Section 1, the term of this Agreement was from August 15, 2013 to August 15, 2018.

2b. Responsibility of the Parties. Subject to Section 27.1 of the MPA, 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.

Section 2 of the Agreement is hereby amended in its entirety to read as follows:

2a. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from August 15, 2013 to August 14, 2022.

2b. Amendment to MPA, Section 27 – Responsibilities of the Parties. Subject to Section 27.1 of the MPA is hereby amended, as follows:

The following additional subsections are hereby added to the end of the first sentence: (e) CUSTOMER's use, sharing or disclosure of any Purchaser Information obtained in connection with CUSTOMER's use of the Clover Service; (f) the content or delivery of any marketing messages that CUSTOMER sends or causes to be sent to any Purchaser phone number or email address collected through the use of the Clover Service; (g) or any other party's access and/or use of the Clover Service with CUSTOMER's unique username, password, or other appropriate security code (unless such other party's access and/or use was due to SERVICERS' negligence).

Section 27.1 is further amended to add the following: For purposes of subsections (e), (f), and (g), above, capitalized terms not defined herein shall have the same meanings as defined in the Clover Services Supplement.

2c. Fee Schedule of the MPA. The MPA Fee Schedule A is amended as set forth in the MPA Amendment, attached hereto as Exhibit 1, and fully incorporated herein by reference. In addition, Schedule A is further amended as described in the Clover Service Supplement and TransArmor Data Protection Services Supplement. Except as provided herein, the remainder of Schedule A of the MPA remains unchanged and in full force and effect. However, the Clover Equipment Prices (as identified on Schedule A to Clover Service Supplement) and fees for Data

Protection Services (as identified in the TransArmor Data Protection Services Supplement) are provided on Exhibit 2 for reference purposes.

2d. Additional Services. The Agreement is hereby modified to include the additional services described in this Section 2d.

2d.1. Clover Service Supplement. The Agreement is further amended to include the Clover Service Supplement to Merchant Processing Agreement and Attachment to Schedule A (“Clover Services Supplement”) attached hereto as Exhibit 2 and fully incorporated herein by reference.

2d.2. TransArmor Data Protection Services Supplement. The Merchant Processing Agreement is hereby amended to include the TransArmor Data Protection Services Supplement to Merchant Processing Agreement and Attachment to Schedule A attached hereto as Exhibit 3 and fully incorporated herein, by reference.

2e. Insurance. Section 15 of the Agreement is hereby replaced in its entirety to read as follows:

15. Insurance.

a. Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Professional liability insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(b) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco via a blanket Additional Insured endorsement.

2) Contractor, or its representative, will provide notice of cancellation of any policies contemplated by this Section 15 as soon as reasonably practical upon receipt of same from Contractor's insurance company.

c. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

f. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

g. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

h. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

2f. Replacing "Earned Income Credit (EIC) Forms", with "Consideration of Criminal History in Hiring and Employment Decisions" . Section 32 of the Agreement "Earned Income Credit (EIC) Forms", is hereby deleted in its entirety and replaced in its entirety to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The

provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to candidates and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall require all subcontractors to comply with all Applicable Laws. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Reserved.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **July 1st, 2017**.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.


IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

Banc of America Merchant Services, LLC



Tajel Shah
Chief Assistant Treasurer
Office of the Treasurer & Tax Collector

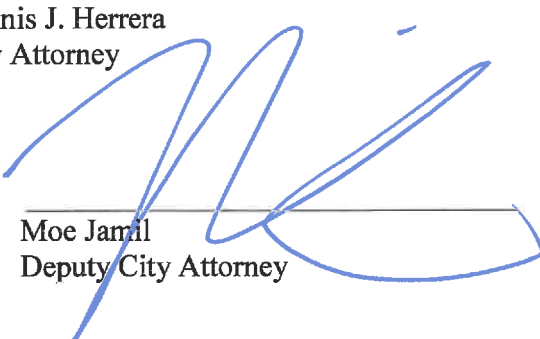


Ed Sykes
Senior Vice President

Approved as to Form:

Bank of America, N.A.
By: Banc of America Merchant Services, LLC,
pursuant to a limited Power of Attorney

Dennis J. Herrera
City Attorney

By: 

Moe Jamil
Deputy City Attorney



Ed Sykes
Senior Vice President

City Vendor Number: **02827**
City Supplier ID: **0000024733**

Exhibit 1

AMENDMENT OF THE MERCHANT PROCESSING AGREEMENT

This Amendment No 1 ("Amendment 1") is made and entered into by and between Banc of America Merchant Services, LLC ("BAMS") and Bank of America, N.A. ("Bank") (collectively, "Servicers") and City and County of San Francisco, having offices located at 1 Dr. Carlton B. Goodlett Place, San Francisco, CA ("Customer") as of this 29 day of SEPTEMBER, 2017 to amend and supplement that certain Merchant Processing Agreement between the parties dated November 5, 2013 (the "Agreement")

In consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Servicers and Customer do hereby agree as follows:

- I. **Amendment of Section 22. Term; Events of Default.** Section 22.2 is hereby amended as follows:

This Agreement shall be from August 15, 2013 to August 14, 2022.

- II. **Amendment of Schedule A to Merchant Processing Agreement, Fee Schedule**

Servicers agree to amend Schedule A to Merchant Processing Agreement, Fee Schedule (the "Original Fee Schedule") as follows: The Fee Schedule of Schedule A is hereby removed and replaced with Fee Schedule A-1 to Merchant Processing Agreement, attached hereto and incorporated herein as Exhibit 1. Except as set forth herein, Schedule A to Merchant Processing Agreement shall be unchanged, and is hereby ratified in all respects and shall remain in full force and effect.

- III. **Agreement Confirmation.** Except as otherwise amended hereby, the Agreement is hereby ratified in all respects and shall remain in full force and effect.

City and County of SF - Merch Proc Agmt- And 1 (09.26.17) BAMS rd-ccsf

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 1 to be duly executed by their authorized officers, all as of the day and year first written above.

BANK OF AMERICA MERCHANT SERVICES, LLC

BY: [Signature]
TITLE: SVP
DATE: 10/4/17

CITY AND COUNTY OF SAN FRANCISCO

BY: [Signature]
TITLE: CHIEF ASSISTANT TREASURER
DATE: 9/29/17

BANK OF AMERICA, N.A.
By: Banc of America Merchant Services LLC
pursuant to limited Power of Attorney

NAME: [Signature]
TITLE: SVP
DATE: 10/4/17

City and County of SF - March Proc June April 1 10/20/17 (BAMS roll over)

Exhibit 1
Fee Schedule A-1 to Merchant Processing Agreement

| | | | |
|--|---|---|-------------------------|
| Merchant Name: | City & County of San Francisco | Average Ticket: | \$26.59 |
| Contract Term (Years): | 5 | Annual Volume: | \$759,456,174 |
| Transmission Method: | Blend | Fee Collection Frequency | Monthly |
| Pricing Method: | Interchange Plus | | |
| Processing Fees: | *Authorization Fee- Per Authorization Attempt | | |
| | **Per Item Fee- Per Settled Sale and Credit Transactions | | |
| | ***The discount rate is charged as a % of total gross dollar volume | | |
| Card Type | Auth Fee* | Per Item Fee** | Discount Rate*** |
| Visa | \$0.0140 | \$0.0000 | 0.0000% |
| MasterCard | \$0.0140 | \$0.0000 | 0.0000% |
| American Express | \$0.0500 | \$0.0000 | 0.0000% |
| Discover Full Service | \$0.0140 | \$0.0000 | 0.0000% |
| PIN Debit | \$0.0000 | \$0.0400 | 0.0000% |
| Per Occurrence Fees: | Amount | Description | |
| Chargeback Fee | \$10.00 | Per Chargeback | |
| Return Item Fee | \$0.0140 | Per Visa/MC Credit (Return) Transaction | |
| ACH Reject Fee | waived | Per ACH Returned Item | |
| Services Hourly Rate | \$125.00 | Per outlined in Sections 4.1 and 18.1 | |
| ACH Deposit Fee | waived | Per ACH Deposit | |
| Wire Deposit Fee | N/A | Per Wire Deposit | |
| Pin Debit Adjustment Fee | N/A | Per Pin Debit Adjustment | |
| Voice Auth/ARU Fee | \$0.95 | Per Voice Auth/ARU Item | |
| Monthly Fees: | | | |
| Minimum Discount Fee | \$10.00 | Per Month per MID | |
| Client Line Fee | waived | Per Set Up | |
| Paper Statement Fee | waived | Per Statement Mailed | |
| All telecommunications costs/Third Party Fees will be passed through to CUSTOMER. | | | |
| Interchange Schedule and Qualification Attachments (Interchange Schedules) | | | |
| Visa and MasterCard Interchange | BAMS.MVD.S17.1 IC_Gross MSA | | |
| Discover Interchange | BAMS.MVD.S17.1 IC_Gross MSA | | |
| PIN Debit Switch and Interchange Fees | 2016 BAMS Debit Network Standard Fees FD | | |

**Exhibit 2 To Amendment 1
Prices for Clover Equipment**

| Item | Model Name | Merchant Price (\$) |
|---|-------------------|----------------------------|
| Clover Solutions | | |
| Clover Station 2018 (touchscreen/stand) | AA1297 | N/A |
| Clover Station Power Hub Kit (Starter Kit) MUST BE SELECTED | AA129G | N/A |
| Clover Station P500 Printer (Basic Printer) | AA1298 | \$1,245.00 |
| Clover Station NFC Customer Display Printer | AA129C | \$1,295.00 |
| Clover Mobile - 3G and Wi-Fi | AA106B | \$799.00 |
| Clover Mini - Wi-Fi Only | AA105J | \$649.00 |
| Clover Mini - 3G and Wi-Fi | AA105K | \$699.00 |
| Clover Flex - 3G and Wi-Fi | AA11QX | \$699.00 |
| Optional Peripherals For Clover Mobile | | |
| Clover Mobile Printer (Bluetooth) | AA1069 | \$198.00 |
| Clover Mobile Docking Station ** | AA1068 | \$169.00 |
| Optional Peripherals | | |
| Kitchen Printer (Mini and Station) | CRKTPR | \$396.00 |
| Handheld 2D Bar Code Scanner | AA11Z4 | \$191.00 |
| Hands Free 2D Bar Code Scanner (Countertop) | AA11Z5 | \$257.00 |
| Weight Scale (Mini and Station) | AA1018 | \$419.00 |
| Kitchen Printer - Asian Chr (Mini and Station) | AA1019 | N/A |
| Clover Merchant Keypad (Mini Only) ** | AA110B | \$45.61 |
| Clover Cash Drawer (Mini and Station) | CLVCDR | \$121.00 |
| Additional Items | | |
| 50' Ethernet Cable for Kitchen Printer | CRC8KP | \$6.54 |
| Clover Employee Login Cards (Station, Mobile, Mini, Flex) - Quantity of 10 cards included in package | AA11Z7 | \$9.99 |
| Clover Flex Silicon Sleeve | AA11Z6 | \$6.88 |
| Additional Items - Retail pricing does not include freight. Freight could be charged at \$14.95 per order delivery or \$24.95 for overnight delivery. | | |

| Replacement Policy |
|--|
| Purchase - < 1 year - no charge for replacement; \$35 shipping/handling |
| Lease - no charge for replacement during lease term; \$35 shipping/handling |
| ** These items are non-serialized - therefore - do not qualify for replacements. |

Fees for the Data Protection Services

| Item | Fee | Driver |
|--|----------|--|
| Implementation Fee | \$99.00 | One-time fee |
| Token and Encryption (RSA) (12E) | \$0.0200 | per transaction |
| Token and Encryption (VeriFone) (12I) | \$0.0200 | per transaction |
| Token Only or Token and Encryption (TDES) (12G) <i>This fee will appear on the Merchant Account Statement as "TransArmor Token Only", even if CUSTOMER uses TDES.</i> | \$0.0200 | per transaction |
| Token Registration (Get Token) (12H) | N/A | per transaction |
| TransArmor Monthly Fee (30L) | \$10.00 | per month per MID |
| TransArmor Minimum Monthly Fee (959) <i>This Fee is charged for each MID for which the total amount of fees charged in a given month for such MID under codes 12E, 12G, 12I, and 30L, as applicable, ("Applicable Data Protection Fees Total") is less than the amount listed in the next column for this Fee and will be equal to the difference between the amount of this Fee and the Applicable Data Protection Fees Total for that month.</i> | N/A | per month per MID |
| TransArmor Per Device Fee (M2A) <i>This fee is a one-time fee applicable to each unit of CUSTOMER's Merchant Equipment that is (1) enabled for Encryption, as part of the Data Protection Services, (2) connected to a merchant point of sale network and (3) either a non-Verifone device, on which the TransArmor Verifone Edition Encryption method is used, or a Verifone device (such Merchant Equipment, "Covered Data Protection Services Equipment").</i> | \$23.00 | Per unit of Covered Data Protection Services Equipment |
| Legacy Data Conversion | \$0.005 | per PAN converted |
| Legacy Data Deconversion | \$0.005 | Per Token deconverted |

**EXHIBIT 2 TO AMENDMENT 1
CLOVER SERVICE SUPPLEMENT TO MERCHANT PROCESSING AGREEMENT AND
ATTACHMENT III TO SCHEDULE A**

This Clover Service Supplement to Merchant Processing Agreement and Attachment III to Schedule A (as amended, modified and supplemented from time to time, "Clover Supplement") is being entered into by and among **CITY AND COUNTY OF SAN FRANCISCO** ("CUSTOMER"), Banc of America Merchant Services, LLC ("BAMS") and, for purposes set forth below in this introductory paragraph only, Bank of America, N.A. ("BANK") supplements the Merchant Processing Agreement (as amended, modified and supplemented from time to time, the "Agreement") by and between BAMS, BANK, and CUSTOMER.

This Clover Supplement and the Clover Service (as hereinafter defined) are subject to the terms of the Agreement, except to the extent expressly provided. Unless stated otherwise, (i) any reference to this Clover Supplement shall include the Agreement. To the extent the terms of this Clover Supplement directly conflict with the terms of the Agreement, this Clover Supplement shall control. Except to the extent set forth to the contrary in this Clover Supplement, this Clover Supplement will remain in effect, and may be terminated by CUSTOMER or BAMS, in the same manner, and to the same extent, and for the same reasons, as set forth in the Agreement.

BAMS AND CUSTOMER AGREE:

The Clover Service is provided to CUSTOMER by BAMS and not BANK. BANK is not a party to this Clover Supplement, and CUSTOMER acknowledges that BANK is not liable to CUSTOMER in any way with respect to the Clover Service. The Clover Service, transactions processed, and other matters contemplated under this Clover Supplement are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Clover Supplement directly conflict with another provision of the Agreement, in which case the terms of this Clover Supplement will control.

1. **Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Clover Supplement or as defined elsewhere in the Agreement.

"**Clover**" means Clover Network, Inc.

"**Clover API**" means an application programming interface linking the Clover Service and the Third Party Services, including any Third Party POS System App. Each provider of a Third Party Service is responsible for ensuring that such Third Party Service will function properly with the Clover API.

"**Clover App Market**" means the Clover-supported application marketplace.

"**Clover Integrated Service**" means the combination of (i) the Clover Service for Card transaction processing services only, which BAMS will provide for CUSTOMER, and (ii) a Third Party Service, including a Third Party POS System App, which Third Party Service may be accessible from the Clover App Market or through the Clover API.

"**Clover Marks**" means the trademarks or service marks used in connection with the Clover Service.

"**Clover Service**" means (i) the website associated with the Clover Service, if any, but not any website associated with an application marketplace accessible via the Clover Service; (ii) the object code version of the software applications resident on a Device at the time BAMS provides CUSTOMER with the Device or "pushed" to CUSTOMER's Device by BAMS, but excluding any such software applications developed by the BANK; (iii) the object code version of the software that enables such applications listed in (ii) above; (iv) PAN Data Protection; (v) BAMS-provided Internet-based services, and (vi) any related updates (including software maintenance or bug fixes), materials, documentation and derivative works released by BAMS from time to time, all of which are designed to assist with the management of CUSTOMER's business and to facilitate the provision of certain Services (e.g., payment processing) under the Agreement. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by CUSTOMER separately from the Clover Service (e.g., any applications downloaded by CUSTOMER through an application marketplace or any Third Party POS System App software). The Clover Service is deemed part of the "Services," as defined in and provided under the Agreement.

"**Device**" means a tablet, smartphone, the Clover Station, Clover Mobile, Clover Mini, Clover Flex or any other form factor identified by BAMS from time to time as compatible with and capable of supporting the Clover Service. For the avoidance of doubt, the Device is deemed to be "Equipment" or "Merchant Equipment" as defined in the Agreement.

"**Purchaser**" means a Person who makes a purchase of goods or services from CUSTOMER, the transaction for which utilizes the Clover Service.

"**Purchaser Information**" means information about Purchasers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with CUSTOMER's use of the Clover Service.

"**Third Party Service**" means the services, products, promotions or applications provided by someone other than BAMS, including, for example, an application available through the Clover App Market.

"**PAN**" means the primary account number associated with a Card.

"**PAN Data Protection**" means the TransArmor® Data Protection services described in Section 5 of this Supplement.

"Third Party POS System App" means a Third Party Service application for a point of sale system which does not include Card transaction processing services.

"Token" means a random numeric or other code that is assigned to replace certain Card data as described herein.

"Tokenization" means a form of data substitution that replaces sensitive payment card values with a Token.

2. **License Grant.** During the term of this Clover Supplement, BAMS grants CUSTOMER a personal, limited, non-exclusive, revocable, non-transferable sublicense, without the right to further sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage CUSTOMER's designated location(s) and to conduct associated point of sale activities within the United States in accordance with this Clover Supplement. For purposes of this Clover Supplement "United States" does not include U.S. Territories or possessions. The Clover Service is for CUSTOMER's internal business use only. This Clover Supplement does not grant CUSTOMER any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain BAMS', BAMS' vendors', or BAMS' licensors' (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by BAMS in this Clover Supplement are deemed withheld.

3. **Restrictions.** CUSTOMER may not, nor may CUSTOMER permit any third party to, do any of the following: (a) access or attempt to access the Clover Service (or any part) that are not intended or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer CUSTOMER's license rights to any Person, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in any case obtaining BAMS' advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or, in BAMS' reasonable judgment, impose an unreasonable or disproportionately large load on the BAMS Platform or BAMS' infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in Section 2 of this Clover Supplement.

4. **Clover Service Limitations and Requirements; Clover Service Plans.**

4.1. CUSTOMER may access the Clover Service through CUSTOMER's Device(s) using a wired (Ethernet) or wireless (Wi-Fi or cellular) connection to the Internet. CUSTOMER is solely responsible for the payment of any fees that may be imposed by CUSTOMER's Internet/data provider. CUSTOMER's use of the Clover Service may be subject to: (a) the terms of CUSTOMER's agreements with CUSTOMER's Internet/data provider; and (b) the availability or uptime of the services provided by CUSTOMER's Internet/data provider.

4.2. CUSTOMER may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for Authorization when Internet connectivity to the Clover System is restored. However, CUSTOMER assumes all risk, responsibility and liability associated with any transaction that CUSTOMER chooses to conduct while the Clover Service is used offline.

4.3. The Clover Service does not function with every mobile device. BAMS may alter which Devices are approved as compatible with the Clover Service in BAMS' discretion from time-to-time.

4.4. BAMS or BAMS' service providers may perform maintenance on the Clover Service from time to time which may result in service interruptions, delays, or errors. CUSTOMER may be offered new services or software that may be in beta testing phase and not final. As such, the Clover Service may contain errors and "bugs" that may result in failure. BAMS will not be liable for any such interruptions, delays, errors, or bugs. CUSTOMER agrees that BAMS or BAMS' service providers may contact CUSTOMER in order to assist CUSTOMER with the Clover Service and obtain information needed to identify and fix any errors.

4.5. CUSTOMER shall at all times comply with any operating procedures, requirements, or guidelines regarding CUSTOMER's use of the Clover Service that are posted on the Clover website or otherwise provided or made available to CUSTOMER.

4.6. CUSTOMER is solely responsible for compliance with all laws, rules, and regulations that are applicable to CUSTOMER's business and notwithstanding CUSTOMER's use of the Clover Service to facilitate the management of CUSTOMER's business, BAMS disclaim any and all liability for CUSTOMER's failure to comply with such laws, rules, and regulations.

4.7. CUSTOMER is solely responsible for ensuring the accuracy of all information and data regarding CUSTOMER's business that CUSTOMER provides to BAMS or BAMS' service providers in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, CUSTOMER is solely responsible for verifying that all information and data loaded onto a Device by BAMS or BAMS' service providers at CUSTOMER's request are accurate prior to CUSTOMER's business use of such Device. BAMS and BAMS' service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

4.8. CUSTOMER shall comply with the following requirements in connection with CUSTOMER's use of the Clover Service:

a. With respect to each Purchaser who requests the delivery of transaction receipts via text message or email, such Purchaser must enter his phone number or email address in the appropriate space displayed on the Device himself; CUSTOMER is NOT permitted to add or modify any Purchaser Information (including, but not limited to, phone number and email address) on behalf of a Purchaser.

b. With respect to each Purchaser who desires to receive marketing material or other communications from CUSTOMER via text message or email, such Purchaser must check the appropriate consent check box displayed on the Device himself; CUSTOMER is NOT permitted to add or modify a Purchaser's consent indication on his behalf.

c. CUSTOMER (or CUSTOMER's agents acting on CUSTOMER's behalf) may only send marketing materials or other communications to the Purchaser's provided phone number, street address, and/or email address if the Purchaser has specifically consented by checking (himself) the applicable box displayed on the Device.

d. NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE PURCHASER INFORMATION AND TO ALLOW PURCHASERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM CUSTOMER, SOME STATES MAY LIMIT CUSTOMER'S USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE PURCHASER HAS PROVIDED HIS CONSENT, AND/OR CUSTOMER'S DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. CUSTOMER ACKNOWLEDGES AND AGREES THAT (i) CUSTOMER'S USE OF PURCHASER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (ii) CUSTOMER IS SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (iii) CUSTOMER WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

4.9. **Service Plans.** A Service Plan is a limited, full or expanded version of the Clover Service available directly from BAMS or on the Clover App Market for a Device. To the extent a Service Plan upgrade is available for a Device, CUSTOMER can upgrade to that Service Plan through the Clover App Market. Each Service Plan available from the Clover App Market includes all of the applications listed within the service description for that Service Plan on the Clover App Market.

a. BAMS is an Authorized Sublicensor of all Service Plans as referenced in the Clover End User License Agreement ("Clover EULA"), including all upgraded Service Plans available through the Clover App Market. Fees for upgraded Service Plans will be disclosed on the Clover App Market and will be charged by Clover on BAMS' behalf..

The Service Plans, including their names, may change from time to time, and the then-available Service Plans will be reflected in the Clover App Market or in other documentation provided to CUSTOMER.

b. Devices sold or rented to CUSTOMER by BAMS or leased to CUSTOMER by First Data Merchant Services LLC (through its First Data Global Leasing division) require activation via the Clover App Market. If CUSTOMER upgrades its Service Plan, then, as further described in the Clover EULA and notwithstanding the terms of this Clover Supplement or information on the Clover App Market that may be to the contrary, (i) BAMS, and not Clover, will be deemed to have sold and/or licensed to CUSTOMER, and CUSTOMER will be deemed to have purchased or obtained from BAMS, and not Clover, that Service Plan, (ii) BAMS, and not Clover, are responsible to CUSTOMER for providing that Service Plan, and that Service Plan will not be a Third Party Service under this Clover Supplement; (iii) this Clover Supplement, and not the Clover EULA, will govern the use of all Service Plans, (iv) if a monthly fee for that Service Plan is indicated on the Clover App Market, then CUSTOMER will be obligated to pay BAMS that fee as further described in Section 18 of this Clover Supplement; provided, however, that Clover will, on BAMS' behalf, collect that fee from CUSTOMER, and CUSTOMER's authorization for BAMS to debit the Settlement Account for amounts due BAMS under the Agreement will apply for any amounts debited from the Settlement Account by Clover for Service Plans. Once CUSTOMER has activated more than one Device of the same type on CUSTOMER's Account, CUSTOMER will be required to have the same Service Plan for all CUSTOMER's Devices for its account, or if all Devices on CUSTOMER's Account are not the same type of Device, then CUSTOMER will be required to have comparable Service Plans for each of CUSTOMER's Devices, which may require an upgrade to the Service Plan provided on any such Device. Depending on the Devices and Service Plans involved, CUSTOMER may be charged by BAMS for some Devices and Clover for the Service Plans for other Devices.

5. PAN Data Protection

This section describes the TransArmor Data Protection services that are part of the Clover Service (also referred to herein as "PAN Data Protection") and apply only to Card transactions processed using Clover Equipment, as further described in Section 5.1 hereof.

If CUSTOMER desires to use PAN Data Protection for Card transaction acceptance via means other than the Clover Service, then (a) CUSTOMER must separately subscribe to the TransArmor Data Protection services, (b) CUSTOMER must pay separate fees for the TransArmor Data Protection services and (c) the TransArmor Data Protection services terms will supersede this Section 5 (unless BAMS advises CUSTOMER otherwise).

If CUSTOMER desires to use TransArmor Solution (and CUSTOMER is eligible for TransArmor Solution) with the Clover Service (or other services BAMS provides), then (x) CUSTOMER must separately subscribe to TransArmor Solution, and CUSTOMER will pay additional fees for TransArmor Solution, even for its use with the Clover Service, and (y) the TransArmor Solution terms will supersede the terms of this Section 5.

5.1. **Encryption and Tokenization.** PAN Data Protection consists of encryption and Tokenization. BAMS will encrypt Card data received from CUSTOMER's Clover Equipment, during transmission of the Authorization request from such Clover Equipment to BAMS Platform, and replace the Card data with a Token. During the period when a Card transaction is being transmitted to BAMS for Authorization processing, all historical transaction data, including PAN and full magnetic stripe data (track data and expiration date when a Card is swiped), will be encrypted. BAMS will then generate or retrieve a unique, randomly generated Token for the PAN, and this Token will be returned to CUSTOMER in lieu of the PAN with the Authorization response.

5.2. **Grant of License.** Subject to the terms of this Section 5, BAMS grants to CUSTOMER a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 5 to use PAN Data Protection, associated software, firmware or hardware, end-user documentation and associated Marks, whether provided by BAMS or a Person through BAMS, in the United States on CUSTOMER's computers, networks or Merchant Systems for their intended purpose. The foregoing license will automatically be revoked, and CUSTOMER's right to access or use PAN Data Protection will cease, upon termination, expiration or suspension of the Agreement or this Section 4 for any reason.

CUSTOMER will not (i) decompile, reverse engineer, disassemble, or otherwise derive the source code from any of the components of PAN Data Protection, including the software or firmware embedded therein; (ii) modify, enhance, translate, alter, tamper with, upgrade or create derivatives works of the software, firmware or documentation associated with PAN Data Protection; (iii) distribute, lease, license, sell, assign, sublicense or otherwise disseminate or transfer CUSTOMER's rights to use any portion of PAN Data Protection to any Person; or (iv) strip out or alter any Mark, copyright, patent, trade secret, ownership or any other proprietary or intellectual property notices, legends, warnings, markings or indications on or within any software, firmware or documentation associated with PAN Data Protection, or attempt (i), (ii), (iii) and/or (iv) above. Further, CUSTOMER will not file any action, in any forum that challenges the ownership any of PAN Data Protection, Processor Technology or Processor IP. Failure to comply with this provision will constitute a material breach of this Section 5 and the Agreement. In the event CUSTOMER challenges BAMS' or BAMS' Persons', ownership of PAN Data Protection or any component thereof, BAMS may immediately terminate this Section 5, the Agreement and/or CUSTOMER's access to and use of PAN Data Protection.

All technology provided or used by BAMS, BAMS' licensors, vendors or other Persons in connection with performing PAN Data Protection, including, without limitation, software, firmware, data processing systems (each of the foregoing, whether in object or source code form), report templates, documentation and materials (collectively, "Processor Technology"), and any of BAMS', BAMS' licensors', vendors' or other Persons' patents, Marks, copyrights, trade secrets and other intellectual property (collectively, "Processor IP"), and any derivative works of or modifications to the Processor Technology or Processor IP, constitute the sole and exclusive property of, and is valuable, confidential and proprietary to, BAMS, BAMS' licensors, vendors or other Persons. This Section 5 does not otherwise grant CUSTOMER with any other right, interest, claim, title or license (whether express or implied, by estoppel or otherwise) in or to PAN Data Protection, Processor Technology or Processor IP (whether BAMS' or any Person's); and all rights with respect thereto that BAMS does not expressly grant to CUSTOMER in this Section 5 are deemed withheld.

USE OF PAN DATA PROTECTION IS NOT A GUARANTEE AGAINST AN UNAUTHORIZED BREACH OF CUSTOMER'S COMPUTERS OR MERCHANT SYSTEMS.

5.3. Responsibilities of CUSTOMER. CUSTOMER must comply with the following regarding CUSTOMER's use of PAN Data Protection:

- a. CUSTOMER is required to comply with the Card Organization Rules, including taking all steps required to comply with the PCI DSS. CUSTOMER must ensure that all Persons and software used by CUSTOMER in connection with CUSTOMER's payment processing are compliant with PCI DSS. Use of PAN Data Protection will not, on its own, cause CUSTOMER to be compliant or eliminate CUSTOMER's obligations to comply with PCI DSS or any other Card Organization Rule. CUSTOMER must demonstrate and maintain CUSTOMER's current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor ("QSA") with corresponding Report on Compliance ("ROC") or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire ("SAQ") or ROC, as applicable, and if applicable to CUSTOMER's business, passing quarterly network scans performed by an approved scan vendor, all in accordance with Card Organization Rules and PCI DSS.
- b. CUSTOMER must never retain full PANs, whether in electronic form or hard copy.
- c. CUSTOMER must use the Token in lieu of the PAN for ALL activities subsequent to receipt of the Authorization response, including settlement processing, retrieval processing, Chargeback and adjustment processing and transaction reviews.
- d. CUSTOMER must use truncated report viewing and data extract creation within reporting tools provided by BAMS.
- e. CUSTOMER is required to follow rules or procedures BAMS may provide to CUSTOMER from time to time regarding CUSTOMER's use of PAN Data Protection. BAMS will provide CUSTOMER with advance written notice of any such rules or procedures or changes to such rules or procedures.
- f. CUSTOMER will use only unaltered version(s) of PAN Data Protection and will not use, operate or combine PAN Data Protection or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this Section 5.
- g. CUSTOMER will promptly notify BAMS of a breach of any terms of this Section 5.

5.4 General; Termination. BAMS' obligations to provide PAN Data Protection are subject to BAMS' ability to obtain and maintain any and all required governmental licenses, permits or other authorizations, and BAMS' ability to comply with any and all laws, regulations, orders and other governmental directives which may be imposed related to PAN Data Protection. BAMS may terminate this Section 5 at any time for any reason.

5.5. PAN Data Protection Limited Warranty. BAMS warrants that the Token returned to CUSTOMER, as a result of using PAN Data Protection, cannot be used by an unauthorized Person to initiate a financial sale transaction outside the Merchant Systems. This warranty by BAMS is referred to herein as the "Limited Warranty" and is subject to the terms and conditions set forth in this Section 5. To be eligible for the Limited Warranty, CUSTOMER must maintain a processing relationship with BAMS and be in compliance with all the terms of this Section 5 and the Agreement and any other agreement relating to Cards eligible for PAN Data Protection. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, BAMS agrees to indemnify and hold CUSTOMER harmless from direct damages, including third party claims, resulting from BAMS' breach of the Limited Warranty. The express remedy for BAMS' breach of the Limited Warranty set forth in this paragraph constitutes BAMS' entire liability and CUSTOMER's sole and exclusive remedy for BAMS' breach of the Limited Warranty. The Limited Warranty is void if (i) CUSTOMER uses PAN Data Protection in a manner not contemplated by, or in violation of, the Agreement, including this Section 5, or any other agreement relating to Cards eligible for PAN Data Protection or (ii) CUSTOMER is negligent or engage in intentional misconduct.

5.6. PAN Data Protection Disclaimer. IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO PAN DATA PROTECTION: EXCEPT AS EXPRESSLY PROVIDED FOR THE LIMITED WARRANTY IN THIS SECTION 5, BAMS MAKES NO REPRESENTATIONS, GUARANTIES, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO PAN DATA PROTECTION, INCLUDING, WITHOUT LIMITATION, THE

MERCHANTABILITY, TITLE, NON-INFRINGEMENT, ACCURACY, UNINTERRUPTED OR ERROR-FREE OPERATION, ACCESSABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF PAN DATA PROTECTION, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. PAN DATA PROTECTION IS PROVIDED TO CUSTOMER "AS-IS" AND WITH ALL FAULTS.

6. **Clover Equipment.** The terms of the Clover Equipment Purchase Agreement set forth in Schedule A-1-Clover to this Clover Supplement will apply to Devices and other equipment and/or peripherals related to the Clover Service (collectively, the "Clover Equipment") purchased by CUSTOMER from BAMS, from time to time over the life of the Agreement, described in the ordering documentation for the Clover Equipment, including, without limitation, email orders, additional location forms and purchase orders, ("Clover Equipment Documents"). Schedule A to-Clover Service Supplement is part of this Clover Supplement and the Agreement, will govern CUSTOMER'S purchase(s) of Clover Equipment, and will supersede any other language in the Agreement or elsewhere with respect to CUSTOMER'S purchase(s) of Clover Equipment. If CUSTOMER leases any Clover Equipment, CUSTOMER must be separately approved by, and enter into a separate lease agreement with, First Data Merchant Services LLC (through its business unit, First Data Global Leasing). If CUSTOMER leases any Clover Equipment or if CUSTOMER provides CUSTOMER'S own equipment to use with the Clover Service (as approved by BAMS), Schedule A to Clover Service Supplement will not apply to CUSTOMER with respect to such leased Clover Equipment or CUSTOMER owned equipment. Please note that such lease agreement may have a different term length than the Agreement.

7. **Term and Termination.** This Clover Supplement shall become effective on the day BAMS begins providing the Clover Service to CUSTOMER and shall end when terminated as set forth herein. This Clover Supplement may be terminated at any time by either party upon thirty (30) days' written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, BAMS may suspend the Clover Service or terminate this Clover Supplement if (i) BAMS determines that CUSTOMER is using the Clover Service for any fraudulent, illegal, or unauthorized purpose, (ii) CUSTOMER violates the terms of this Clover Supplement or an Event of Default occurs under the Agreement, (iii) BAMS terminates BAMS' agreement with any third parties that are involved in providing the Clover Service, or (iv) BAMS otherwise decides to discontinue providing the Clover Service. CUSTOMER acknowledges and agrees that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Agreement, thereby affording BAMS and BANK all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement (and this Clover Supplement) without notice. Further, this Clover Supplement will terminate automatically upon the termination of the Agreement. Upon termination of this Clover Supplement for any reason, CUSTOMER may remain responsible for the full amount of the Clover Services Fee through the end of the calendar month in which such termination is effective.

8. **Account Registration.** BAMS may require CUSTOMER to register and create a "Member" or "Merchant" account to use the Clover Service. If and when prompted by BAMS' registration process, CUSTOMER agrees to (a) provide true, accurate, current and complete information about CUSTOMER and/or CUSTOMER'S business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by CUSTOMER is untrue, inaccurate, not current or incomplete, BAMS has the right to terminate CUSTOMER'S Clover Service account ("Account") and refuse any and all current or future use of the Clover Service.

9. **Privacy and Data Use.** All data that CUSTOMER provides or are collected from CUSTOMER in connection with CUSTOMER'S use of the Clover Service (collectively, "Account Data") are collected by Clover and not BAMS or BANK; therefore, the use and sharing of such Account Data is controlled by the Clover Network, Inc. Privacy Policy (available at https://www.clover.com/privacy_policy). CUSTOMER acknowledges and agrees that BAMS and BANK may access such Account Data upon BAMS' request to Clover, and BAMS' use of CUSTOMER'S Account Data is governed by the terms set forth in the Agreement. CUSTOMER grants BAMS permission to anonymously combine CUSTOMER'S Account Data with that of other merchants in order to improve BAMS' services to CUSTOMER. Subject to compliance with applicable legal requirements and Card Organization Rules and notwithstanding any language to the contrary in the Agreement, certain data collected by BAMS or BAMS' service providers in connection with the Clover Service may be shared with third parties, and used by BAMS, BAMS' service providers, or third parties for the purpose of providing additional products and services to CUSTOMER, other merchants, or other third parties. If CUSTOMER elects Clover Integrated Service, then, in addition to the above and other rights of BAMS under the Agreement with respect to sharing information, CUSTOMER authorizes BAMS and Clover to share any information regarding CUSTOMER'S use of the Clover Service, including transaction information and Account Data, with the Third Party POS System App provider and any other Persons to the extent necessary for CUSTOMER to receive the Clover Integrated Service.

10. **Third Party Services.** The Clover Service may contain links to Third Party Services (e.g., a link in the Clover App Market or a link through the Clover API to a Third Party POS System App). If CUSTOMER decides to use Third Party Services, CUSTOMER will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). If CUSTOMER elects to use Third Party Services, information CUSTOMER submits in CUSTOMER'S application to use Third Party Services will be provided to the provider(s) of such Third Party Services and not to BAMS. CUSTOMER'S access of any Third Party Services is at CUSTOMER'S own risk. Third Party Services are not governed by the terms and conditions of this Clover Supplement or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT CUSTOMER'S OWN RISK. BAMS WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND BAMS EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. BAMS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROVIDER OF A THIRD PARTY SERVICE, OR ANY THIRD PARTY SERVICE OR THIRD PARTY PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND BAMS WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN CUSTOMER AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

11. **Protecting CUSTOMER's Information.** CUSTOMER is solely responsible for ensuring that CUSTOMER's account numbers, passwords, security questions and answers, login details and any other security or access information used by CUSTOMER to use or access the Clover Service are kept safe and confidential. CUSTOMER must prevent unauthorized access to, and use of, any Account Data. CUSTOMER is responsible for all electronic communications sent to BAMS or to any third party, including Clover, containing Account Data. When BAMS receives communications containing Account Data, BAMS assumes CUSTOMER sent it to BAMS. CUSTOMER must immediately notify BAMS if CUSTOMER becomes aware of any loss, theft or unauthorized use of any Account Data (see Clover Service support center contact information below). BAMS reserves the right to deny CUSTOMER access to the Clover Service, in whole or in part, if BAMS believes that any loss, theft or unauthorized use of any Account Data or access to information has occurred.

12. **Clover Service Disclaimer.** USE OF THE CLOVER SERVICE IS AT CUSTOMER'S OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED "AS IS", AND BAMS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

13. **Reserved.**

14. **Notices.** BAMS may provide notices and other information regarding the Clover Service to CUSTOMER via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below. CUSTOMER's notices to BAMS shall be delivered via the method(s) described in the Agreement.

15. **Ideas.** CUSTOMER may choose or BAMS may invite CUSTOMER to submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service ("**Ideas**"). By submitting any Idea, CUSTOMER agrees that: (a) BAMS expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) CUSTOMER's submission will be non-confidential, and (c) BAMS is free to use and disclose any Idea on an unrestricted basis without notifying or compensating CUSTOMER. CUSTOMER releases BAMS from all liability and obligations that may arise from BAMS' receipt, review, use or disclosure of any Ideas or portion of any Idea.

16. **Third Party Beneficiaries.** BAMS' Affiliates and any Persons BAMS uses in providing the Clover Service are intended third party beneficiaries of this Clover Supplement, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Clover Supplement, nothing in this Clover Supplement is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Clover Supplement.

17. **Support.** For all Clover Service support (including questions related to the Device), please contact the dedicated Clover support center at 1-800-430-7161 or at cloversupport@firstdata.com.

Attachment III to Schedule A, as amended

18. **Fees.** CUSTOMER shall pay BAMS the fees for the Clover Service as set forth and further described in the Agreement and this Section 18 which is also made a part of the Fee Schedule by this reference thereto as Attachment III to Schedule A, as amended.

18.1. **Clover Services Fee.** The Clover Services Fee is charged monthly for the license of the Clover Service for the quantity of Devices for which the CUSTOMER has been enabled to access the Clover Service. This fee will appear on CUSTOMER's Merchant Account statement as one amount for all Devices (including additional Devices requested after the date hereof).

18.2. **Load Fee.** The Load Fee, if applicable, is charged for each time we load CUSTOMER's menu or list of services or products to a Device for which CUSTOMER has been enabled to access the Clover Service.

18.3. **Processing Fees.** Processing fees for transactions processed using the Device are the same as for non-Clover Service transactions, which are set forth in such Fee Schedule.

18.4. **Reprogramming Fee.** \$75 per unit of equipment that is reprogrammed. A fee charged to reprogram CUSTOMER's equipment that (a) BAMS has approved for use with the Clover Service, and (b) was originally programmed, or last reprogrammed, by BAMS for CUSTOMER or for a prior client from whom CUSTOMER obtained such equipment.

E-SIGN CONSENT AGREEMENT FOR NOTIFICATION OF DISCLOSURES RELATED TO THE CLOVER SERVICE AND THE AGREEMENT

1. Consent

CUSTOMER consents and agrees that:

- a. BAMS can provide disclosures required by law and other information about CUSTOMER's legal rights and duties to CUSTOMER electronically.
- b. Where required or requested, CUSTOMER's electronic signature (via "click-through" or other method) on agreements and documents relating to the Clover Service has the same effect as if CUSTOMER signed them in ink.

- c. BAMS can send all communications, billing statements, amendments to this Clover Supplement, notices, and other disclosures or information regarding the Clover Service or CUSTOMER's use of the Clover Service or in connection with the Agreement, including, but not limited to, any Card Organization notices (collectively defined as "Disclosures") to CUSTOMER electronically (1) via e-mail, (2) by access to a website that BAMS designates in an e-mail notice BAMS sends to CUSTOMER at the time the information is available, or (3) to the extent permissible by law, by access to a website that BAMS will generally designate in advance for such purpose.
- d. If CUSTOMER wants a paper copy, CUSTOMER can print a copy of the Disclosure or download the information for CUSTOMER's records.
- e. This consent applies to all future Disclosures sent to CUSTOMER in connection with this Clover Supplement, the Clover Equipment Purchase Agreement (if applicable), the Agreement, or CUSTOMER's use of the Clover Service or the Services as defined in the Agreement.

2. Legal Effect

By consenting, CUSTOMER agrees that electronic Disclosures have the same meaning and effect as if BAMS provides paper Disclosures to CUSTOMER. When BAMS sends CUSTOMER an email or other electronic notification alerting CUSTOMER that the Disclosure is available electronically and makes it available online, such action shall have the same meaning and effect as if BAMS provides a paper Disclosure to CUSTOMER, whether or not CUSTOMER chooses to view or print or download the Disclosure.

THIS CLOVER SUPPLEMENT HAS BEEN EXECUTED BY BAMS AND ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF CUSTOMER. THIS CLOVER SUPPLEMENT IS NOT BINDING UPON BAMS UNTIL SIGNED BY BAMS.

BY SIGNING THE AMENDMENT, CUSTOMER ALSO SEPARATELY CONSENTS TO THE E-SIGN CONSENT AGREEMENT ABOVE, WHICH CUSTOMER ACKNOWLEDGES IS REQUIRED FOR CUSTOMER'S ACCEPTANCE OF THE CLOVER SERVICE AND BAMS' ACCEPTANCE OF THIS CLOVER SUPPLEMENT.

Schedule A to Clover Service Supplement

Clover Equipment Purchase Agreement

1. **Definitions.** All capitalized terms used in this Clover Equipment Purchase Agreement and not defined herein shall have the meaning given to them in the Clover Service Supplement to Merchant Processing Agreement ("Clover Supplement").
2. **General.** This Clover Equipment Purchase Agreement is incorporated by reference into the Clover Supplement and governs all Clover Equipment that is identified below and/or in the Clover Equipment Documents and is sold to CUSTOMER by BAMS, from time to time over the life of the Agreement, to use in connection with the Clover Service under the Clover Supplement. THE CLOVER EQUIPMENT IS BEING SOLD TO CUSTOMER FOR CUSTOMER'S BUSINESS USE ONLY AND SHALL NOT BE USED FOR HOUSEHOLD OR PERSONAL USE. Sales of Clover Equipment are made by BAMS.
3. **One Year Limited Warranty.** The Clover Equipment is warranted against material defects for a one year period after the original date of purchase. This warranty does not include damage to the Clover Equipment resulting from accident or misuse or any other breach of this Clover Equipment Purchase Agreement. If any Clover Equipment should otherwise become defective within the warranty period, BAMS will replace it free of charge (except that appropriate shipping charges may apply). This warranty does not apply to any Clover Equipment that has become obsolete. Notwithstanding this limited warranty, it may be necessary for CUSTOMER to upgrade CUSTOMER's Clover Equipment or to purchase new Clover Equipment from time to time, for which CUSTOMER will be charged. This warranty is non-transferable. For more information on making a claim under the limited warranty, please contact the dedicated Clover support center as set forth in the Clover Supplement.
USE OF THE CLOVER EQUIPMENT IS AT CUSTOMER'S OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS PROVIDED IN THIS SECTION 3, BAMS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER EQUIPMENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER EQUIPMENT WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER EQUIPMENT IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.
4. **Incompatibility.** CUSTOMER ACKNOWLEDGES THAT THE CLOVER EQUIPMENT AND ANY SOFTWARE RESIDENT ON THE CLOVER EQUIPMENT CUSTOMER PURCHASES FROM BAMS MAY NOT BE COMPATIBLE WITH ANOTHER PROVIDER'S SYSTEMS. BAMS DOES NOT HAVE ANY OBLIGATION TO MAKE THE CLOVER EQUIPMENT AND/OR SOFTWARE COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT CUSTOMER ELECTS TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THE CLOVER SUPPLEMENT, CUSTOMER ACKNOWLEDGES THAT CUSTOMER MAY NOT BE ABLE TO USE THE CLOVER EQUIPMENT AND/OR SOFTWARE PURCHASED UNDER THIS CLOVER SUPPLEMENT.
5. **Purchase; Taxes; Payment.** BAMS agrees to sell to CUSTOMER, and CUSTOMER agrees to buy from BAMS, the Clover Equipment, as described in Section 2 of this Clover Equipment Purchase Agreement, free and clear of all liens and encumbrances (subject to Section 8 of this Clover Equipment Purchase Agreement) except that any software resident on a Device at the time of purchase or "pushed" to CUSTOMER'S Device(s) by BAMS will not be sold to CUSTOMER outright but instead will be provided to CUSTOMER pursuant to, and subject to the conditions of, Section 2 of the Clover Supplement. CUSTOMER agrees to pay the purchase price specified for the Clover Equipment at the prices set forth in Section 12 of this Schedule A-1-Clover or as otherwise set forth on the Clover Equipment Documents (prices subject to change without notice). CUSTOMER may also purchase from BAMS, at prices determined by BAMS, supplies related to the Clover Equipment that BAMS makes available. In addition to the purchase price for any Clover Equipment or supplies due hereunder, CUSTOMER will be responsible for any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges or on the Clover Equipment or use thereof, including, without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on BAMS' net income. CUSTOMER hereby authorizes BAMS to collect all amounts due from CUSTOMER under this Clover Equipment Purchase Agreement by initiating debit entries for such amounts to the Settlement Account or by deducting such amounts from amounts due to CUSTOMER under the Agreement.
6. **Delivery and Acceptance.** BAMS will deliver the Clover Equipment to the site designated by CUSTOMER. CUSTOMER will be deemed to have accepted each piece of Clover Equipment when it has been delivered to CUSTOMER.
7. **Support and Maintenance.** Help desk support for Clover Equipment may be obtained by contacting the dedicated Clover support center as set forth in the Clover Supplement. BAMS or Persons designated by BAMS will only provide help desk support for Clover Equipment purchased from BAMS hereunder. BAMS will not provide any such support or related services for any other products or equipment. Maintenance and repair of Clover Equipment purchased from BAMS is CUSTOMER'S responsibility. CUSTOMER acknowledges and agrees that from time to time BAMS may "push" software updates to CUSTOMER'S Clover Equipment remotely and automatically in connection with CUSTOMER'S use of the Clover Service.
8. **Security Interest; Financing Statements.** CUSTOMER hereby grants to BAMS a security interest in all Clover Equipment and the related software to secure payment of the purchase price, and authorizes BAMS to file financing statements with respect to the Clover Equipment and the related software in accordance with the Uniform Commercial Code, signed only by BAMS or signed by BAMS as CUSTOMER's attorney-in-fact.
9. **Equipment Purchase and Rental Supplement to Merchant Processing Agreement.** The parties agree that Clover Equipment shall be considered "Equipment" as such term is defined in the Equipment Purchase and Rental Supplement to Merchant Processing Agreement ("MPA Equipment Supplement"). Further, the parties agree the terms and conditions of the MPA Equipment Supplement applies to Clover Equipment, specifically including (but not limited to) any limitation of liability and/or indemnification provisions contained therein. However, to the extent the terms of this Clover Equipment Purchase Agreement directly conflict with the terms of the MPA Equipment Supplement, this Clover Equipment Purchase Agreement shall control.
10. **Default; Remedies.** If any debit to the Settlement Account initiated by BAMS for charges due hereunder is rejected when due, or if CUSTOMER otherwise fails to pay BAMS any amounts due hereunder when due, it will be deemed an event of default under the Agreement.

11. Clover Equipment Prices.

The below Clover Equipment prices are based on current prices for the below described equipment which are subject to change without prior notice. Actual prices charged for each order of Clover Equipment will be reflected on the related Clover Equipment Documents for that order.

Prices for Clover Equipment

| Item | Model Name | Merchant Price (\$) |
|---|------------|---------------------|
| Clover Solutions | | |
| Clover Station 2018 (touchscreen/stand) | AA1297 | N/A |
| Clover Station Power Hub Kit (Starter Kit) MUST BE SELECTED | AA129G | N/A |
| Clover Station P500 Printer (Basic Printer) | AA1298 | \$1,245.00 |
| Clover Station NFC Customer Display Printer | AA129C | \$1,295.00 |
| Clover Mobile - 3G and Wi-Fi | AA106B | \$799.00 |
| Clover Mini - Wi-Fi Only | AA105J | \$649.00 |
| Clover Mini - 3G and Wi-Fi | AA105K | \$699.00 |
| Clover Flex - 3G and Wi-Fi | AA11QX | \$699.00 |
| Optional Peripherals For Clover Mobile | | |
| Clover Mobile Printer (Bluetooth) | AA1069 | \$198.00 |
| Clover Mobile Docking Station ** | AA1068 | \$169.00 |
| Optional Peripherals | | |
| Kitchen Printer (Mini and Station) | CRKTPR | \$396.00 |
| Handheld 2D Bar Code Scanner | AA11Z4 | \$191.00 |
| Hands Free 2D Bar Code Scanner (Countertop) | AA11Z5 | \$257.00 |
| Weight Scale (Mini and Station) | AA1018 | \$419.00 |
| Kitchen Printer - Asian Chr (Mini and Station) | AA1019 | N/A |
| Clover Merchant Keypad (Mini Only) ** | AA110B | \$45.61 |
| Clover Cash Drawer (Mini and Station) | CLVCDR | \$121.00 |
| Additional Items | | |
| 50' Ethernet Cable for Kitchen Printer | CRC8KP | \$6.54 |
| Clover Employee Login Cards (Station, Mobile, Mini, Flex) - Quantity of 10 cards included in package | AA11Z7 | \$9.99 |
| Clover Flex Silicon Sleeve | AA11Z6 | \$6.88 |
| Additional Items - Retail pricing does not include freight. Freight could be charged at \$14.95 per order delivery or \$24.95 for overnight delivery. | | |
| Replacement Policy | | |
| Purchase - < 1 year - no charge for replacement; \$35 shipping/handling | | |
| Lease - no charge for replacement during lease term; \$35 shipping/handling | | |
| ** These items are non-serialized - therefore - do not qualify for replacements. | | |

EXHIBIT 3 TO AMENDMENT 1

**TRANSARMOR® DATA PROTECTION SERVICES SUPPLEMENT TO
MERCHANT PROCESSING AGREEMENT AND ATTACHMENT IV TO SCHEDULE A**

This TransArmor Data Protection Services Supplement to Merchant Processing Agreement and Attachment IV to Schedule A-1 ("TransArmor Supplement") is made as of July 26, 2018 ("Effective Date") by and between the CITY AND COUNTY OF SAN FRANCISCO ("CUSTOMER") and Banc of America Merchant Services, LLC ("BAMS") and supplements the Merchant Processing Agreement by and among CUSTOMER, and BAMS and Bank of America, N.A. ("BANK") dated September 25, 2013 (as amended, modified and supplemented from time to time, all collectively, the "Agreement") to include terms for the Data Protection Services (as defined below). Unless stated otherwise, any reference to this TransArmor Addendum will include the Agreement.

CUSTOMER AND BAMS agree as follows:

1. **Definitions.** Capitalized terms used but not defined in this TransArmor Addendum are defined in the Agreement. In addition, the following defined terms apply to this TransArmor Addendum:

"Approved Person" means a Merchant Provider acting for or in connection with CUSTOMER's use of the Data Protection Services that, in addition to any approvals required for such Merchant Provider as set forth in the Agreement, is separately approved by BAMS for CUSTOMER's use in connection with the Data Protection Services.

"Data Protection Services" has the meaning set forth in Section 2 of this TransArmor Addendum.

"Encryption" means the encryption of (i) Track 1 or Track 2 data from the magnetic stripe or otherwise from the physical Card or (ii) PAN.

"Get PAN" means the deconversion of a Token and return of the PAN associated with such Token back to the CUSTOMER or an Approved Person based on CUSTOMER's (or such Approved Person's) requests received on a per transaction basis, subject to BAMS' prior approval.

"Get Token" or "Token Registration" means a process by which CUSTOMER may obtain a Token or a Multi-Pay Token without requesting an Authorization, which results in a non-financial Card transaction that permits CUSTOMER to store a Multi-Pay Token for future financial Card transactions involving the related customer of CUSTOMER.

"Group Member" has the meaning set forth in Section 2.c of this TransArmor Addendum.

"Group Owner" has the meaning set forth in Section 2.c of this TransArmor Addendum.

"Legacy Data" has the meaning set forth in Section 2.b of this TransArmor Addendum.

"Legacy Data Conversion" or "LDC" means Tokenization of PANs that are received on a bulk file basis, from CUSTOMER or an Approved Person during implementation of or in connection with CUSTOMER's use of the Data Protection Services.

"Legacy Data Deconversion" or "LDD" means the deconversion of Tokens and return of the PANs associated with such Tokens back to CUSTOMER or an Approved Person, on a bulk file basis, during the term of, or following termination of, this TransArmor Addendum, as requested by CUSTOMER and approved by BAMS.

"Merchant System" means, for purposes of this TransArmor Addendum, any and all equipment, systems and facilities CUSTOMER uses in connection with Authorization, clearing, completing, settling, and transmitting or other related processing or storage of, Card transaction data or Cardholder data including, without limitation, all telecommunication lines and wireless connections and software, computers, networks, servers, systems, point-of-sale terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned or licensed by CUSTOMER, Merchant Providers or other Persons used by CUSTOMER.

"Multi-Pay Token" means a Token that provides the option to support businesses that need to submit a financial transaction in a card-not-present sale situation or on a recurring basis. These Tokens are unique to each merchant that uses them and are stored in place of the PAN. With these Tokens, merchants can initiate new or recurring payments within their own environment instead of using the PAN for the related Card. A Multi-Pay Token can be obtained following a request for Authorization or a Token Registration or through Legacy Data Conversion and can be placed within the Merchant System, including a merchant's payment page or "e-wallet," for use with future or recurring payments. It is common for ecommerce merchants to ask their customers to register by providing profile information, such as name, address, and phone number, to the merchant website before or upon checkout.

"PAN" means the Primary Account Number associated with a Card"

"Shared Merchant System" has the meaning set forth in Section 2.c of this TransArmor Addendum.

"Shared Token" has the meaning set forth in Section 2.c of this TransArmor Addendum.

"Token" means a random numeric or other code that is assigned to replace a PAN as described herein.

"Token Only" means a request for Authorization, without Encryption, for which a Token or Multi-Pay Token is returned. Token Only is available for Card Not-Present Sales transactions only.

"Token Registration" (see Get Token),

"Tokenization" means a form of data substitution that replaces a PAN with a Token.

"Transferred Token" has the meaning set forth in Section 2.d of this TransArmor Addendum.

2. **Data Protection Services.**

The TransArmor Data Protection Services ("Data Protection Services") consists of (i) Encryption and Tokenization; (ii) Token Only; (iii) Get Token; (iv) Get PAN; (v) Legacy Data Conversion and (vi) Legacy Data Deconversion. BAMS shall provide the Data Protection Services elected by CUSTOMER, subject to the terms of this TransArmor Addendum and any required approvals by BAMS. The Data Protection Services are available only for (a) CUSTOMER's internal business purposes and (b) Card transactions CUSTOMER sends to BAMS for Authorization, or Authorization and settlement, pursuant to the Agreement, whether each such financial transaction occurs at the time of the related Authorization request or at a later time after Token Registration for the related PAN. The Data Protection Services are not available for electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless mode, Wright Express (also known as "WEX") transactions, Voyager transactions, private label Card transactions or other Card transaction types that BAMS determines are not capable of Tokenization. The Data Protection Services are incorporated within the term Services in the Agreement but are provided to CUSTOMER by BAMS and not BANK; BANK is not liable to CUSTOMER in any way with respect to the Data Protection Services. For the purposes of this TransArmor Addendum, the term "Servicers" in the Agreement refers only to BAMS and not the Bank. Below are additional terms regarding certain aspects of the Data Protection Services.

a. Encryption; Tokenization and Token Only.

- i. *Encryption.* If CUSTOMER elects Encryption and Tokenization, BAMS shall provide Encryption at the time PAN or Magnetic Stripe, as applicable, is first read by, or entered into, CUSTOMER's device for an Authorization or a Token Registration request; provided, however, that depending on CUSTOMER's point of sale solution and whether CUSTOMER uses a Merchant Provider, the point at which Encryption occurs may vary.
- ii. *Tokenization and Token Only.* After BAMS receives CUSTOMER's Authorization or Token Registration request, whether CUSTOMER elects Encryption and Tokenization or Token Only, BAMS shall then return a Token to CUSTOMER, in lieu of the PAN, with the Authorization response or in response to a Token Registration request.

b. Legacy Data Deconversion. If CUSTOMER uses Legacy Data Deconversion, then BAMS shall provide the PANs for deconverted Tokens (collectively, "Legacy Data") to CUSTOMER or, at CUSTOMER's written request and upon BAMS' written approval, to an Approved Person, as part of Legacy Data Deconversion. Legacy Data constitutes Cardholder data under the Agreement. CUSTOMER shall be responsible for its, and, if applicable, the Approved Person's, compliance with Applicable Law and Card Organization Rules (including PCI DSS) with respect to use, storage, transmission or handling of Legacy Data that BAMS provides to CUSTOMER or such Approved Person, in connection with Legacy Data Deconversion. BAMS shall not be responsible for any claims, losses or liabilities arising from CUSTOMER's, or the Approved Person's, use, transmission, storage or handling of Legacy Data that BAMS provides in connection with Legacy Data Deconversion. CUSTOMER agrees that BAMS' provision of Legacy Data to the Approved Person in connection with Legacy Data Deconversion hereunder is not a breach of the confidentiality provisions of the Agreement. Notwithstanding the foregoing, BAMS shall not be required to provide the Legacy Data to any Person that is not authorized to use, transmit, store or handle Legacy Data pursuant to Applicable Law or the Card Organization Rules, even if an Approved Person for other purposes.

c. Shared Tokens; Shared Merchant System. If CUSTOMER is a Group Member or Group Owner, then, subject to BAMS' approval, CUSTOMER may utilize Shared Tokens through a Shared Merchant System, and subject to the terms of this TransArmor Addendum, BAMS agrees to perform for CUSTOMER the Data Protection Services and BAMS' other obligations hereunder, and CUSTOMER agrees to perform CUSTOMER's obligations to BAMS hereunder, to the same extent as with respect to Tokens and Merchant Systems. "Group Member" means a franchisee, licensee, association or member of a similar type of group member associated with the Group Owner. "Group Owner" means a franchisor, licensor, association or other group level entity that has a relationship with BAMS for the benefit of the Group Owner and the members of the group for whom the Group Owner acts. "Shared Merchant System" means the Merchant Systems and/or similar systems used by the Group Owner and Group Members for processing Card transactions with Shared Tokens, whether such Merchant Systems are owned or operated, entirely or in combination, by the Group Owner, one or more Group Member(s) or a Person acting for the Group Owner. "Shared Token" means any Multi-Pay Token that can be utilized by Group Member merchants, as requested by Group Owner and agreed to by BAMS. This type of Multi-Pay Token is not unique to each Group Member but is unique to any non-Group Member merchants. In connection with the Shared Tokens, CUSTOMER authorizes BAMS to use CUSTOMER's transaction data and disclose Tokens generated for CUSTOMER (and related PANS, if applicable) within the Shared Merchant System. If CUSTOMER ceases to be a Group Member or Group Owner, then in either case, BAMS shall no longer be obligated to provide Shared Tokens to CUSTOMER and may cease doing so without prior notice to CUSTOMER.

d. Transferred Tokens. "Transferred Token" means a Multi-Pay Token that was originally generated by a Person providing to CUSTOMER services similar to the Data Protection Services ("Non-BAMS Acquirer") which Multi-Pay Token such Non-BAMS Acquirer transitions to the Data Protection Services, at the request of CUSTOMER and upon agreement between BAMS and such Non-BAMS Acquirer. Upon CUSTOMER's use of a Transferred Token in

connection with Data Protection Services provided by BAMS, such Transferred Token will constitute a Token for purposes of this TransArmor Addendum.

3. **CUSTOMER Responsibilities.** CUSTOMER shall implement the Data Protection Services according to the operating instructions, which includes, without limitation, (i) implementing the Data Protection Services throughout the Merchant Systems (and, if applicable, the Shared Merchant System) involved in the Services, (ii) replacing existing PANs within Merchant Systems involved in the Services with Tokens (and, if applicable, the Shared Merchant System) and (iii) complying with applicable Card Organization Rules and applicable data security standards and reviews set forth in the Agreement and in the Card Organization Rules. CUSTOMER shall implement any upgrades to the Data Protection Services within a commercially reasonable period of time after receiving the updates. CUSTOMER shall not retain PANs following implementation of the Data Protection Services and shall use Tokens or account truncation (as applicable) in lieu of PANs for all activities related to the Services provided by BAMS subsequent to receipt of a Token associated with a Card transaction; including, without limitation, settlement, retrieval, chargeback and adjustment processing and transaction reviews. CUSTOMER shall only use Merchant Systems, gateways or VARs that are certified for use with the Data Protection Services. If CUSTOMER submits Card transactions as batch files for processing, CUSTOMER shall use batch file processing services, truncated report viewing and data extract creation tools provided by BAMS in connection with the Data Protection Services.

4. **Implementation and Startup Expenses.** BAMS and CUSTOMER agree to begin the process of implementing the Data Protection Services within fifteen (15) days of the Effective Date. In order to minimize any potential delay in the implementation of the Data Protection Services, CUSTOMER hereby authorizes BAMS to undertake preparatory steps and incur reasonable and necessary expenses in connection with the development and implementation of the Data Protection Services ("**Startup Expenses**"). If the Data Protection Services are not implemented by the Implementation Date and BAMS and CUSTOMER are unable to mutually agree, in writing, on an alternative Implementation Date, CUSTOMER shall reimburse BAMS for the actual, out-of-pocket Startup Expenses, not to exceed Fifteen Thousand United States Dollars (USD \$15,000.00), that BAMS reasonably incurs in connection with the implementation of the Data Protection Services, and BAMS shall be permitted to terminate this TransArmor Addendum. As used herein, "**Implementation Date**" means the date that is one hundred twenty (120) days after the Effective Date.

5. **TransArmor Limited Warranty.** BAMS warrants that the Token or Shared Token, as applicable, returned to CUSTOMER as a result of using the Data Protection Services cannot be used to initiate a financial sale Card transaction by an unauthorized Person (i) outside the Merchant Systems (if not part of the Shared Merchant System) or (ii) outside the Shared Merchant System (the "**TransArmor Limited Warranty**"). The TransArmor Limited Warranty applies only to Authorization responses for which BAMS returns a Token to CUSTOMER and the subsequent use of such Token to initiate a financial sale Card transaction as described in the TransArmor Limited Warranty. To be eligible for the TransArmor Limited Warranty, CUSTOMER must obtain Authorization only or Authorization and settlement processing services from BAMS and must be in compliance with the material terms of the Agreement and this TransArmor Addendum.
 - a. If CUSTOMER uses Shared Tokens, CUSTOMER acknowledges and agrees that Shared Tokens may be utilized within the Shared Merchant System, which may occur outside one or more Merchant Systems that are part of the Shared Merchant System. BAMS shall not be responsible for, and the TransArmor Limited Warranty does not apply to, any unauthorized use of any Shared Token within a Shared Merchant System, whether such use occurs within or outside any of the Merchant Systems that are part of that Shared Merchant System.
 - b. BAMS shall indemnify and hold harmless CUSTOMER from and against any and all direct damages, including third party claims, resulting from BAMS' breach of the TransArmor Limited Warranty; subject to the exclusion of consequential damages and limitations of liability set forth in the Agreement. The TransArmor Limited Warranty is void if CUSTOMER (a) fails to comply with the operating instructions BAMS may provide for Tokenization, the terms of this TransArmor Addendum or the Agreement, or (b) is negligent or engages in willful misconduct with respect to Tokenization or use of a Token. If an Approved Person has been approved separately by BAMS to receive or use PAN for authentication, authorization, settlement or other BAMS-approved activities, the TransArmor Limited Warranty is not void due to such receipt or use of PAN.

6. **Fees.** The fees for the Data Protection Services are described in the table below and are part of the Fee Schedule. The Data Protection Services fees are incremental fees charged for each transaction in addition to the applicable processing fees set forth in the Agreement. CUSTOMER shall also be responsible for all additional costs and expenses as set forth in the Agreement. BAMS shall collect, and CUSTOMER agrees to pay BAMS, the fees for the Data Protection Services, which BAMS may charge and collect in the same manner and pursuant to the same terms and conditions that are set forth in the Agreement for the collection and payment of Servicers' fees.

| Item | Fee | Driver |
|--|----------|-------------------|
| Implementation Fee | \$99.00 | One-time fee |
| Token and Encryption (RSA) (12E) | \$0.0200 | per transaction |
| Token and Encryption (VeriFone) (12I) | \$0.0200 | per transaction |
| Token Only or Token and Encryption (TDES) (12G) <i>This fee will appear on the Merchant Account Statement as "TransArmor Token Only", even if CUSTOMER uses TDES.</i> | \$0.0200 | per transaction |
| Token Registration (Get Token) (12H) | N/A | per transaction |
| TransArmor Monthly Fee (30L) | \$10.00 | per month per MID |
| TransArmor Minimum Monthly Fee (959) <i>This Fee is charged for each MID for which the total amount of fees charged in</i> | N/A | per month per MID |

| | | |
|--|---------|--|
| a given month for such MID under codes 12E, 12G, 12I, and 30L, as applicable, ("Applicable Data Protection Fees Total") is less than the amount listed in the next column for this Fee and will be equal to the difference between the amount of this Fee and the Applicable Data Protection Fees Total for that month. | | |
| TransArmor Per Device Fee (M2A) <i>This fee is a one-time fee applicable to each unit of CUSTOMER's Merchant Equipment that is (1) enabled for Encryption, as part of the Data Protection Services, (2) connected to a merchant point of sale network and (3) either a non-Verifone device, on which the TransArmor Verifone Edition Encryption method is used, or a Verifone device (such Merchant Equipment, "Covered Data Protection Services Equipment").</i> | \$23.00 | Per unit of Covered Data Protection Services Equipment |
| Legacy Data Conversion | \$0.005 | per PAN converted |
| Legacy Data Deconversion | \$0.005 | Per Token deconverted |

7. Data Protection Services Disclaimers.

a. USE OF THE DATA PROTECTION SERVICES DOES NOT CAUSE CUSTOMER TO BE COMPLIANT WITH, OR ELIMINATE CUSTOMER'S OBLIGATION TO COMPLY WITH, THE DATA SECURITY REQUIREMENTS OR CARD ORGANIZATION RULES AS SET FORTH IN THE AGREEMENT. USE OF THE DATA PROTECTION SERVICES DOES NOT ELIMINATE THE RISK OF, AND IS NOT A GUARANTY AGAINST, AN UNAUTHORIZED BREACH OF THE MERCHANT SYSTEMS OR SHARED MERCHANT SYSTEM.

b. EXCEPT AS EXPRESSLY PROVIDED IN THIS TRANSARMOR ADDENDUM, BAMS MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO THE DATA PROTECTION SERVICES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT BY THE DATA PROTECTION SERVICES OR THAT THE DATA PROTECTION SERVICES WILL FUNCTION UNINTERRUPTED OR ERROR-FREE; AND ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) ARE DISCLAIMED AS SET FORTH IN THIS TRANSARMOR ADDENDUM AND THE AGREEMENT.

8. Intellectual Property.

a. BAMS grants to CUSTOMER a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this TransArmor Addendum to use the Data Protection Services, and the associated Marks identified in the operating instructions, within the United States and subject to the terms of this TransArmor Addendum and the Agreement. CUSTOMER has no right, title or interest in or to the Data Protection Services, any related software, materials, documentation, or derivative works thereof; and nothing in this TransArmor Addendum or the Agreement assigns, transfers or creates any such right, title or interest for CUSTOMER (whether express or implied, or by implication, estoppel or otherwise); and any rights associated with the Data Protection Services that are not expressly granted by BAMS within this TransArmor Addendum are withheld. CUSTOMER shall not take any action inconsistent with the ownership, title or license rights associated with the Data Protection Services. CUSTOMER shall not file any action, in any forum, challenging ownership of the Data Protection Services, any related software, materials, documentation or derivative works thereof. Breach of this Section 8 constitutes a material breach of this TransArmor Addendum and the Agreement, and BAMS may immediately suspend or terminate CUSTOMER's use of the Data Protection Services, this TransArmor Addendum or the Agreement in the event of such breach.

b. CUSTOMER shall not, and shall not permit others to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the Data Protection Services or any portion thereof; (ii) copy, modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the Data Protection Services or any portion thereof; (iii) use altered versions of the Data Protection Services or portion thereof; (iv) use, operate or combine the Data Protection Services or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with this TransArmor Addendum or the Agreement; or (v) use the Data Protection Services, or any portion thereof, as a standalone or non-integrated program. CUSTOMER shall not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting BAMS' or other third parties' (if any) proprietary interest in the Data Protection Services.

9. Full Force and Effect. This TransArmor Addendum is subject to the terms of the Agreement, and the Agreement remains in effect as supplemented hereby. In the event of any conflict between the terms of this TransArmor Addendum and the Agreement, the terms of this TransArmor Addendum will control with respect to the Data Protection Services. References to the Agreement after the Effective Date will include this TransArmor Addendum.

10. Representations and Warranties. CUSTOMER and BAMS each represent and warrant to the each other: that (i) such party has corporate authority to execute this TransArmor Addendum; and (ii) executing this TransArmor Addendum does not constitute a material conflict with, breach or default under any 1documents, agreements or other instruments which are binding upon such party.

11. Counterparts. This TransArmor Addendum may be executed in any number of counterparts, each of which is deemed an original and all of which constitute one and the same instrument. Facsimile, electronic or other copies of this executed TransArmor Addendum are effective as executed originals.