

File No. 230749

Committee Item No. 3

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date July 19, 2023

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
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#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Original Agreement 9/23/2013</u>            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>First Amendment 7/31/2018</u>               |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Second Amendment 7/8/2021</u>               |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Merchant Processing Agreement 11/5/2013</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>MPA Amendment No. 1 9/23/2017</u>           |
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Completed by: Brent Jalipa Date July 14, 2023

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Contract Amendment - Banc of America Merchant Services, LLC and Bank of America  
2 N.A. - Merchant Processing Agreement - Not to Exceed \$9,127,020]

3 **Resolution authorizing the Office of the Treasurer & Tax Collector to amend a**  
4 **merchant processing agreement which enables the City and County of San**  
5 **Francisco to accept credit and debit cards with point of sale terminals with Banc of**  
6 **America Merchant Services, LLC and Bank of America N.A, to increase the contract**  
7 **amount by \$1,127,020 for a total amount not to exceed \$9,127,020 and to extend the**  
8 **contract term for an additional one year from August 14, 2023, for the total term of**  
9 **August 15, 2013, through August 14, 2024, effective upon approval of this**  
10 **Resolution.**

11  
12 WHEREAS, Charter, Section 9.118(b), requires the Board of Supervisors to approve  
13 by resolution contracts estimated to exceed \$10,000,000 or with a term exceeding ten  
14 years; and

15 WHEREAS, Since 2013 Bank of America has provided to the City and County of  
16 San Francisco (CCSF) merchant services primarily for in person card present transactions  
17 enabling CCSF departments and agencies to process in person credit card payments; and

18 WHEREAS, For Fiscal Year 2022, these services generated \$64,000,000 in revenue  
19 from over 500,000 transactions; and

20 WHEREAS, Terminals provided by this contract have allowed multiple departments  
21 to process credit card payments including Animal Care and Control, County Clerk, San  
22 Francisco International Airport, Office of Assessor-Recorder, Art Commission, Board of  
23 Supervisors, Superior Court, Department of Building Inspection, Department of Public  
24 Health, Fire Department, Metropolitan Transportation Authority, Public Library, Port  
25

1 Authority, Public Utilities Commission, Recreation and Parks, and San Francisco Unified  
2 School District; and

3 WHEREAS, Office of the Treasurer & Tax Collector (TTX) has previously contracted  
4 with Bank of America to provide merchant services; and

5 WHEREAS, TTX wishes to extend the contract for one year and will issue a Request  
6 for Proposals to replace the existing contract in the coming months; and

7 WHEREAS, The contract in substantially final form is on file with the Clerk of the  
8 Board of Supervisors in File No. 230749; now, therefore, be it

9 RESOLVED, That the Board of Supervisors authorizes the Office of the Treasurer &  
10 Tax Collector and Banc of America Merchant Services, LLC and Bank of America N.A, to  
11 execute an amended merchant processing agreement, to extend the contract term for an  
12 additional one year, increasing the contract amount by \$1,127,020 for a total amount not to  
13 exceed \$9,127,020 to extend the contract term for an additional one year from August 14,  
14 2023, for the total term of August 15, 2013, through August 14, 2024, effective upon  
15 approval of this Resolution; and, be it

16 FURTHER RESOLVED, That within 30 days of the contract being fully executed by  
17 all parties, the Purchaser, the Office of the Treasurer & Tax Collector shall provide the final  
18 contracts to the Clerk of the Board for inclusion into the official file.

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<p><b>Item 3</b> <b>File 23-0749</b></p>	<p><b>Department:</b> Office of the Treasurer &amp; Tax Collector</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed resolution authorizes the Office of the Treasure and Tax Collector (TTX) to enter into the third amendment to their agreement with Banc of America Merchant Services, LLC and Bank of America, N.A. (Bank of America) to increase the not-to-exceed amount by \$1,127,020 for a total not-to-exceed of \$9,127,020 and extend the contract by one year from August 14, 2023 through August 14, 2024, for a total term of 11 years from August 15, 2013 through August 24, 2024.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>TTX entered into an agreement with Bank of America on September 25, 2013 to provide merchant processing services for credit card payments. Bank of America was selected through a competitive request for proposals (RFP) process and received the highest score.</li> <li>The proposed amendment adds an addendum fee schedule for services provided to the Department of Public Health for the use and purchase of credit card processing terminals that provide payment integration with Epic Electronic Health Record System.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>The proposed \$1,127,020 increase to the contract spending authority would fund \$1,000,000 in transaction fees and \$127,020 for the purchase of the credit card processing terminals and associated fees.</li> <li>The original agreement did not include a not to exceed amount as TTX reports this was considered a “zero-dollar revenue contract” and the cost of the fee was netted out from the transaction. In 2019, changes to the accounting practices allowed TTX to track the cost of fees. They used this information to estimate an \$8 million not to exceed that is being increase to \$9,127,020 through the proposed resolution.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>The RFP used to procure this contract stated a maximum term of 5 years with two 2-year extensions at City's discretion or a total maximum term of nine years. TTX extended the agreement through August 2022, resulting in a ten-year, under the Mayor’s 47th Supplement to the COVID Emergency Declaration, now expired, which allowed Departments extend agreements without complying with the procurement procedures of the Administrative Code. The proposed resolution would extend the agreement by one year, for a total term of 11 years, now two years beyond the term stated in the RFP. According to TTX staff, the extension is necessary because the Department was delayed in issuing a new RFP, but plans to do so in July 2023.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>Approval of the proposed resolution is a policy matter for the Board of Supervisors.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

## BACKGROUND

On September 25, 2013, the Office of the Treasurer & Tax Collector (TTX) entered into an agreement with Banc of America Merchant Services, LLC and Bank of America, N.A. (Bank of America) to provide merchant processing services, which allows the City to accept credit and debit cards at point-of-sale terminals.<sup>1</sup> These merchant services are primarily for processing in person card transactions and credit card payments. According to the proposed resolution, in FY 2021-22, TTX estimates that these services generated \$64 million in revenue from over 500,000 transactions.

Bank of America was selected to provide merchant processing services following a Request for Proposal that was issued on May 11, 2012. There were seven respondents, which included Bank of America Merchant Services, Bank of the West - Elavon, Chase Paymentech, Citibank Merchant Services, FIS, U.S. Bank – Elavon, and Wells Fargo Merchant Services. The proposals were reviewed by four panelists,<sup>2</sup> and scored out of 100 points and then weighted by staff to compare the top candidates. Bank of America Merchant Services received the highest weighted score, of 148.50 and the next closest score was 134.82 for U.S. Bank.

The original agreement with Bank of America was for a term of five years from August 15, 2013 through August 15, 2018. The agreement includes the Merchant Processing Agreement (MPA), which governs the processing services related to credit, debit, and other card transactions and services and specifies the fee schedule for these transactions. The agreement has been amended two times. It was amended first on July 31, 2018 to extend the term through August 14, 2022, update the fee schedule, and add additional services. The second amendment extended the term through August 14, 2023 and amended the MPA to remove the annual minimum bankcard volume requirement between July 1, 2021 and August 15, 2022.

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<sup>1</sup> According to the proposed resolution, departments processing credit card payments include Animal Care and Control, County Clerk, San Francisco International Airport, Office of Assessor-Recorder, Art Commission, Board of Supervisors, Superior Court, Department of Building Inspection, Department of Public Health, Fire Department, Metropolitan Transportation Authority, Public Library, Port Authority, San Francisco Public Utilities Commission, Recreation and Parks, and San Francisco Unified School District.

<sup>2</sup> Panelist titles were not provided as TTX reports that it was a historic practice to not reveal this information and the document retention period for this has expired.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution authorizes the third amendment to the agreement between TTX and Bank of America to increase the not-to-exceed amount of the contract by \$1,127,020 for a total not to exceed amount of \$9,127,020 and extend the term by one year from August 14, 2023 through August 14, 2024, for a total term of 11 years from August 15, 2013 through August 24, 2024.

The proposed amendment adds an addendum fee schedule for services provided to the Department of Public Health. The addendum describes the use and purchase of credit card processing terminals related to Bank of America’s Health Payment Solutions Platform. These terminals provide payment integration with Epic Electronic Health Record System, allowing for integration for point-of-service transactions as well as integration to process payments through MyChart, Epic’s patient portal.

Exhibit 1 details the current MPA fee schedule for transactions, which has been in place without changes since the July 2018 amendment.

**Exhibit 1: Merchant Processing Agreement Fee Schedule**

<b>Card Type</b>	<b>Authorization Fee (per attempt)</b>	<b>Per Item Fee (per settled sale/transaction)</b>
Visa	\$0.0140	\$0.0000
Master Card	\$0.0140	\$0.0000
American Express	\$0.0500	\$0.0000
Discover	\$0.0140	\$0.0000
PIN Debit	\$0.0000	\$0.0400
<b>Per Occurrence Fees</b>		<b>Amount</b>
Chargeback		\$10.00
Return Item		\$0.0140
Servicers Hourly Rate		\$125.00
Voice Authorization		\$0.95
Automated Clearing House (ACH) Reject and Deposit Fees		Waived
Wire Deposit & Pin Debit Adjustment Fee		N/A
<b>Monthly Fee</b>		<b>Amount</b>
Minimum Discount Fee		\$10.00
Client Line Fee, Paper Statement Fee		Waived

Source: First Amendment MPA

TTX staff report that once this agreement ends in August of 2024, they will be entering into a new contract for merchant processing services. This will be competitively procured through an RFP that they intend to issue by the end of July 2023.

**FISCAL IMPACT**

The proposed \$1,127,020 increase to the contract is projected to be used as shown in Exhibit 2 below.

**Exhibit 2: Projected Uses of Contract Funds**

Category	Estimated Cost
<u>Health Payment Solutions Platform Equipment Costs</u>	
Equipment Purchase (200 units at \$379.00 per unit)	\$75,800
Equipment Fees per month (200 units at \$16.00 per month per unit)*	51,200
Account Item Fee (200 units at \$0.10 per unit)	20
<i>Subtotal, Equipment (Credit Card Processing Terminals)</i>	<i>\$127,020</i>
Department fees rounded up**	\$1,000,000
<b>Total</b>	<b>\$1,127,020</b>

Source: TTX  
 \*Note: The \$16.00 a month in fees is comprised of an \$8.00 monthly account fee and an \$8.00 monthly terminal fee. TTX is budgeting equipment fees for 16 months because they anticipated equipment could be utilized sooner.  
 \*\*TTX estimates department fees of \$970,365 for 12 months and rounded this figure to \$1 million

No more than \$127,020 will be used for the purchase of the credit card processing terminals (equipment) and the associated fees as outlined in the Payment Solutions Addendum based on an estimated 6,000 transactions. TTX estimates that the department fees associated with merchant processing will be \$970,365 for 12 months. This is based on the monthly amount of fees collected July through May of FY 2022-23 and discounted 19 percent to remove select payments from Airport, Fire, and Public Health departments that will be moving to other City contracts<sup>3</sup>, which was roughly 19 percent of the total payments processed in FY 2022-23. The estimated department fees and equipment costs were rounded up to \$1,000,000, which is \$29,635 (3 percent) more than \$970,365 estimated.

TTX reports the original agreement and subsequent amendments did not include a not to exceed amount, which is required under Administrative Code Section 21.19, because the original agreement was considered a “zero-dollar revenue contract” at the time it was signed in 2013, as the transaction fee that Bank of America charged each department was netted out from the revenue earned through a payment. According to TTX staff, the City updated its accounting practices in 2019 and TTX subsequently began to centralize and track the service fees.

The proposed third amendment similarly does not include a not to exceed amount. However, to calculate the \$9,127,020 not-to-exceed amount presented in the proposed resolution, TTX staff

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<sup>3</sup> TTX reports that they manage two other contracts for merchant processing that are focused on processing online transactions. These contracts are with First Data Merchant Services CityBase. TTX also reports that departments may be granted a waiver to enter department-specific contracts if they do not wish to use a citywide system. Two departments have been granted waivers: the Library, which has a system to integrate with its Sierra Integrated Library System and Recreation and Parks Department to integrate with ActiveNet for reservations.

report that they estimated \$8 million in contract costs under the current agreement and added the \$1,127,020 increase associated with the proposed amendment. TTX's estimate of \$8 million for the current agreement based on actual contract expenses from 2019 to the present and retroactively applied those fees to prior years when fees were not tracked.

### **POLICY CONSIDERATION**

#### **Extension of Contract Term**

The RFP used to procure this contract stated a maximum term of 5 years with two 2-year extensions at City's discretion or a total maximum term of nine years. TTX extended the agreement through August 2022, resulting in a ten-year, under the Mayor's 47<sup>th</sup> Supplement to the COVID Emergency Declaration, now expired, which allowed Departments extend agreements without complying with the procurement procedures of the Administrative Code. The proposed resolution would extend the agreement by one year, for a total term of 11 years, now two years beyond the term stated in the RFP. According to TTX staff, the extension is necessary because the Department was delayed in issuing a new RFP, but plans to do so in July 2023.

### **RECOMMENDATION**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.



**City and County of San Francisco  
Office of the Treasurer and Tax Collector**

**Third Amendment**

THIS AMENDMENT (this “Amendment”) is made as of May 1, 2023 in San Francisco, California, by and between Bank of America N.A., (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”).

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 to extend the performance period; and

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposal (“RFP”) issued on May 11, 2012 and this modification is consistent therewith; and

Whereas, the Third Amendment, dated October 25, 2022, previously signed by City and Contractor is hereby replaced and superseded by this Third Amendment dated May 1, 2023; and

WHEREAS, the City’s Board of Supervisors approved this Agreement by \_\_\_\_\_ on \_\_\_\_\_.

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, | dated October 7, 2017   |
| First Amendment,  | dated July 31, 2018,    |
| Second Amendment, | dated July 8, 2021, and |
| Third Amendment,  | dated May 1, 2023       |

**1b. 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 shall be from August 15, 2013 to August 14, 2024.

**2b. Appendix A.** Appendix A, “Payment Solution Addendum”, as attached, is hereby added to the Agreement, and fully incorporated there within.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

**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**

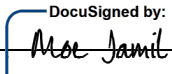
Recommended by:

Tajel Shah  
Chief Assistant treasurer  
Office of the Treasurer and Tax Collector



Approved as to Form:

David Chiu City Attorney

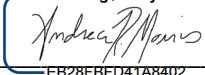
By: 

Moe Jamil  
Deputy City Attorney

**CONTRACTOR**

Bank of America, N.A.

Andrea Morris Senior Vice President  
Bank of America, N.A.

  
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City Vendor Number: 2827  
City Supplier ID: 24733

**Appendix A**  
**PAYMENT SOLUTIONS ADDENDUM**

This Payment Solutions Addendum, together with the Supplements hereto (collectively, the “**Payment Solutions Addendum**”) is made by and between City and County of San Francisco (“**Customer**”) and Bank of America, N.A. (“**Bank**”) as of \_\_\_\_\_ (“**Effective Date**”) and supplements the Merchant Processing Agreement dated September 25, 2013 (as amended and supplemented from time to time, the “**Merchant Agreement**”). Any references in the Merchant Agreement (or any amendments, addenda or supplements thereto) to “**Customer**,” “**you**” or “**Merchant**”, when used herein, refer to Customer; and any references in the Merchant Agreement (or any amendments, addenda or supplements thereto) to “**us**,” “**our**” or “**we**”, when used herein, refer to Bank.

Capitalized terms used, but not defined, in this Payment Solutions Addendum have the meanings given in the Merchant Agreement. Unless stated otherwise, any reference to this Payment Solutions Addendum herein includes the Merchant Agreement. The Payment Solutions (as defined in Section 2) are incorporated within the term “**Services**” in the Merchant Agreement. For the avoidance of doubt, any monetary caps on Bank’s limitation of liability set forth in the Merchant Agreement shall apply in the aggregate to Services provided by Bank.

CUSTOMER AND BANK AGREE AS FOLLOWS:

1. **Definitions.** Capitalized terms used but not defined in this Payment Solutions Addendum are defined in the Merchant Agreement. In addition, the following defined terms apply to this Payment Solutions Addendum:
  - 1.1 **Authorized Users** means persons or entities that are authorized by Customer to access and use the Services.
  - 1.2 **Healthcare Payment Device Manager** means the cloud-based payment device management solution owned and operated by Bank, which may be provided to Customer as indicated on the Setup Form attached hereto as Schedule B (Healthcare Omni-Channel Gateway Services Setup Form).
  - 1.3 **Documentation** means the written materials provided to Customer from time to time, including terms and conditions, training manuals, support policies, API and related documentation, integration tools and manuals and other documentation which relate to or assist or describe the Services provided by Bank, including without limitation, the PIM for Customer’s use with the Validated P2PE Solution.
  - 1.4 **Payment Solutions** means the transaction processing services including the transmission, acceptance and authorization of credit, debit ACH and other transactions on behalf of Customer to a payment processing network through another gateway provided by Bank and, as applicable, the Healthcare Omni-Channel Gateway.
  - 1.5 **Healthcare Omni-Channel Gateway** means the cloud-based payment solution owned and maintained by Bank including the hardware and software utilized for processing credit, debit and other transactions as well as transmitting other data between a Customer, a software solution utilized by a Customer as well as the consumers of the goods and/or services provided by the Customer. The Healthcare Omni-Channel Gateway is included in the definition of Bank Systems as set forth in the Merchant Agreement.
  - 1.6 **PIM** means the Validated P2PE Instruction Manual as published by Bank, as may be amended from time to time.
  - 1.7 **Services** means the select Payment Solutions and the other selected services provided by Bank through the Healthcare Omni-Channel Gateway to Customer as expressly indicated on the Schedule B, which may include Healthcare Payment Device Manager and Validated P2PE Solution.
  - 1.8 **Software** means the software programs, including without limitation the software related to the Payment Solutions and Healthcare Omni-Channel Gateway as well as related software and all pass-through software licenses from third-party software providers whose software is part of the offering under this Payment Solutions Addendum.
  - 1.9 **Supplement** means any and all concurrent and subsequent addenda, appendices, exhibits, supplements and schedules to this Payment Solutions Addendum.
  - 1.10 **Validated P2PE Solution** means a PCI validated Point to Point Encryption Solution provided by Bank and its subcontractors as an optional service hereunder, which may be provided to Customer as indicated on the Schedule B.
2. **Payment Solutions.** Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Payment Solutions Addendum, during the Term (as defined below), Customer and its Authorized Users may access and use the Services (collectively, the “**Payment Solutions**”). Bank shall use commercially reasonable efforts to provide the Services to Customer. Access and use of the Services are permitted by Bank solely for Customer’s internal use and benefit. Bank may sell or license to the Customer equipment in connection to the Payment Solutions, under the terms set out in the applicable schedule. Bank may, in its discretion from time to time, without liability to Customer, revise, modify, update, limit or replace any Services in whole or in part, provided the Services are not adversely affected in any material manner and Bank provides reasonable notice to Customer prior to the occurrence of any such event. The parties agree that Bank will implement the Services as described in Schedule E attached hereto and incorporated herein by reference.
3. **Customer Representations, Warranties and Covenants.**

- 3.1 Customer represents and warrants to, and covenants with, Bank that Customer shall use the Payment Solutions only in accordance with this Payment Solutions Addendum, the Merchant Agreement, Applicable Law and applicable Card Organization Rules, and the Documentation provided by Bank.
  - 3.2 Customer is responsible for ensuring the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all data as it is entered or uploaded. Bank is not responsible for inability to perform Services due to Customer's use of improperly formatted or corrupt files, viruses on media provided, incompatible backup media or software, or any other technological errors or issues.
  - 3.3 Customer shall not transmit or store data that is subject to the rights of any third parties without first obtaining all required authorizations, consents, and/or rights in writing from such third parties, including the right to communicate with Authorized User<sup>1</sup> by electronic communication. BANK IS NOT LIABLE OR RESPONSIBLE FOR ANY ACTS OR OMISSIONS IN RELATION TO CUSTOMERS' OR AUTHORIZED USERS' USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION USE OF THE SERVICES IN WAYS THAT ARE NOT IN COMPLIANCE WITH APPLICABLE LAWS OR APPLICABLE CARD ORGANIZATION RULES.
  - 3.4 Customer understands that Customer may not process transactions on behalf of any other entity or individual and that the use of the Services is provided herein as a service for a single Merchant account. Any attempt to use the Services herein for more than one Merchant account without additional agreements and fees for each merchant or MID may result in additional fees and charges or the revocation of the license granted for the Services (the "Services License") and termination of this Payment Solutions Addendum. This Services License is transferable and may be sold, traded, assumed or otherwise transferred to another individual or entity only with the express written consent of Bank.
  - 3.5 To the extent that Customer is utilizing the Validated P2PE Solution, Customer shall comply with all requirements related to the Validated P2PE Solution provided in the PIM at all times, as well as any and all related requirements set forth in the Card Organization Rules. Customer fully acknowledges that it is responsible for maintaining its compliance in order to take advantage of the benefit of the Validated P2PE Solution. Customer acknowledges that it is Customer's responsibility to ensure that it is fully compliant with all of the requirements of PCI for the Validated P2PE Solution, and Bank shall have no liability whatsoever for any non-compliance regardless of whether such non-compliance is related to the Services.
  - 3.6 To the extent that Customer is utilizing Healthcare Payment Device Manager, Customer shall at no time allow any person other than its own officers, directors or employees to access Healthcare Payment Device Manager at any time, shall ensure that any use of Healthcare Payment Device Manager shall be consistent with the Documentation, in furtherance of the purposes hereunder, and shall not endanger the security of the Payment Fusion system nor cause any harm to Bank or its Customers. Customer shall at no time resell any portion of Healthcare Payment Device Manager. Customer shall be fully liable for any of its or its agents' acts or omissions in relation to their use of Healthcare Payment Device Manager.
4. **Authorized Users.** Customer shall be responsible for ensuring Authorized Users' compliance with the terms set forth herein, Applicable Law, applicable Card Organization Rules, and other agreements with Bank or any of Bank's Affiliates. Customer shall also be responsible for all acts or omissions by Authorized Users, and for any damages incurred as a result thereof. Customer shall have sole responsibility for terminating the access previously granted to any Authorized User, whether on the basis of termination of employment, reassignment, or any other cause. Bank may disable an Authorized User's access to the Services at any time in its sole discretion if Bank suspects that such Authorized User poses a security risk. Customer is responsible for designating user IDs and passwords for any and all Authorized Users. Customer agrees to hold all passwords, user IDs or other system access credentials and information under close control and shall notify Bank immediately if access to such information is, or is thought to have been, released to any unauthorized party. Customer agrees not to allow multiple users to access the Software using a common account or user credentials. Security control of Bank-assigned user IDs and passwords are the sole responsibility of Customer and Bank shall not be held responsible in any way for any breach in system security as a result of Customer's actions or omissions.
  5. **User IDs.** Customer is solely responsible and liable for all activity occurring under the user IDs and passwords issued in connection with this Payment Solutions Addendum whether or not such activities have been authorized by Customer. Customer shall abide by all Applicable Law in connection with its use of the Services as contemplated by this Payment Solutions Addendum, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify Bank immediately in writing of any unauthorized use of any password or user ID or any other suspected or known breach of security, including the loss or theft of any password or user ID or computer or device containing such information; (ii) at its own cost, take all steps reasonably necessary, or as otherwise directed by Bank, to prevent access and use of the Services by unauthorized users; and (iii) not provide false identification information to gain access to, or use of, the Services or the Software.
  6. **Fees.** Customer agrees to pay Bank the fees for the Payment Solutions as set forth on Schedule A (Healthcare Omni-Channel Gateway Services Fees), which are in addition to the processing fees, any third party-based fees, and other fees or charges set forth elsewhere in, and are part of the fee schedule to, the Merchant Agreement. Customer shall also be responsible for all additional costs and expenses as set forth in the Merchant Agreement. The fees due under this Payment Solutions Addendum constitute amounts due under the Merchant Agreement which will be billed, collected and charged or paid as permitted under the Merchant Agreement (including any right of set-off available to Bank). The fees and charges will be debited from an account designated by Customer through ACH or any other method as may be specified by Bank from time to time. Customer agrees to take any additional actions requested by Bank to permit debiting via ACH or any other method of the amounts owed to Bank hereunder.

The parties hereto acknowledge and agree that the parties anticipate the total cost due and owing under this Payment Solutions Addendum will not exceed \$127,020.00, One Hundred Twenty-Seven Thousand and Twenty Dollars, No Pennies; which includes the transaction based fees and the equipment related fees, based on the quantities and costs set forth in the Schedule A and an anticipated annual Payment Solution transaction volume of 6000 Payment Solution transactions. Should Customer purchase additional equipment quantities or submit additional Payment Solutions transactions, the aforementioned amount will be proportionally increased. In no event shall Customer be liable for interest or late charges for any late payments. Customer will not honor minimum service order charges for any services covered by this Agreement.

## 7. Intellectual Property.

- 7.1 Customer may only use any Documentation in connection with Customer's access to and use of the Payment Solutions. Customer has no intellectual property rights or other right, title or interest in or to the Payment Solutions, the Documentation, or derivative works thereof (collectively, the "**Payment Solutions IP**"); and nothing in this Payment Solutions Addendum or the Merchant Agreement assigns, transfers or creates any such right, title or interest for Customer (whether express or implied, or by estoppel or otherwise). Any and all right, license, title or interests associated with the Payment Solutions IP that are not expressly granted by Bank within this Payment Solutions Addendum are expressly withheld. Customer shall not take any action inconsistent with the ownership, title or license rights associated with the Payment Solutions IP. Customer shall not file any action, in any forum, challenging ownership of the Payment Solutions IP. Customer shall not use any Payment Solutions or Payment Solutions IP outside of the United States (and "United States" as used in the foregoing sentence excludes U.S. territories and possessions). Customer shall use the Payment Solutions only for its business purposes and not for any household use. Customer obtains no rights (license or otherwise), title or interest to trademarks, service marks, brand names or logos associated with the Payment Solutions, Bank, or any of its service providers hereunder. Breach of any part of this Section constitutes a material breach of this Payment Solutions Addendum, and Bank may immediately suspend or terminate Customer's use of the Payment Solutions or this Payment Solutions Addendum in the event of such breach.
- 7.2 Customer shall not, and shall not permit any third parties to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the Payment Solutions IP or any portion thereof; (ii) copy, modify, enhance, translate, supplement, derive source code or create derivative works from, reverse engineer, decompile, disassemble, or otherwise reduce to human-readable form the Payment Solutions IP or any portion thereof; (iii) use altered versions of the Payment Solutions IP or portion thereof; (iv) use, operate or combine the Payment Solutions IP with other products, materials or services in a manner inconsistent with this Payment Solutions Addendum or the Merchant Agreement; (v) use the Payment Solutions or Payment Solutions IP, or any portion thereof, as a standalone or non-integrated program or in any other manner other than as contemplated by this Payment Solutions Addendum; or (vi) perform or attempt to perform any actions that would interfere with the proper working of the Payment Solutions, prevent access to or use of the Payment Solutions by other users, or, in Bank's reasonable judgment, impose an unreasonably large or disproportional load on any Bank platform or infrastructure. Customer shall not permit any third parties to access the Payment Solutions IP. Customer shall not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting our or other third parties' proprietary interests in the Payment Solutions IP.
- 7.3 Customer shall promptly notify Bank in writing of any threat, or the filing of any action, suit or proceeding against Customer regarding the Payment Solutions or Payment Solutions IP in which an adverse decision would reasonably be expected to have a material impact on Bank or any of the Payment Solutions subcontractors.

## 8. Term; Special Termination Provisions.

- 8.1 This Payment Solutions Addendum shall be effective on the Effective Date and shall be coterminous with the Merchant Agreement. Either party may terminate this Payment Solutions Addendum immediately upon written notice to the other if the other party (i) materially breaches this Payment Solutions Addendum and fails to cure such breach within thirty (30) days following written notice thereof, or (ii) becomes or is declared insolvent or bankrupt, commits an act of bankruptcy, or is subject to any proceeding in bankruptcy, receivership, liquidation or insolvency.
- 8.2 In addition to the termination rights set forth in the Merchant Agreement, this Payment Solutions Addendum will automatically terminate upon any termination of the Merchant Agreement pursuant to an Event of Default by Customer. Upon termination, expiration or cancellation of this Payment Solutions Addendum: (a) all rights and licenses granted hereunder will immediately terminate and Customer must immediately cease using the Payment Solutions and accessing the Software for any purpose, including without limitation access to Healthcare Payment Device Manager; (b) Customer shall uninstall and destroy all copies of the Software (including any Documentation) in its possession or under its control, certifying such destruction in writing to Bank; and (c) Customer shall immediately pay Bank for all amounts due through the effective date of termination or cancellation.
- 8.3 For the avoidance of doubt, this Payment Solutions Addendum will not automatically terminate upon any termination of the Merchant Agreement by Bank for any other reason other than an Event of Default by Customer and shall remain in full force and effect thereafter until terminated as set forth herein.
- 8.4 Bank shall have the right to terminate this Payment Solutions Addendum for any of the reasons set forth for termination of the Merchant Agreement. In addition, Bank reserves the right to suspend, upon thirty (30) days prior written notice to Customer to terminate the Payment Solutions, in the event Customer violates any material respect the terms of this Payment Solutions Addendum, or the Merchant Agreement. In addition, Bank reserves the right to (a) alter the Payment Solutions in the event any agreement with third parties that are involved in providing the Payment Solutions is terminated or otherwise no longer in effect, or Bank is otherwise unable to continue to provide the Payment Solutions; provided, that Bank shall provide Customer with at least thirty (30) days' prior written notice of any such

alteration that could reasonably be expected to adversely impact Customer’s ability to use the Payment Solution or (b) suspend the Payment Solution if Bank is otherwise unable to continue to provide the Payment Solution due to any event beyond its reasonable control, provided, that Bank shall provide Customer with at least thirty (30) days’ prior written notice of any such suspension that could reasonably be expected to adversely impact Customer’s ability to use the Payment Solutions, or shorter notice to the extent necessary for Bank or the Payment Solution to comply with Card Organization Rules or Applicable Law.

8.5 Termination of this Payment Solutions Addendum shall not affect the respective rights and responsibilities of the Parties to the extent that they arose prior to such termination.

9. **Disclaimers.** The Services provided by Bank hereunder shall be performed, in all material respects, in a professional, timely, and workmanlike manner. In the event Customer believes Bank has breached the warranty in the foregoing sentence, Customer shall promptly notify Bank thereof including information necessary to allow Bank to examine the issue and to re-perform any Services containing reproducible errors. THE SERVICES ARE PROVIDED TO CUSTOMER ON AN “AS IS” AND WITH ALL FAULTS BASIS. BANK MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE EXCEPT FOR THE EXPRESS WARRANTIES AND COVENANTS HEREIN. BANK MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICES DATA OR THE SOFTWARE IS ACCURATE, COMPLETE, OR RELIABLE. BANK FURTHER MAKES NO REPRESENTATIONS OR WARRANTIES THAT CUSTOMER’S ACCESS TO AND USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; FREE OF VIRUSES, UNAUTHORIZED CODE, OR POTENTIALLY HARMFUL COMPONENTS; WITHOUT DELAY; OR SECURE. For the avoidance of doubt, Bank makes no warranties of any kind in regard to the services provided by any telephone company or other telecommunications provider. Bank shall not be responsible for any failure of any telecommunications provider however constituted or described. Certain jurisdictions do not permit the exclusion or limitation of implied warranties. Therefore, only if required by Applicable Law, some or all of the exclusions or limitations above may not apply.

10. **General.**

10.1 Representations and Warranties. Customer and Bank each represent and warrant to the other that: (i) such party has all required corporate authority to execute this Payment Solutions Addendum and (ii) this Payment Solutions Addendum creates valid, legal and binding obligations that are enforceable against such party.

10.2 Entire Agreement. This Payment Solutions Addendum constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements between the parties with respect to the subject matter hereof.

10.3 Counterparts/Electronic Originals. This Payment Solutions 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 images of this executed Payment Solutions Addendum are effective as executed originals.

10.4 Full Force and Effect. The Merchant Agreement remains in effect as supplemented by this Payment Solutions Addendum. In the event of any conflict between the terms of this Payment Solutions Addendum and the terms of the Merchant Agreement, the terms of this Payment Solutions Addendum will control with respect to the Payment Solutions. References to the Merchant Agreement after the date of this Payment Solutions Addendum include this Payment Solutions Addendum.

**This Payment Solutions Addendum has been executed by Bank without signature, and has been agreed to and executed by Customer as of the date shown below.**

**BANK OF AMERICA, N.A.**

**Customer: City and County of San Francisco**  
(Business Legal Name)

By : \_\_\_\_\_  
(Customer’s Authorized Signer)

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

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

Date: \_\_\_\_\_

**Schedule A  
Information/Fee Schedule**

Business Contact Info	Shipping Info
<b>Corporate Name</b> City and County of San Francisco	<b>Yes</b> Same as Business Contact Info
<b>DBA</b> San Francisco Department of Public Health	<b>DBA</b>
<b>Contact Name</b> Tajel Shah	<b>Contact Name</b> _____
<b>Address</b> 1360 Mission St. STE 401	<b>Address</b> _____
<b>City</b> San Francisco	<b>City</b> _____
<b>State</b> CA <b>Zip</b> 94103-2628	<b>State</b> _____ <b>Zip</b> _____
<b>Phone</b>	<b>Phone</b> _____
<b>Email</b>	<b>Email</b> _____
	<b>Shipping Type</b> _____

Account Billing Fees	
<b>Account Setup Fee</b> Waived	<b>Setup Fee Per Terminal</b> Waived
<b>Account Monthly Fee</b> \$8.00	<b>Monthly Cost Per Terminal</b> \$8.00
<b>Per Item Fee</b> \$0.10	
Equipment	
<b>Terminal Type</b> Pax A80 _____	<b>Cost</b> \$379
<b>Quantity</b> 200	<b>Total Cost</b> \$75,800 + Tax and Shipping
Setup Options (select one)	
<input checked="" type="checkbox"/> <b>Standard</b>	
<input type="checkbox"/> <b>Recurring Billing Add-On</b>	

Billing Information (please provide voided check if billing information is different than what was provided on merchant agreement)	
<b>Routing Number</b> _____	<b>Deposit Number</b> _____

**Signature:** \_\_\_\_\_      **Date:** \_\_\_\_\_

**Customer Name:** \_\_\_\_\_      **Rep Name:** \_\_\_\_\_

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

**Schedule B  
Healthcare Omni-Channel Gateway Services Setup Form**

**Business Contact Info**

Corporate Name \_\_\_\_\_  
DBA \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

**Shipping Info**

\_\_\_\_\_ Same as Business Contact Info  
DBA \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

Shipping Type \_\_\_\_\_

**Setup Options (select one)**

Standard  
 Recurring Billing Add-On

**Billing Information** (please provide voided check if billing information is different than what was provided on merchant agreement)

Routing Number \_\_\_\_\_ Deposit Number \_\_\_\_\_



Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Customer Name: \_\_\_\_\_ Rep Name: \_\_\_\_\_

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



**Schedule C**  
**Payment Solutions Equipment Purchase Agreement**

1. **Definitions.** All capitalized terms used in this Payment Solutions Equipment Purchase Agreement (“**Purchase Agreement**”) and not defined herein shall have the meaning given to them in the Payment Solutions Addendum (“**Payment Solutions Addendum**”).
2. **General.** This Purchase Agreement and Schedule D (*Merchant Equipment Terms*) are incorporated by reference into the Payment Solutions Addendum and governs all Gateway Equipment that is identified below and/or in the Documentation (collectively, the “**Gateway Equipment**”) and is sold to Customer by Bank, from time to time over the term of the Merchant Agreement, to use in connection with the Payment Solutions under the Payment Solutions Addendum. THE GATEWAY EQUIPMENT IS BEING SOLD TO CUSTOMER FOR CUSTOMER’S BUSINESS USE ONLY AND SHALL NOT BE USED FOR HOUSEHOLD OR PERSONAL USE. Sales of Gateway Equipment are made by Bank.
3. **Purchased Gateway Equipment.** Bank agrees to sell to Customer, and Customer agree to buy from Bank, the Gateway Equipment identified below (“**Purchased Gateway Equipment**”), all according to the terms and conditions of this Purchase Agreement.

Manufacturer and Model	Wireless*	Quantity	Purchase Price Per Unit (+ Taxes & Shipping)	Total Price
Manufacturer and Model: Pax A80	One time	200	\$379.00	\$75,800.00

Any equipment costs set forth in this Purchase Agreement are guaranteed only for ninety (90) days from the Effective Date of the Payment Solutions Addendum, after which they are subject to change.

4. **Indemnification.** In addition to the indemnification, defense, and hold harmless obligations of the parties set forth in the Merchant Agreement (which apply to this Purchase Agreement), Customer agrees to indemnify, defend, and hold Bank and its Affiliates, employees, directors, and officers harmless from and against all third party Claims, and all related Losses, to the extent such Claims result from: (a) Customer’s installation, ownership, possession, use, or operation of the Gateway Equipment; or (b) any breach by Customer of any of Customer’s obligations hereunder; provided that the foregoing obligations do not apply to the extent Claims or Losses result from Bank’s gross negligence or willful misconduct or to the extent Bank enforcing such obligations is prohibited under the law governing this Purchase Agreement. Customer acknowledges and agrees that the “use” and “operation” of the Gateway Equipment against which Customer agrees to indemnify, defend, and hold Bank harmless includes, without limitation, Customer’s loading onto Gateway Equipment software that was not provided with the Gateway Equipment; Customer’s using such software, or using Gateway Equipment or Software, to access the internet; and Customer’s using Gateway Equipment in any manner that does not comply with this Purchase Agreement or the Merchant Agreement. As used herein: (i) “**Claim**” means any third party claim, demand, suit, action, cause of action or proceeding of any form, kind or nature (including contract claims and negligence and other tort claims); and (ii) “**Losses**” means any liability, obligation, loss, damage, judgment, settlement, cost, or expense (including attorneys’ fees, expert witness fees and collection costs), regardless of whether suit is brought, and any assessment, fee, or fine imposed by any Card Organization.
5. **Default; Remedies.** The occurrence of any the following shall be considered a “**Default**” under this Purchase Agreement: (a) any debit of Customer’s Settlement Account for any amount due under this Purchase Agreement or the Merchant Agreement is rejected; (b) Customer fails to pay any amount due under this Purchase Agreement or the Merchant Agreement when due; or (c) Customer materially breaches any provision in this Purchase Agreement or the Merchant Agreement. Upon and any time after the occurrence of any Default, after a thirty (30) day cure period, Bank may, with or without notice, terminate this Purchase Agreement in writing and, proceed in any lawful manner against Customer to collect amounts due, and exercise all other rights available to Bank under this Purchase Agreement, the Merchant Agreement, at law, or in equity.
6. **Assignment.** Customer may not assign or transfer any of its rights and/or obligations under this Purchase Agreement, by operation of law or otherwise, without Bank’s prior written consent; any assignment or transfer attempted without Bank’s prior written consent is null, void, and a Default. Bank may assign or transfer this Agreement and its rights and obligations hereunder, in whole or in part, to any third party without obtaining Customer’s consent. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor-in-possession, officer of a court, or other Person charged with taking custody of a party’s assets or business shall have any right to continue, assume, or assign this Agreement.
7. **Notices.** All notices and other communications hereunder (other than those involving normal operational matters) must be in writing and shall be deemed given: (a) if sent by mail, upon the earlier of five (5) days after mailing or when actually received; (b) if sent by courier, when delivered; and (c) if sent by email, when actually delivered. Notices shall be sent to Customer at the address Customer have provided to Bank, and notices to Bank shall be sent to Bank at the e-mail or physical address Bank specifies in writing.
8. **Miscellaneous.** This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California, without applying its conflicts of laws principles. Each party agrees that any action or proceeding relating to this Purchase Agreement shall be brought exclusively in any court of competent jurisdiction in the State of California and the United States District Court for the Northern District of California, located in San Francisco, California. Each party irrevocably and unconditionally agrees and submits to the jurisdiction of such courts and waives any objection to the venue of such courts whether based on inconvenience of forum or other grounds. If any part of this Purchase Agreement is not enforceable, the remaining provisions will remain valid and enforceable. In performing its obligations under this Purchase

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Agreement, each party agrees to comply with all laws and regulations applicable to it. This Purchase Agreement constitutes the entire agreement between the parties regarding the Gateway Equipment, supersedes any previous agreements and understandings with respect to the Gateway Equipment, and can be changed only by a written agreement signed by all parties.

## Schedule D Merchant Equipment Terms

This Schedule D governs any Devices, Device Software and other Merchant Equipment that you buy from us or an authorized third party partner under the Agreement, Fee Schedule, subsequent purchase, and/or other documentation provided in connection with the purchase of Merchant Equipment (individually and collectively, “**Merchant Equipment Documents**”), except to the extent provided otherwise in the Merchant Equipment Documents. As of the Effective Date, the terms in this Schedule D apply only to Devices offered by PAX Technology, Inc. (“**PAX**”). We may agree to offer these terms to other Devices from time to time, at our sole discretion. THE MERCHANT EQUIPMENT IS SOLD TO YOU FOR YOUR BUSINESS USE; THE MERCHANT EQUIPMENT IS NOT PERMITTED TO BE USED FOR HOUSEHOLD OR PERSONAL PURPOSES.

### A. DEFINITIONS

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

“**Application**” means any type of application Software.

“**API**” means an application programing interface.

“**Authorization**” means an approval by, or on behalf of, the Issuer to validate a Card Transaction.

“**Bank Systems**” means any and all Card-related information reporting, operating and processing systems used by us or Persons on our behalf, including, hardware, Bank Software, related documentation, technical formats and specifications, technical and business information related to inventions, present and future products and product lines, intellectual property, know-how, and any other information that is identified as our systems, whether owned by us or Persons used by us.

“**Card Organization**” means any entity formed to administer and promote Cards, including Visa U.S.A., Inc. (“**Visa**”), Mastercard International Incorporated (“**Mastercard**”) and DFS Services LLC (“**Discover**”), American Express Company (“**American Express**”), JCB Co., Ltd. (“**JCB**”), UnionPay International Co. Ltd (“**China UnionPay**”), and any applicable Debit Networks. Card Organization may also be referred to as Card Organization.

“**Card Organization Rules**” means the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization. Card Organization Rules may also be referred to as Card Organization Rules.

“**Card Transaction**” means a purchase, rental or lease of goods or services by a Cardholder using a Card and any related transactions, including preauthorized orders and recurring, virtual and electronic transactions, regardless of whether the form of such transactions is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and Applicable Law.

“**Devices**” means those tablets, smartphones, devices, Merchant Equipment, hardware, peripherals (including, without limitation, mag stripe readers, cash drawers, printers, keypads, bar code readers or check readers), or any other mobile or fixed form factors identified by us capable of supporting the Merchant Services and through which Software can be accessed.

“**Device Software**” means the Bank Systems and custom firmware, APIs, those Applications owned or licensed by us and are part of the standard pre-provisioned Device functionality, and associated Software provided through us which (a) may be accessed through Devices or one or more websites (e.g. a web dashboard) designed or designated by us from time to time, (b) is enabled via cloud based servers, (c) is capable of integrating the Bank Services, (d) provides or integrates with other non-payment processing related functionality or Applications. The Device Software will provide point of sale functionality and Bank developed Applications, which allow a merchant to; among other things: (i) initiate electronic payments; (ii) capture card data at the point of sale; (iii) capture Cardholder personal data at the point of sale; (iv) customize user interface; (v) customize receipts; (vi) perform transaction history retrievals or reviews; (vii) manage time-clock functionality for employees; (viii) control user access to a Device, associated Software or systems within defined functional areas; (ix) perform inventory management; (x) manage pricing for good or services; (xi) perform other administrative tasks; (xii) track consumer transaction histories; (xiii) perform reporting; and (xiv) integrate other non-payment related data elements, functionality or Applications as identified by Bank from time-to-time as capable of being integrated with the Device Software.

“**Fee Schedule**” means the then-current schedule of fees prepared by us, setting forth the fees charged by us for the provision of the Merchant Services and any other services to you, as may be amended from time to time and which forms part of this Agreement.

“**Location**” means a physical location, internet address, division, processing method or business activity for which: (i) you have requested and we have approved the assignment of a unique merchant account number; or (ii) we have otherwise determined a unique merchant account number is required and have assigned it.

**“Merchant Equipment”** means any and all equipment Merchant uses in connection with Card Transaction authorization, clearing, completing, settling, transmitting or other related processing, including, all telecommunication lines and wireless connections and Software, and Merchant Systems, Terminals, Card readers, merchandise and Card scanners, printers, PIN pad devices and other hardware, whether owned by Merchant, Merchant Providers or other Persons.

**“Merchant Provider”** means any Person engaged by Merchant to provide services to Merchant involving or relating to: (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data; (ii) the storage, processing, or transmission of Cardholder data on behalf of Merchant; or (iii) PIN encryption, including, Encryption Service Organizations (ESOs). “Merchant Provider” also includes any Person providing software solutions, Persons providing payment gateway services and any corporate entity, franchisor or other Person that provides or controls a centralized or hosted network environment for Merchant irrespective of whether Cardholder data is being stored, transmitted or processed through it.

**“Merchant Services”** means the Authorization, processing and settlement of Card Transactions that are submitted to us by you, and includes any other services provided by us to you under this Agreement.

**“PIN”** means the Personal Identification Number used by a Cardholder to complete a PIN Debit Transaction.

**“Settlement Funds”** means funds received in respect of a Card Transaction from a Card Organization.

## **B. PURCHASED MERCHANT EQUIPMENT TERMS**

1. **Purchased Merchant Equipment.** Throughout the term of the Agreement, we will sell to you, and you will buy from us or an authorized third party partner, the Merchant Equipment identified in the Merchant Equipment Documents (**“Purchased Merchant Equipment”**), free and clear of all liens and encumbrances (subject to Section 8 of this Schedule D).
2. **Supplies.** Some supplies may be included with the hardware you purchase. We will sell you additional supplies, such as paper rolls, replacement cables, and other items to be used with Purchased Merchant Equipment (**“Supplies”**), as requested by you and as agreed to by us from time to time.
3. **Payment; Additional Amounts.** Unless otherwise agreed in writing between you and us, you shall be solely responsible at your own cost for the provision of all Merchant Systems, Purchased Merchant Equipment, telecommunications facilities and any other facilities which are necessary to enable you to receive the Merchant Services from us. In addition to the foregoing, you must pay all: (a) taxes, however levied, designated, or based on amounts charged or on Purchased Merchant Equipment, Supplies, or ownership, possession or thereof; (b) shipping and handling costs and charges for Purchased Merchant Equipment and Supplies (where applicable); (c) charges for services, including installation and de-installation, programming and re-programming, base loads, injections, app loads; and (d) any other costs described in the Fee Schedule. We may require you to pay in full before we ship Purchased Merchant Equipment and Supplies to you, or we may permit you to pay after we ship. We may require you to pay with a credit card/debit card, debiting your Settlement Account, via ACH transfer, or in any other manner we are permitted to collect any other amounts under the Agreement. You shall be responsible for paying to us any amounts outstanding to us for the purchase of any Merchant Equipment acquired from the Bank (**“Bank Merchant Equipment”**) in the event that we suspend providing the Merchant Services to you or this Agreement is terminated. We may withhold any such amounts from the Settlement Funds otherwise due to you pending the return of the Bank Merchant Equipment to us or the payment of such amounts by you in accordance with Section 12.3, where applicable. You agree to pay any fees, costs and/or expenses incurred by us in connection with recovering the Bank Merchant Equipment and/or such amounts due. Alternatively, Bank may elect to invoice Customer for any amounts due under this Purchase Agreement, due thirty (30) days after the invoice date or on such earlier date Bank specifies. As used herein, **“Settlement Account”** means an account or accounts at a financial institution designated by Customer as the account(s) to be debited and/or credited for amounts due from or to Customer in connection with this Agreement.
4. **Delivery and Acceptance; Installation; Risk of Loss; Title; Changes to Purchased Merchant Equipment.** After the Purchased Merchant Equipment has been prepared for shipment to you, we will deliver it to the address identified in the Merchant Application or to an alternative address mutually agreed upon by you and us. You are deemed to have accepted each unit of Purchased Merchant Equipment on the earlier of: (a) the seventh day after we deliver the Purchased Merchant Equipment to the shipper for shipment to you or your representative; (b) the day after the Purchased Merchant Equipment is delivered to you or your representative; and (c) for Purchased Merchant Equipment that we install for you, the date of installation (**“Acceptance”**). Purchased Merchant Equipment ships F.O.B. origin; risk of loss or damage to Purchased Merchant Equipment passes to you when Purchased Merchant Equipment is delivered to the shipper for shipment to you or your representative. Title to Purchased Merchant Equipment passes to you after you pay in full for the Purchased Merchant Equipment. If installing Purchased Merchant Equipment, you and your representatives must do so in accordance with our, and the Purchased Merchant Equipment manufacturer’s, requirements and specifications. If Bank has agreed to install Purchased Merchant Equipment for Customer, before Bank’s personnel arrives at the Site, Customer must prepare the Site in accordance with Bank’s, and the Purchased Merchant Equipment manufacturer’s, requirements and specifications. As used herein, **“Site”** means the location(s) where Purchased Merchant Equipment and related items (e.g., printers) are to be installed or located.

At any time for any reason we may change Purchased Merchant Equipment model numbers or names, issue new Purchased Merchant Equipment models, discontinue Purchased Merchant Equipment, or otherwise change Purchased Merchant Equipment.

5. Use, Maintenance, and Return of Purchased Merchant Equipment.
  - 5.1. Your use of the Purchased Merchant Equipment must comply with any operating or other instructions applicable to the Purchased Merchant Equipment, the Agreement, Applicable Law, and Card Organization Rules. You are responsible for obtaining permits for the Purchased Merchant Equipment.
  - 5.2. You are responsible for maintaining Purchased Merchant Equipment. You are responsible for safeguarding the Purchased Merchant Equipment from, and for insuring it via comprehensive insurance coverage against loss, damage, unauthorized use, misuse, and theft. You must notify us immediately if any of the foregoing occurs. You are responsible for any expenses related to altering the location where Purchased Merchant Equipment is located, and other facilities and property, in connection with use of the Purchased Merchant Equipment.
  - 5.3. You may not make or permit any physical alteration or modification of Purchased Merchant Equipment, materially change where Purchased Merchant Equipment is installed, or materially move Purchased Merchant Equipment without our prior written consent. On commercially reasonable advance notice, we or our representatives may enter your premises to examine or repair Purchased Merchant Equipment for legal or regulatory (including Card Organization) compliance.
  - 5.4. If Purchased Merchant Equipment or other communications Purchased Merchant Equipment appears defective, you must call our Customer Service team promptly. You must pay to replace any defective Purchased Merchant Equipment not promptly returned to us and must pay all legal and/or collection costs incurred by us or the Purchased Merchant Equipment owner in connection with recovering Purchased Merchant Equipment.
  - 5.5. Except for Purchased Merchant Equipment that has been paid for in full, the Purchased Merchant Equipment will remain Bank's personal property or the personal property of Bank's Affiliates; it never will be considered a fixture affixed to Customer's property.
6. Purchased Merchant Equipment Returns. Your right to return Purchased Merchant Equipment is limited to the Replacement Warranty set forth below in Section 13 of this Schedule D, or as may otherwise be agreed to by us in our sole discretion from time to time. Any Purchased Merchant Equipment we agree to accept for return will be subject to our then-current restocking fee.
7. Security Interest. You hereby grant to us a security interest in all Purchased Merchant Equipment and the related Software to secure payment of the purchase price and authorize us to file financing statements with respect to the Purchased Merchant Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact. Our security interest in Purchased Merchant Equipment will terminate automatically when we receive full payment for the Purchased Merchant Equipment.
8. Your Responsibilities. You are solely responsible for verifying all information and data loaded onto a Device including Device Software by us or our service providers at your request are accurate prior to your business use of such Device or Device Software. Bank and its merchant providers disclaim any and all liability arising out of any inaccuracies with respect to any information or data you provide. You shall be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition within the Merchant Systems and for notifying us of any errors after receipt of the applicable report from us. You shall notify us of all incorrect reports or output within two (2) Business Days after receipt of such reports or output. Within one (1) Business Day of the original Card Transaction, you must balance each Location to the Bank Systems for each Business Day that each Location is open. If you determine that Card Transactions have been processed in error, you shall initiate the appropriate actions for adjustment to correct the transaction in question. You assume all liability resulting from your failure to notify us of any changes or modifications to your Merchant Systems or Purchased Merchant Equipment, or any failure of your Merchant Systems or Purchased Merchant Equipment.
9. Software. Bank or other Persons retains all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how, and processes at any time embodied in or at any time provided in connection with the Purchased Merchant Equipment (collectively "**Software**"), and Customer shall have only a non-exclusive, non-transferable, non-sub-licensable, revocable license to use the Software in Customer's operation of the Purchased Merchant Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any right, title or ownership of any Software to Customer. Customer is bound by all Software terms and conditions of use and other license terms, whether provided by Bank, the Purchased Merchant Equipment manufacturer, the Software owner, or other Persons. Customer shall not reverse engineer, disassemble, or decompile the Software. Customer shall not give any Person access to the Software without Bank's prior written consent. Customer's obligations under this Section 10 shall survive the termination of this Purchase Agreement. From time to time we may "push" updates to Devices, Device Software and other Purchased Merchant Equipment remotely and automatically. Such "pushed" updates are not sold to you outright but instead are licensed to you.

10. Disclaimer of Warranties and of Compatibility with Other Payment Processors. EXCEPT FOR THE LIMITED, ONE-YEAR REPLACEMENT WARRANTY ON CERTAIN PURCHASED MERCHANT EQUIPMENT DESCRIBED BELOW IN SECTION 13, BANK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, RELATED TO THE PURCHASED MERCHANT EQUIPMENT. If the Purchased Merchant Equipment manufacturer provides any warranty, such warranty is provided solely by such manufacturer, is not provided by Bank, and is governed by any terms or conditions such manufacturer provides. The only support Bank will provide for the Purchased Merchant Equipment is help desk support.
11. Limitation of Liability; Exclusion of Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BANK'S CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUDING OF ANY INDEMNIFICATION OBLIGATION, WHETHER SUCH CLAIMS ARE RELATED OR UNRELATED TO ONE ANOTHER) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS PURCHASE AGREEMENT, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, WILL NOT EXCEED THE PURCHASE PRICE OF THE PARTICULAR PURCHASED MERCHANT EQUIPMENT INVOLVED; IN NO EVENT SHALL BANK BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, OR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH LOSSES OR DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. THE REMEDIES AVAILABLE TO CUSTOMER UNDER THIS PURCHASE AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO THE PURCHASED MERCHANT EQUIPMENT.
12. Limited Two-Year Replacement Warranty on Certain Purchased Merchant Equipment. Certain Purchased Merchant Equipment, is warranted against material defects for the two year period commencing on the date such Purchased Merchant Equipment is shipped to you ("**Replacement Warranty**"). Except as set forth below, if such Purchased Merchant Equipment becomes materially defective within the warranty period, we will replace it free of charge with refurbished Merchant Equipment of the same type, provided that Customer must pay shipping and handling charges. The Replacement Warranty: (i) does not include damage to Purchased Merchant Equipment resulting from accident, misuse, negligence, or abuse, or from breach of the Agreement; (ii) does not apply to Purchased Merchant Equipment that has become obsolete; and (iii) does not apply to defects that are not material. The Replacement Warranty is non-transferable and terminates on the two year anniversary of the date the Purchased Merchant Equipment is shipped to you. Upon expiration of the Replacement Warranty, you must pay the full price to replace any Purchased Merchant Equipment. In addition, notwithstanding the Replacement Warranty, it may be necessary for you to upgrade your Purchased Merchant Equipment or purchase new Merchant Equipment from time to time, for which you will be charged. If you make a claim under the Replacement Warranty requesting replacement Merchant Equipment, you must return to us the Purchased Merchant Equipment that you claim is materially defective. We will examine and test the Purchased Merchant Equipment that you return. You will be charged the full price of replacement Merchant Equipment if we do not receive the allegedly defective Purchased Merchant Equipment from you within ninety (90) days of the date replacement Merchant Equipment is shipped to you. We may collect shipping and handling charges, any Merchant Abuse Fees (as defined in Section 14 of this Schedule D), and any other amounts arising under this Section in any manner that we may collect any other fees and amounts arising under the Agreement. For more information on making a claim under the Replacement Warranty, please contact our Customer Service.
13. Merchant Abuse Fee. IF YOU RETURN PURCHASED MERCHANT EQUIPMENT TO US PURSUANT TO THE REPLACEMENT WARRANTY, AND WE REASONABLY DETERMINE BASED ON OUR EXAMINATION AND TESTING THAT THE MERCHANT EQUIPMENT YOU HAVE RETURNED HAS BEEN DAMAGED OR IS NOT FUNCTIONING PROPERLY DUE TO ACCIDENT, MISUSE, NEGLIGENCE, ABUSE, OR BREACH OF THE AGREEMENT, OR THAT ANY MERCHANT EQUIPMENT DEFECTS ARE NOT MATERIAL, YOU WILL BE CHARGED THE FEES ASSOCIATED WITH A REPLACEMENT DEVICE ("MERCHANT ABUSE FEES").
14. Help Desk Support. We or third parties designated by us will provide help desk support only for Purchased Merchant Equipment; we will not provide any such support or related services for any other products or Merchant Equipment. If you decide to work with a Third Party Service and have any issues with the services provided via your Third Party Service provider, contact your Third Party Service provider to resolve any issues.

## SCHEDULE E

**Healthcare Payment Solutions Product and Services Description**

**Executive Summary:** Bank of America's **Health Payment Solutions Platform** is an approved Epic app orchard vendor that can provide payment gateway services integrated with the Epic Electronic Health Record System. The Gateway integration consists primarily of two processes: 1. Device integration for point-of-service transactions and 2. Integration to process payments online through MyChart, Epic's patient portal. For point-of-service payments, that communication happens through credit card devices. HPS is an integrated healthcare payment platform meeting client needs for payment solutions with omnichannel payment workflows, PCI-compliant security, and flexible EHR integrations, all bundled with Bank of America merchant processing.

**PAX A80 Desktop Terminal**

Integrated touchscreen, thermal printer and keypad makes the A80, integrated with the Healthcare Payment Solutions Platform, allows for integrated point-of-service payments for Epic clients.

**Scope of work:** Bank of America's **Healthcare Payment Solutions Platform** is a cloud-based payment technology service addressing the top priorities of health systems, including security infrastructure and enhanced revenue cycle workflow. The platform consists of four primary deliverables to DPH which include:

1. Merchant acquiring,
2. Terminal integration with the gateway and Epic, including device deployment,
3. Healthcare payment device manager, and
4. Gateway and terminal reporting.

**Deployment model:** Bank of America will establish a terminal deployment plan that is mutually agreeable with DPH. Plan will include pre-configuration of devices by Bank of America and shipment to the DPH destination(s) for final installation by DPH. DPH has estimated 200 PAX A-80 wired devices at \$379/device (price as of the date hereof for the initial purchase of devices). BofA anticipates a 4-8 week lead time on delivery of devices to DPH upon receipt of final order and all information necessary for configuration from DPH. For detailed configuration information, see the previously delivered Epic Implementations Guides for gateway and payment page information.

**Features/Functionalities:**

External Payment Page in MyChart: Process payments collected from Epic MyChart.

P2PE Point-of-Service Payments: Devices utilized in our Epic integration are validated point-to-point encrypted by the PCI council.

Payment Processing: serves as both the processor and gateway which will bring economies of scale to financial metrics, reporting, and vendor consolidation.

Tokenization: Solution to store sensitive details like bank account information or credit card numbers and sends Epic tokens that can be referenced for future transactions. The actual bank account or credit card details will not be stored or visible to DPH staff in Epic.

Allow Token Sharing: Supports using the same stored token across multiple merchants.

Refunds to Credit Cards: Supports Epic integration to allow sending refunds, which are initiated in Epic system, for payments collected with a credit card directly back to that card by processing it through the gateway. Supports collecting both credit cards and bank account payments,

Process payments using Apple Pay and Google Pay: AxiaMed's API technology supports digital wallet payment methods like Apple Pay and Google Pay for card present transaction using NFC. Support of digital wallets for card not present transactions is in our future roadmap. See the previously delivered PAX A80 wired device data sheet & set-up guide for

features and functionalities of the hardware. See the Payment Fusion Technical Integration guide for gateway specifications.

**Validated P2PE PCI compliant payment platform:** Owned and maintained by Bank of America, the Healthcare Payment Solution is inclusive of a proprietary, certified PCI-validated P2PE payment devices and a cloud-based device management solution (including remote key injection). All clients are obligated to be PCI-compliant and using our end-to-end technology significantly reduces your PCI scope. Bank of America as your acquirer will assign a representative from our PCI team to assist with questions related to compliance as well as ensure proper documentation guidelines are followed. Your dedicated Merchant Portfolio Officer serves as the liaison to the PCI team which will support the specific needs of DPW in relation to this complex topic.

**Training:** Bank of America will provide training at no cost to SFDPH using the train-the-trainer method. Implementation Specialist will provide an initial web-based training program specific to the needs of DPH. Once live, we will coordinate ongoing training as needed at no cost to SFDPH.

**Reporting:** Bank of America provides integrated payment reporting within EPIC which is bolstered by both merchant acquiring reporting in the Client Line Enterprise reporting tool for transactional data as well as gateway reporting from the Healthcare Payment Device Manager system. Bank of America will take a train the trainer approach on the Client Line tool and Healthcare Payment Device Manager system to ensure users are set-up and trained before the implementation cycle has completed.

**Responsibilities:** For details surrounding customer (DPH) responsibilities such as server, Epic setup/access, build expectations, additional technical requirements please review the previously provided Epic implementations guide which will include the high-level milestones & deliverables.

**Project Management:** From procurement to implementation and support please see the CCSF Implementations plan document. This is a live document that will be used throughout the process.

**Implementation deliverables:** Timeline is flexible and follows standard project management best practices, creating implementation touch points along the way.

**Support:** Quarterly Preventive Maintenance and Software Maintenance Update: City shall be entitled to receive four 4 quarterly Preventative Maintenance (PM) service, as mutually agreed upon by the parties, to ensure the System is performing in accordance with the published specifications.

**Merchant ID [MID] & Merchant Category Code [MCC] process:** The process for requesting and provisioning is for DPH to complete the additional location form requesting a new MID. The form will specify the location volume, the MCC code, legal DBA information and TAX ID, etc.



**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

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

This Agreement is made this **25th day of September, 2013**, in the City and County of San Francisco, State of California, by and between: Banc of America Merchant Services, LLC and Bank of America, N.A., hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing.” The Merchant Processing Agreement (the “MPA”) attached hereto is incorporated herein by reference. References herein to the Agreement shall be deemed to mean, collectively, the provisions of this Agreement and the MPA. To the extent a conflict exists between the provisions of this Agreement and the MPA, the terms of this Agreement shall take precedence.

**Recitals**

WHEREAS, the Office of the Treasurer & Tax Collector (“Department”) wishes to utilize cardholder present merchant card services; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on **May 11, 2012**, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

Now, THEREFORE, the parties agree as follows:

- 1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. **THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from August 15, 2013 to August 15, 2018.
3. **Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.
4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in this Agreement (including the MPA), attached hereto and incorporated by reference as though fully set forth herein.
5. **Compensation.** Compensation shall be made in accordance with the terms of the MPA.
6. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. City will use best efforts to seek appropriations in order to fulfill its obligations for amounts due to Contractor under the Agreement, whether during the term of, or following termination of, the Agreement.
7. **Reserved (Payment; Invoice Format)**
8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.
9. **Disallowance.** If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded

from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

#### **10. Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**11. Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**12. Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. All personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**13. Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

**14. Independent Contractor; Payment of Taxes and Other Expenses**

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**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 Combined Single Limit 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 professional services to be provided under this Agreement.

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, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy 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.

d. Contractor shall provide thirty days' advance written notice to the City of cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. 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.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. 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.

h. Before commencing any operations under this Agreement, 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. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

**16. Reserved. (Indemnification)**

**17. Reserved. (Incidental and Consequential Damages)**

**18. Reserved. (Liability of City).**

**19. Reserved. (Liquidated Damages)**

**20. Default; Remedies**

a. Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- |   |                                       |
|---|---------------------------------------|
| 8. Submitting False Claims; Monetary Penalties.     | 37. Drug-free workplace policy        |
| 10. Taxes   | 53. Compliance with laws              |
| 15. Insurance                                       | 55. Supervision of minors             |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment                                      | 58. Graffiti removal                  |

2) Contractor fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) days after written notice thereof from City to Contractor.

3) Contractor (a) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, (b) makes an assignment for the benefit of its creditors, (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor’s property or (d) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**21. Reserved. (Termination for Convenience)**

**22. Rights and Duties upon Termination or Expiration**

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- |   |   |
|---|---|
| 8. Submitting false claims                                      | 24. Proprietary or confidential information of City     |
| 10. Taxes   |   |
| 11. Payment does not imply acceptance of work                   | 28. Audit and Inspection of Records                     |
| 13. Responsibility for equipment                                | 48. Modification of Agreement.                          |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance   | 50. Agreement Made in California; Venue                 |
|   | 51. Construction  |
|   | 52. Entire Agreement                                    |
|   | 56. Severability  |
|   | 57. Protection of private information                   |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect; provided that the provisions of the Agreement governing (i) processing and settlement of Card transactions, all related adjustments, fees and other amounts due from City, (ii) the resolution of any related Chargebacks, disputes or other issues involving Card transactions, and (iii) compromise or disclosure of Cardholder Data, in each case with respect to all Card transactions made prior to termination will continue to apply until City has fulfilled all of its obligations relating thereto. Contractor shall transfer title to City of any purchased items, and deliver in the manner, at the times, and to the extent, if any, directed by City, any supplies, equipment, and other materials purchased by City from Contractor. This subsection shall survive termination of this Agreement.

**23. Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**24. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement or otherwise permitted under this Agreement (including the MPA). Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**25. Notices to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: **Pauline Marx, Chief Assistant Treasurer  
Office of the Treasurer & Tax Collector  
City Hall Room 140  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
pauline.marx@sfgov.org**

To Contractor: **Banc of America Merchant Services, LLC,  
Attention: Executive Vice President Operations  
1307 Walt Whitman Road  
Melville, New York 11747  
with a copy to Attention: General Counsel's Office,  
150 N. College Street; Mail Code NC1-028-15-01  
Charlotte, NC 28213**

**Attention: Operations Manager  
1231 Durrett Lane  
Louisville, KY 40213  
with a copy to Legal Department-Merchant Services Group  
Bank of America, N.A.  
Bank of America Plaza  
101 South Tryon Street, Mail Code: NC1-002-29-01  
Charlotte, North Carolina, 28255-0001**

All notices shall be deemed received by postmark date if sent via U.S. Mail. Any notice of default must be sent by registered mail.



**26. Reserved. (Ownership of Results)**

**27. Reserved. (Works for Hire)**

**28. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit, upon reasonable notice, City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition (provided that certain data and records may be archived and will need to be retrieved in the event of an audit) for a period of seven years after the date of any transaction in connection with services performed under this Agreement. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**29. Subcontracting.** The City recognizes the Contractor may retain the services of First Data Merchant Services and/or Total System Services, Inc. in performance of this Agreement. Contractor is prohibited from otherwise subcontracting for services provided to the Contractor exclusively in performance of this Agreement or any part of it (and not in the Contractor's normal course of business) unless such subcontracting is first approved by City in writing, which such approval will not be unreasonably withheld or delayed. Notwithstanding anything in this Agreement to the contrary, any provision of this Agreement requiring Contractor to include or incorporate any term or provision of this Agreement into any subcontract shall apply only to those subcontracts whereby the subcontractor provides services to Contractor exclusively in respect of this Agreement (and not in the ordinary course of Contractor's business). Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**30. Assignment.**

- a. **By City.** Any transfer or assignment of this Agreement (or any portion of it) by City without Contractor's prior written consent, by operation of law or otherwise, is voidable at Contractor's sole discretion. In the event of such transfer or assignment, the party to whom this Agreement was transferred or assigned shall be bound to the terms and conditions of this Agreement to the same extent as if Contractor and such assignee or transferee, as the case may be, entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. Furthermore, City shall be liable to Contractor for all liabilities, Chargebacks, expenses, costs, fees and fines arising in connection with such transferee's or assignee's, as the case may be, submission of Card transactions to Contractor for processing. Contractor is not required to continue this Agreement after City's merger or reorganization with or into another entity without Contractor's prior written consent, which will not be unreasonably conditioned, withheld, or delayed. City agrees to provide Contractor with at least 30 days' prior written notice of City's intention to take any of those types of actions.
- b. **By Contractor.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement;

provided that each Contractor may assign any or all of its rights or delegate any or all of its obligations to an affiliate or an entity acquiring all or substantially all of the assets of that Contractor upon prior written notice to City. Furthermore, upon prior written notice to City, another Visa or MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed. In the event another Visa or MasterCard member is substituted for Bank under whose sponsorship this Agreement is performed, City shall have the option to terminate this Agreement. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. Upon termination, this Agreement shall terminate and be of no further force or effect; provided that the provisions of the Agreement governing (i) processing and settlement of Card transactions, all related adjustments, fees and other amounts due from City, (ii) the resolution of any related Chargebacks, disputes or other issues involving Card transactions, and (iii) compromise or disclosure of Cardholder Data, in each case with respect to all Card transactions made prior to termination will continue to apply until City has fulfilled all of its obligations relating thereto.

- c. Except as provided in the following sentence, this Agreement shall be binding upon permitted successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

**31. Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**32. Earned Income Credit (EIC) Forms.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide access to EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall

have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**33. Local Business Enterprise Utilization; Liquidated Damages**

a. **The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Contractor’s obligations or liabilities, or materially diminish Contractor’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor’s obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

**34. Nondiscrimination; Penalties**

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts for services provided to the Contractor exclusively in service of this Agreement (and not in the ordinary course of the Contractor’s business) the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all such subcontractors to comply with such provisions. Contractor’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been

registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. **MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. **Drug-Free Workplace Policy.** Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. **Resource Conservation.** Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. **Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and

further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**41. Public Access to Meetings and Records.** If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

**42. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**43. Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

**45. Left blank by agreement of parties. (First Source Hiring Program)**

**46. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.



**47. Preservative-treated Wood Containing Arsenic.** Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**48. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

**49. Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement. The parties acknowledge and agree the foregoing is part of City’s internal procedure relating to contractual disputes. The parties acknowledge and agree the foregoing shall not limit any of Contractor’s rights under the Agreement.

**50. Agreement Made in California; Venue.** The formation, interpretation, and performance of this Agreement will be governed by the laws respecting national banks and, to the extent not so covered, by the laws of the State of California without regard to conflicts of law provisions. To the extent permitted under Applicable Law, the exclusive venue for any actions or claims arising under or related to the formation, interpretation and performance of this Agreement shall be the courts of the City and County of San Francisco, and each party submits to the jurisdiction of those courts in connection with such actions or claims. To the extent permitted under Applicable Law, City consents to the resolution of such actions or claims in the courts specified in the foregoing sentence.

**51. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**52. Entire Agreement.** This contract (including the MPA attached hereto) sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, “Modification of Agreement.” To the extent a conflict exists between the provisions of this Agreement and the MPA, the terms of this Agreement shall take precedence. Throughout this Agreement and MPA, where appropriate, singular terms include the plural and the plural includes the singular and the words “will” and “shall” are used interchangeably and have the same meaning. Headings are for convenience and reference only, and shall not in any way affect the meaning or construction of any provision of this Agreement. Purchase orders,

requests for production, pre-printed terms or other City-generated documents that Contractor may receive are for administrative convenience only and do not modify this Agreement and are expressly rejected by Contractor.

**53. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**54. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**55. Supervision of Minors.** Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care. If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor. Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**56. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be

affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and the parties shall in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

**57. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**58. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**59. Food Service Waste Reduction Requirements.** Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the

remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**60. Slavery Era Disclosure**

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

**61. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

**CONTRACTOR**

Recommended by:

Banc of America Merchant Services, LLC and Bank of America, N.A.


  
Pauline Marx  
Chief Assistant Treasurer  
Office of the Treasurer & Tax Collector

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.


Approved as to Form:

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Dennis J. Herrera  
City Attorney

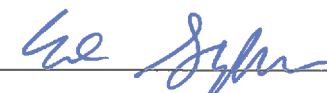
By:   
Jean Alexander  
Deputy City Attorney

Banc of America Merchant Services, LLC

By:   
Name: Ed Sykes  
Title: SVP

Bank of America, N.A.

By: Banc of America Merchant Services, LLC

By:   
Name: Ed Sykes  
Title: SVP  
City vendor number: 02827

**Appendices**

- A: Services to be provided by Contractor
- B: Merchant Processing Agreement

## APPENDIX A

### Services to Be Provided by Contractor

#### 1. Description of Services

The Contractor's response to the City Request for Proposals issued May 11, 2012 is hereby incorporated by reference.

#### 2. Reports

Contractor shall submit updated responses to Section 9 of the City Request for Proposals upon execution of this Agreement and upon each anniversary of this Agreement. Such data submitted shall be for the most recent period available. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

#### 3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the **Office of the Treasurer & Tax Collector** will be **Janet Tolenada**.

**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](http://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 1<sup>st</sup>, 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.

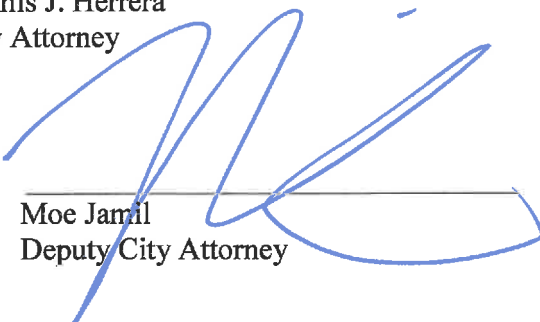
**CITY**

Recommended by:

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

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:   
\_\_\_\_\_  
Moe Jamil  
Deputy City Attorney

**CONTRACTOR**

Banc of America Merchant Services, LLC

  
\_\_\_\_\_  
Ed Sykes  
Senior Vice President

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

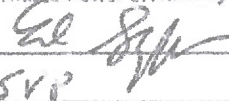
BANK OF AMERICA MERCHANT SERVICES, LLC

BY:   
TITLE: SVP  
DATE: 10/4/17

CITY AND COUNTY OF SAN FRANCISCO

BY:   
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:   
TITLE: SVP  
DATE: 10/4/17

City and County of SF - March Proc June April 1 106 20 17 (BAMS roll cost)

**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		
<b>Processing Fees:</b>	*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		
<b>Card Type</b>	<b>Auth Fee*</b>	<b>Per Item Fee**</b>	<b>Discount Rate***</b>
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%
<b>Per Occurrence Fees:</b>	<b>Amount</b>	<b>Description</b>	
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	
<b>Monthly Fees:</b>			
Minimum Discount Fee	\$10.00	Per Month per MID	
Client Line Fee	waived	Per Set Up	
Paper Statement Fee	waived	Per Statement Mailed	
<b>All telecommunications costs/Third Party Fees will be passed through to CUSTOMER.</b>			
<b>Interchange Schedule and Qualification Attachments (Interchange Schedules)</b>			
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**

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

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

**City and County of San Francisco  
Office of the Treasurer and Tax Collector  
City Hall, Room 140  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Second Amendment to Agreement between the City and County of San Francisco and  
Bank of America, N.A.**

THIS AMENDMENT (this “Amendment”) is made as of July 8, 2021, 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 to extend the performance period, and update standard contractual clauses;

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.** 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. Section 2.** Section 2. **Term of the Agreement** currently reads as follows:

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

**Such section is hereby amended in its entirety to read as follows:**

**2. Term of the Agreement.** Subject to Section 1, the term of this agreement shall be from August 15, 2013 to August 14, 2023.

**2b. Appendix B.** Section **14.12 of Appendix B: Merchant Processing Agreement** is hereby amended as follows: The requirement for the Annual Minimum Volume, described in Section 14.12, is hereby waived from July 1, 2021 through August 15, 2022. As such, the requirement of the Minimum shall not apply to Customer's annual bankcard volume requirements for the contract period of July 1, 2021 through August 15, 2022.

**2c. Limitations on Contributions.** Section 42 is hereby replaced in its entirety as follows:

**42. Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.



**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

**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.

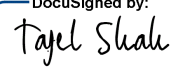
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

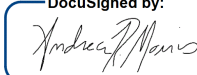
**CITY**

**CONTRACTOR**

Recommended by:

Banc of America Merchant Services, LLC

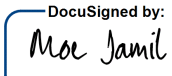
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E45D3E78545E404  
Tajel Shah  
Chief Assistant Treasurer  
Office of the Treasurer and Tax Collector

DocuSigned by:  
  
EB28EBED41A8402  
Andrea Morris  
Senior Vice President  
Bank of America, N.A.

City Vendor Number: 2827  
City Supplier ID: 24733

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:   
DBDA121BAB35448...  
Moe Jamil  
Deputy City Attorney

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

**City and County of San Francisco**

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

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

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

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

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

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

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

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

Organization Rules, as applicable.

## 2. Services.

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

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

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

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

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

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

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

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

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

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

**4. General Requirements and Restrictions for Card Transactions.**

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

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

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

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

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

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

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

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

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

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

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

**6. Authorization.**

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

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

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



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

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

**10. CUSTOMER Responsibilities for Persons Used by CUSTOMER.**

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

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

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

**11. Cardholder Refunds and Credits.**

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

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

**12. Presentment of Card Transactions.**

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

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

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

**13. Settlement of Card Transactions.**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**14.7 Intentionally Deleted.**

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

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

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

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

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

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

15. **Chargebacks.**

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

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

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

**16. Representations; Warranties and Covenants.**

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

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

16.2 SERVICERS represent and warrant to CUSTOMER that:

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

**17. Retention of Records.**

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

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

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

**18. System Testing and System Enhancements.**

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

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

**19. Proprietary or Confidential Information.**

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

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

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

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

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

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

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

## 20. Examinations, Audits and Corrective Action.

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

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

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

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

21. Intentionally Deleted.

## 22. Term; Events of Default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 24. Information Security.

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



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

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

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

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

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

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

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

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

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

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

#### 26. Financial and Other Information.

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

#### 27. Responsibility of the Parties.

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

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

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

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

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

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

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

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

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

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

32. Intentionally Deleted.

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

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

35. Intentionally Deleted.

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

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

37. Intentionally Deleted.

38. Intentionally Deleted.

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

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

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

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

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

#### 42. Card Organization Disclosure

~~Member Bank Information: Bank of America~~

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

##### Important Member Bank Responsibilities

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

##### Important Merchant Responsibilities

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

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

CITY AND COUNTY OF SAN FRANCISCO  
("CUSTOMER")

By: Pauline Au

Name: \_\_\_\_\_  
(Please Print or Type)

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

Date: \_\_\_\_\_

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

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

Name: Ed Syle  
(Please Print or Type)

Title: SVP

Date: 11/5/2013

DENNIS HERERRA, CITY ATTORNEY

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

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

By: Ed Syle

Name: Ed Syle  
(Please Print or Type)

Title: SVP

Date: 11/5/2013

## ANNEX 1

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

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

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

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

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

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

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

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

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

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

~~**"Bankrupt"** means a State or the United States or any of its territories, possessions, or other areas under the authority of the United States that has declared bankruptcy or is insolvent or unable to pay its debts as they become due.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**Important Information About Your Fees**

**Interchange**

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

**Target Discount Rate and Target Qualification Level**

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

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

**Non-Qualified Transactions**

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

**Billback**

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

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

**3. Equipment Costs:**

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

**4. Card Organization Pass Through Fees:**

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

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

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

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

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

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

6. **General Pricing Information:**

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

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

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

c. **Discover Network Credit Transactions:**

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

Other Card Services Supplement to Merchant Processing Agreement and Attachment I

Debit Transactions Supplement to Merchant Processing Agreement and Attachment II

Equipment Purchase and Rental Supplement to Merchant Processing Agreement

**Exhibit A**  
**PARTICIPATION AGREEMENT**

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

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

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

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

1. Participation Terms and Conditions.

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

2. Notices.

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

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

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

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

3. General.

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

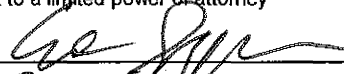
IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be duly executed by their authorized officers, as of the date first written above.

[ ]  
("NON-AGENCY")


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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

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

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

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

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

**OTHER CARD SERVICES SUPPLEMENT TO MERCHANT PROCESSING AGREEMENT:**

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

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

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

**2. ISSUER CONSENTS:**

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

**3. AUTHORIZATION SERVICES ONLY:**

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

**4. PROCESSING AND SUBMISSION TO ISSUERS:**

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

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

**5. DISCOVER PROCESSING PROVISIONS:**

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

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

**ATTACHMENT I TO SCHEDULE A:**

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

\*Card processing services for these transaction types may be subject to a separate agreement.

\*\*SERVICERS will settle Voyager transactions directly to merchants. All other Card types listed in this Attachment shall be settled by the Issuer.

\*\*\*These are DNP Card Types will be processed via Discover systems and subject to Discover Card Organization Rules; BAMS will settle transactions for all Discover Cards and DNP Card Types, unless CUSTOMER is classified by Discover Network as a Discover Direct Strategic Relationship as further described in Subsection 13.1 of the Agreement.



1. FEES: See Schedule A.

General Pricing Information:

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

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

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

CITY AND COUNTY OF SAN FRANCISCO  
(CUSTOMER)

PAULINE MARX,

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

BANC OF AMERICA MERCHANT SERVICES, LLC  
(BAMS)

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

DENNIS HERERRA, CITY ATTORNEY

*[Signature]*  
DEPUTY CITY ATTORNEY  
Date: 10/21/13

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

By: *[Signature]*  
Title: SVP  
Date: 11/9/2013

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

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

### DEBIT TRANSACTIONS SUPPLEMENT TO AGREEMENT:

#### 1. Special Provisions For PIN Debit Card

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

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

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

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

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

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

**REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

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

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

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

**There are several reasons for adjustments being initiated:**

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

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

**ATTACHMENT II TO SCHEDULE A TO AGREEMENT:**

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

CITY AND COUNTY OF SAN FRANCISCO  
(CUSTOMER)

PAULINE MARX,

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

DENNIS HERERRA, CITY ATTORNEY

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

BANC OF AMERICA MERCHANT SERVICES, LLC  
(BAMS)

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

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

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

## EQUIPMENT PURCHASE AND RENTAL SUPPLEMENT TO MERCHANT PROCESSING AGREEMENT

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

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

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

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

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

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

**5. Payment of Amounts Due.**

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

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

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

**6. Use and Return of Equipment; Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. **Default; Remedies.**

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

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

CITY AND COUNTY OF SAN FRANCISCO  
(CUSTOMER)

PAULINE MARX,

By: Pauline Marx  
CHIEF ASSISTANT TREASURER

Date: 10/16/13

DENNIS HERERRA, CITY ATTORNEY

By: Dennis Hererra  
DEPUTY CITY ATTORNEY

Date: 10/21/13

BANC OF AMERICA MERCHANT SERVICES, LLC  
(BAMS)

By: [Signature]  
Title: SVP

Date: 11/5/2013

BANK OF AMERICA, N.A.

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

By: [Signature]

Date: 11/5/2013  
Title: SVP

**Exhibit 1  
Service Level Agreement**

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

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

## 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.



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.

**BANC OF AMERICA MERCHANT SERVICES, LLC**

BY: 

TITLE: SVP

DATE: 10/4/17

**CITY AND COUNTY OF SAN FRANCISCO**

BY: 

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: 

TITLE: SVP

DATE: 10/4/17

**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		
<b>Processing Fees:</b>	*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		
<b>Card Type</b>	<b>Auth Fee*</b>	<b>Per Item Fee**</b>	<b>Discount Rate***</b>
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%
<b>Per Occurrence Fees:</b>	<b>Amount</b>	<b>Description</b>	
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	
Servicers 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	
<b>Monthly Fees:</b>			
Minimum Discount Fee	\$10.00	Per Month per MID	
Client Line Fee	waived	Per Set Up	
Paper Statement Fee	waived	Per Statement Mailed	
<b>All telecommunications costs/Third Party Fees will be passed through to CUSTOMER.</b>			
<b>Interchange Schedule and Qualification Attachments (Interchange Schedules)</b>			
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		





## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 230749

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Amanda Wentworth	(415) 554-4871
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
TTX                      Treasurer and Tax Collector	amanda.wentworth@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Bank of America	<b>TELEPHONE NUMBER</b> 951.233.1221
<b>STREET ADDRESS (including City, State and Zip Code)</b> 555 California Street, Suite 1160, SF, CA 94104	<b>EMAIL</b> pei.h.chen@bofa.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 230749
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$9,127,020		
<b>NATURE OF THE CONTRACT (Please describe)</b> Banking services for credit card payment processing.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Moynihan	Brian	Board of Directors
2	Allen	Sharon L.	Board of Directors
3	Bies	Susan S.	Board of Directors
4	Bramble, Sr.	Frank P.	Board of Directors
5	de weck	Pierre J. P.	Board of Directors
6	Donald	Arnold W.	Board of Directors
7	Hudson	Linda P.	Board of Directors
8	Lozano	Monica C.	Board of Directors
9	May	Thomas J.	Board of Directors
10	Nowell, III	Lionel L.	Board of Directors
11	Ramos	Denise L.	Board of Directors
12	Rose	Clayton S.	Board of Directors
13	White	Michael D	Board of Directors
14	Woods	Thomas D.	Board of Directors
15	Yost	R. David	Board of Directors
16	Zuber	Maria T.	Board of Directors
17	Moynihan	Brian	CEO
18	Knox	Kathleen A.	Board of Directors
19	Athanasia	Dean	Board of Directors

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Leitch	David	Board of Directors
21	Bessant	Catherine P.	Board of Directors
22	Bhasin	Aditya	Board of Directors
23	Bronstein	Sheri B.	Board of Directors
24	Nguyen	Thong M	Board of Directors
25	Donofrio	Paul M.	Board of Directors
26	Sieg	Andy	Board of Directors
27	Mogenson	Lauren	Board of Directors
28	O'Neill	Holly	Board of Directors
29	Scrivener	Tom M.	Board of Directors
30	Stewart	Wendy H.	Board of Directors
31	Greener	Geoffrey S.	Board of Directors
32	Thompson	Bruce	Board of Directors
33	Katziff	Christine P.	Board of Directors
34	Anaya	Raul A.	Board of Directors
35	Bolan	D. Steve	Board of Directors
36	Borthwick	Alastair	Board of Directors
37	Demare	James P.	Board of Directors
38	Koder	Matthew M.	Board of Directors

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List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39	Levine	Aron	Board of Directors
40	Mensah	Bernard A.	Board of Directors
41	Berkshire Hathaway, Inc.		Shareholder
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<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
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# Treasurer & Tax Collector

CITY AND COUNTY OF SAN FRANCISCO

José Cisneros  
TREASURER

June 13, 2023

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find a proposed resolution for Board of Supervisors approval, which authorizes the Office of the Treasurer & Tax Collector to enter into a contract extension with Bank of America.

The following accompanying documents are included:

- Copy of signed contract amendment between City and County of San Francisco and Bank of America.
- Copies of the original contract and all contract amendments between City and County of San Francisco and Bank of America.
- Completed Ethics Commission Form SFEC-126

Thank you,

Eric Manke  
Policy and Communications Manager  
(415) 350-0700