

PIMA COUNTY, ARIZONA

Doing Business As

**857010**

Zip Code

86-6000543

Taxpayer Identification Number

Recipient/Title For Notices

2.3 During the term of this Agreement, CLIENT will use SERVICERS as its exclusive provider of all Services for CLIENT.

- 2.4 SERVICERS will make the Services operational and available to CLIENT through a mutually agreed upon implementation plan. CLIENT agrees to 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 making changes to Merchant Equipment as SERVICERS require.
- 2.5 CLIENT will provide SERVICERS with a complete list of all CLIENT's Locations in the United States and its territories where CLIENT desires to accept Cards, with current information for each Location, including physical address and telephone numbers, mailing address and, if available, fax numbers and email addresses. CLIENT will provide an updated list as changes to any of CLIENT's Locations or their related information occur.
- 2.6 CLIENT will use the Services only for CLIENT's own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person.
- 2.7 SERVICERS will provide the Services for the Card types mutually agreed to in writing in this Agreement and/or in a Supplement or amendment to this Agreement executed by CLIENT and SERVICERS (the "**Agreed Upon Card Types**"). CLIENT will submit to SERVICERS only those transactions made using the Agreed Upon Card Types. Notwithstanding the foregoing, with respect to CLIENT's inadvertent or unintentional acceptance of a Card other than an Agreed Upon Card Type, CLIENT must pay the then-current transaction fees with respect to such Card and is responsible under this Agreement for any such Card and related transaction to the same extent as CLIENT would be if it were an Agreed Upon Card Type or part of the Services.
3. **Card Organization Rules and Compliance; Payments Acceptance Procedures; Order of Precedence.**
- 3.1 **Card Organization Rules.**
- (i) CLIENT will comply with the Card Organization Rules, including PCI DSS (as defined in Section 21.1), applicable to the Card types accepted by CLIENT from time to time. CLIENT will review the Card Organization Rules from time to time for changes, and is responsible for staying up to date with all changes to the Card Organization Rules applicable to CLIENT.
  - (ii) SERVICERS will comply with all applicable Card Organization Rules, including PCI DSS.
  - (iii) Card Organization Rules are available on web sites maintained by the Card Organization, such as <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>, and <https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>, as these links may change from time to time.
- 3.2 **Compliance with Applicable Law.** Each party is responsible for determining all Applicable Law that is applicable to it and for complying with all such Applicable Law in performing its obligations under this Agreement.
- 3.3 **Payments Acceptance Procedures.** SERVICERS have prepared a guide for accepting payments – the Payments Acceptance Procedures – available at <https://merch.bankofamerica.com/support/payments-acceptance-procedures> ("Procedures Guide"). The Procedures Guide was created, in part, to reflect certain obligations under Card Organization Rules and to provide best practices for accepting payments.
- 3.4 **Conflicts; Order of Precedence.** If there is a conflict between Applicable Law, the Card Organization Rules, and this Agreement, the conflict shall be governed in the following order of precedence: (1) Applicable Law; (2) Card Organization Rules; and (3) this Agreement.
4. **Conveyed Transactions.**
- 4.1 **Conveyed Transactions.** The following terms apply to Conveyed Transactions: (a) BAMS (not BANK) will provide an Authorization response to Authorization requests; (b) BAMS and BANK do not have any responsibility or liability for funding, sponsoring, or settling Conveyed Transactions; (c) CLIENT must enter into, and comply with the terms of, a separate agreement with the Card Organization or Issuer that settles Conveyed Transactions ("**Issuer Agreement**"), and will pursue directly with such Card Organization or Issuer all related claims and disputes; (d) the Card Organization or Issuer that settles Conveyed Transactions may charge additional fees and amounts, for which CLIENT is exclusively responsible and liable; and (e) if the Issuer Agreement has been terminated, suspended, or is not in effect, BAMS does not have any obligation to provide any Services for Conveyed Transactions.
- 4.2 **Fees for Conveyed Transactions.** Conveyed Transactions are subject to the fees and charges set forth in the Fee Schedule. CLIENT also must pay, and is exclusively responsible and liable for, any amounts owed to any Card Organization, Issuer, or other third party with respect to Conveyed Transactions, including any fees and amounts owed under any Issuer Agreement and any other Third Party Based Fees.

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

5.1 **Accuracy of Data.** CLIENT will be responsible for the quality and accuracy of all data provided to SERVICERS. SERVICERS may, at their option, return to CLIENT for correction before processing any data submitted by CLIENT which is incorrect, illegible or otherwise not in proper form.

5.2 **Prohibition on Certain Transactions.** CLIENT is prohibited from submitting or presenting, and will not submit or present, Authorization requests and Sales Drafts arising from transactions that CLIENT knows or should have known to be fraudulent, illegal or not authorized by the Cardholder, as well as transactions between (i) CLIENT and Cardholders who are CLIENT's owners, partners, guarantors, officers or employees, other than genuine purchases, leases or rentals of goods or services from CLIENT or other payments to CLIENT, all in the ordinary course of CLIENT's business, and (ii) Cardholders and third parties for their goods or services or other payments to CLIENT.

5.3 **Currency.** Unless otherwise agreed in advance and writing by SERVICERS, CLIENT must submit all Card transactions in U.S. dollars.

6. **Authorizations.**

CLIENT must obtain an Authorization for each Card transaction in accordance with Card Organization Rules. CLIENT acknowledges and agrees that obtaining an Authorization does not ensure payment to CLIENT for a Sales Draft. CLIENT acknowledges that Authorization (i) indicates only the availability of credit at the time of Authorization, (ii) does not warrant that the person presenting the Card is the rightful Cardholder, (iii) is not an unconditional promise or guarantee by SERVICERS that any Card transaction will not be subject to Chargeback and (iv) is not a 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.

7. **Cardholder Refunds and Credits.**

CLIENT must disclose its return/refund policy to Cardholders in accordance with the Card Organization Rules, and such return/refund policy must comply with the Card Organization Rules and Applicable Law.

8. **CLIENT Responsibilities for Persons Used by CLIENT.**

8.1 **Use of Persons.** CLIENT's use of the services, equipment, Software, systems, materials, supplies or resources of Persons with respect to CLIENT's Card transactions processing, including Merchant Providers and any third party lessors and licensors, will not affect CLIENT's obligations under this Agreement which will apply to the same extent as if CLIENT had not used them. SERVICERS have no liability or responsibility to CLIENT or others regarding these Persons, even if SERVICERS referred them to CLIENT. With respect to these third parties, CLIENT is solely responsible for (i) determining whether they can meet CLIENT's needs and standards, (ii) their actions, inactions and compliance with Applicable Law and (iii) any and all fees, costs, expenses, assessments and other obligations owed to them by CLIENT or owed by them to SERVICERS or to the Card Organizations. In addition, CLIENT is responsible for its employees' actions.

8.2 **Merchant Providers.** Before CLIENT engages any Merchant Provider, CLIENT must provide to SERVICERS in writing the Merchant Provider's (a) legal name, (b) contact information, and (c) intended function. CLIENT covenants with SERVICERS that CLIENT will not use, allow the use of, or provide to any Merchant Provider access to any Cardholder data, BAMS Systems, or Services until CLIENT receives SERVICERS' approval and, if required, confirmation of SERVICERS' registration of that Merchant Provider with applicable Card Organizations. CLIENT must ensure that CLIENT and Merchant Providers comply with Card Organization registration processes, all other applicable Card Organization Rules, and Applicable Law. CLIENT may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules and Applicable Law. CLIENT is responsible for all of SERVICERS' costs and expenses associated with SERVICERS' certification (and recertification as may be required by the Card Organization Rules) and registration of any Merchant Providers.

9. **Settlement of Card Transactions.**

9.1 **Settlement of Sales Drafts.** SERVICERS will settle with CLIENT for each Sales Draft acquired and accepted by SERVICERS under this Agreement after SERVICERS receive payment for that Sales Draft from the related Card Organization, subject to the terms of this Agreement. Daily settlements to CLIENT for Sales Drafts will be based upon gross sales, minus Third Party Based Fees, Credit Drafts, adjustments, Chargebacks, Servicers Fees, and other amounts set forth on the Fee Schedule. SERVICERS will collect all other amounts due from CLIENT to SERVICERS under this Agreement (including Data Compromise Losses) via net settlement or separate debit to the Settlement Account. All credits to CLIENT's Settlement Account or other payments to CLIENT 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 CLIENT's actions or omissions, and (iii) any other obligations owed by CLIENT to SERVICERS. Unless SERVICERS agree in writing otherwise, SERVICERS will only acquire Sales Drafts for Visa, Mastercard, or Discover Network Card Organization Rules).

9.2 **Settlement Account.** CLIENT will designate in writing, and maintain at a financial institution acceptable to SERVICERS, a Settlement Account for the purposes of settling transactions under this Agreement. CLIENT authorizes SERVICERS to initiate credit and debit entries and adjustments to CLIENT's Settlement Account through the ACH network

and/or through direct instructions to the financial institution where CLIENT's Settlement Account is maintained for amounts due under this Agreement and under any agreements with SERVICERS or SERVICERS' respective Affiliates for any related services, as well as for any credit entries in error, including but not limited to the following payments: the payment of all fees, charges and other amounts that CLIENT has agreed to pay to SERVICERS in accordance with this Agreement and the Fee Schedule, all payments of Chargebacks, all payments of any other fees, charges, fines, assessments, penalties or other liabilities (including any Data Compromise Losses) that may be imposed on SERVICERS or CLIENT by a Card Organization or otherwise in connection with the Services, all related costs and expenses incurred by SERVICERS, all payments required to establish or fund a Reserve Account and any other amounts owing to SERVICERS pursuant to this Agreement or any other agreement between CLIENT and SERVICERS. This authorization will remain in effect until CLIENT has provided SERVICERS at least thirty (30) days' prior written notice in accordance with Section 29 that CLIENT is terminating the authorization and either (i) all amounts due from CLIENT under this Agreement (including any Servicers Fees, Third Party Based Fees, and Data Compromise Losses that may arise or be assessed after termination of this Agreement and all unmatured and contingent liabilities) and under any other agreements with SERVICERS and SERVICERS' respective Affiliates have been paid in full, or (ii) CLIENT has provided SERVICERS an authorization to debit via ACH a replacement Settlement Account that is satisfactory to SERVICERS.

In order to allow SERVICERS to debit the Settlement Account, CLIENT will provide SERVICERS with a letter from CLIENT's financial institution and take any other steps required by CLIENT's financial institution.

Debits or credits to or from the Settlement Account will be made on the basis of account number and bank routing number only. CLIENT must promptly notify SERVICERS if CLIENT fails to receive any settlement funding or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if CLIENT provides inaccurate information about, or fails to notify SERVICERS of changes to, the Settlement Account. SERVICERS are not responsible for settlement that arise if CLIENT provides inaccurate information about, or fails to notify SERVICERS of, changes to the Settlement Account. If the Settlement Account has insufficient funds, SERVICERS may, without advance notice, withdraw the funds CLIENT owes SERVICERS from the Reserve Account, or any other account CLIENT maintains with SERVICERS (or their respective Affiliates) or to which CLIENT has granted SERVICERS access. If sufficient funds are not available from those sources, CLIENT must pay the amount of any deficiency immediately upon demand. If CLIENT does not do so, at SERVICERS' discretion SERVICERS may cease processing additional Card transactions until the amounts due are paid.

**9.3 Time for Settlement.** Settlements to CLIENT for Sales Drafts will occur only on Business Days. Except as otherwise set forth in this Agreement, if SERVICERS receive CLIENT'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 CLIENT's Settlement Account. SERVICERS will generally initiate this transfer by the following Business Day after SERVICERS process the applicable transactions. Generally, the Settlement Account will be credited within two (2) Business Days after SERVICERS' initiation of the transfer. SERVICERS will not be liable for any delays in receipt of settlement funds or errors in credits or debits to the Settlement Account that are caused by Persons, including delays or errors of any Card Organization or any financial institution.

**9.4 Settlement Amounts Subject to Adjustments.** This Agreement is a contract whereby SERVICERS are extending financial accommodations to CLIENT within the meaning of Section 365(c) of the Bankruptcy Code. CLIENT's right to receive any amounts due or to become due from SERVICERS or SERVICERS' respective Affiliates, whether or not those amounts are related to this Agreement, is expressly subject and subordinate to Chargeback, setoff, recoupment, lien, security interest and SERVICERS' rights to withhold settlement funds under this Agreement for the purpose of paying Chargebacks and any other fees, charges, fines, assessments, penalties or other liabilities (including any Data Compromise Losses), without regard to whether such Chargeback, setoff, recoupment, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

**10. Fees; Adjustments; Collection of Amounts Due; Statements.**

**10.1 Fees and Card Organization Charges.** CLIENT will pay SERVICERS, within the times specified by SERVICERS, all applicable fees and charges for the Services calculated pursuant to the Fee Schedule, including: (i) fees set by the Card Organizations, including interchange fees, and fees set by Persons related to the Services ("Third Party Based Fees"), and (ii) fees that SERVICERS set ("Servicers Fees").

**10.2 Servicers Fee Changes.** Certain Servicers Fees set forth in this Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size set forth on the Fee Schedule and CLIENT's method of doing business. If the actual volume or average transaction size are not as expected or if CLIENT significantly alters its method of doing business, SERVICERS may, upon prior written notice to CLIENT, adjust Servicers Fees (including discount fees or transaction fees).

10.3 Third Party Based Fee Changes. From time to time, SERVICERS may adjust the Fee Schedule to reflect changes to, or new, Third Party Based Fees. All such adjustments will be CLIENT's responsibility to pay and will become effective upon the date any such change or addition is implemented by the applicable Card Organization or other Person. SERVICERS will endeavor to provide CLIENT thirty (30) days' advance notice of such changes or additions; the actual amount of advance notice that SERVICERS provide to CLIENT will depend on the amount of advance notice that SERVICERS receive from the applicable Card Organization or other Person regarding such changes or additions.

10.4 Card Organization Fines, Assessments and Penalties. SERVICERS may pass through to CLIENT any fines, penalties or assessments imposed on SERVICERS by the Card Organizations as a result of any action or inaction by CLIENT. SERVICERS will provide CLIENT with written notification regarding the amount of any such fine, penalty or assessment and the date by which it is payable to SERVICERS. All such amounts will be CLIENT's responsibility to pay on the date specified by SERVICERS.

10.5 Taxes. CLIENT agrees to pay any and all sales, use, excise, personal property, stamp, documentary and ad-valorem taxes, license and registration fees, assessments, fines, penalties and similar charges ("Taxes") imposed on the Services or the transactions contemplated by this Agreement. CLIENT also agrees to pay any and all Taxes imposed on the ownership, possession or use of the Merchant Equipment. CLIENT authorizes SERVICERS, or SERVICERS' respective assigns, to increase the amount of CLIENT's preauthorized payment to reflect any and all increases in all applicable Taxes and waives any requirement for notice of such increase. CLIENT is not responsible for any taxes imposed on SERVICERS based on SERVICERS' net income.

10.6 Duty to Review Statements and Notify SERVICERS of Discrepancies or Adjustments. CLIENT must promptly and carefully review statements and reports (collectively, "Statements") provided or made available to CLIENT, whether provided by SERVICERS or Persons. SERVICERS will effect adjustments remedying any errors on Statements, provided that CLIENT provides SERVICERS written notice detailing such errors within sixty (60) days of receiving the applicable Statement. If CLIENT does not provide written notice of an error within such sixty (60) day time period, SERVICERS shall not have any obligation or liability to investigate or correct such error, or to effect any related adjustment, absent any willful misconduct by SERVICERS.

10.7 Electronic Statements. Upon CLIENT's request, SERVICERS will deliver Statements to CLIENT electronically, and CLIENT authorizes SERVICERS to deliver Statements, as well as Card Organization or regulatory information and notices of change in terms that SERVICERS would typically include with paper statements, to CLIENT electronically. SERVICERS may charge CLIENT a reasonable fee for any paper Statements CLIENT later requests. If CLIENT elects to receive Statements via e-mail, CLIENT is responsible for ensuring its systems are capable of receiving emails from SERVICERS and for providing SERVICERS accurate, valid e-mail addresses. In addition, CLIENT is solely responsible for preventing the disclosure, interception and viewing of Statements by any unauthorized Person after such Statements are sent by SERVICERS. SERVICERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING CLIENT'S ACTUAL RECEIPT OF ELECTRONIC STATEMENTS.

## 11. Chargebacks.

11.1 Chargebacks Payable Immediately. CLIENT will pay SERVICERS the amount of each Card transaction that CLIENT submitted to SERVICERS for processing that is charged back to SERVICERS for any reason permitted by the Card Organization Rules. Each Chargeback to CLIENT is immediately due and payable by CLIENT. See the Procedures Guide for more information regarding Chargebacks.

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

11.3 Chargeback Fees and Other Amounts. CLIENT will pay SERVICERS: a) the fees associated with processing Chargebacks as provided in the Fee Schedule; and b) all Third Party Based Fees related to Chargebacks, including fees and other amounts related to disputing or arbitrating a Chargeback or failing to produce records within the applicable time limits, without regard to whether the Chargeback is settled in CLIENT's favor or the Cardholder's favor.

11.4 Europay/Mastercard/Visa ("EMV") Chip Card Compliance. If CLIENT accepts Chip Cards on equipment not enabled for Chip Card acceptance based on a chip (and not the magnetic stripe), CLIENT (and not the Issuers of such Chip Cards) will be responsible for any counterfeit Card fraud regarding those Chip Card transactions, pursuant to Card Organization Rules ("EMV Liability Shift"). Any such counterfeit Card fraud transactions (including any transactions resulting from lost, stolen, or never received Cards by the Cardholder) may result in Chargebacks for which CLIENT will be liable.

## 12. Representations and Warranties.

12.1 CLIENT represents and warrants to SERVICERS that:

- (i) CLIENT is validly existing and in good standing;

- (ii) CLIENT has all necessary power and authority to enter into this Agreement;
- (iii) all information provided by or on behalf of CLIENT to SERVICERS in support of this Agreement is true and correct;
- (iv) CLIENT is not doing business under a name or style not previously disclosed to SERVICERS;
- (v) CLIENT has not changed its business, in a way not previously disclosed to SERVICERS, such that a different merchant category code is required under Card Organization Rules;
- (vi) CLIENT owns and controls the Settlement Account; and
- (vii) CLIENT 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 Agreement.

12.2 SERVICERS represent and warrant to CLIENT that:

- (i) SERVICERS are validly existing and in good standing; and
- (ii) SERVICERS have all necessary power and authority to enter into this Agreement.

13. **Retention of Records.**

CLIENT must retain legible copies or images of CLIENT's Sales Drafts, Credit Drafts and any other transaction records in accordance with Card Organization Rules.

14. **Merchant System Testing; System Enhancements.**

14.1 Merchant System Testing. 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. If CLIENT changes or modifies the Merchant Systems for any reason during the term of this Agreement, including modifications to accommodate changes in Card Organization Rules or Applicable Law, CLIENT 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 they meet 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 CLIENT; however, subsequent re-certifications will be billed to CLIENT at SERVICERS' then-current hourly development fee. CLIENT assumes all liability resulting from CLIENT's failure to notify SERVICERS of changes or modifications to Merchant Systems, failure to ensure ongoing certification to BAMS' Systems, or refusal to allow SERVICERS to conduct implementation or certification testing.

14.2 System Enhancements. If CLIENT requests SERVICERS to 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.

15. **Confidentiality.**

15.1 Definitions. The parties acknowledge that during the term of this Agreement, each party ("Disclosing Party") may disclose to the other party ("Receiving Party") information relating to the Disclosing Party's or another Person's business that is designated as confidential or proprietary or is known or reasonably should be known as confidential or proprietary to the Disclosing Party or such other Person ("Confidential Information"). Confidential Information includes but is not limited to strategic business information and capabilities; financial information; pricing related to products and services; information related to information technology systems and processes; technical specifications related to products and services, or information technology systems; customer information (not including Cardholder data); and information that must be maintained as confidential by Applicable Law, and whether in oral, written, graphic, electronic, or other form, including all copies and derivatives thereof. Except as specifically provided for herein, this Section 15 does not confer on the Receiving Party any right, license, interest or title in, to or under the Disclosing Party's Confidential Information.

15.2 Use of Confidential Information. Receiving Party will not disclose Disclosing Party's Confidential Information to any Person, provided that Receiving Party may disclose such Confidential Information (i) as required by Applicable Law, (ii) to Receiving Party's auditors and lawyers (internal and external) and regulators, or (iii) to third parties, but only to the extent necessary for SERVICERS to provide the Services or for the Receiving Party to discharge the Receiving Party's obligations arising hereunder, and provided that such third parties are bound by confidentiality obligations with respect to such Confidential Information that are substantially the same as Receiving Party's confidentiality obligations under this Agreement. In addition, SERVICERS may disclose CLIENT's Confidential Information to their respective Affiliates and to each other's Affiliates, provided that such Affiliates are under obligation to treat such Confidential Information with at least the same degree of care as required of SERVICERS, and to the Card Organizations. Receiving Party will safeguard Disclosing Party's Confidential Information using a reasonable degree of care, but not less than that degree of care used by Receiving Party in safeguarding its own similar information or material.

Notwithstanding any contrary provisions in the controlling documents for any other accounts CLIENT has with BANK, CLIENT hereby consents to BANK sharing and exchanging with BAMS and BAMS' Affiliates and agents information about CLIENT and such other accounts in connection with the Services, including collection of amounts owed under this

Agreement to SERVICERS. CLIENT agrees that SERVICERS may obtain relevant information from any applicable telecommunications provider utilized by CLIENT, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by CLIENT in connection with the Services.

**15.3 Exclusions.** The obligations of confidentiality and restrictions on use in this Section 15 will not apply to any Confidential Information that: (i) was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of the Receiving Party; (ii) was received from a Person free of any obligation of confidence of the Receiving Party to the Person 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; (v) is subsequently and independently developed by the Receiving Party's employees, consultants or agents without use of or reference to the Confidential Information; or (vi) the Disclosing Party agrees in writing may be disclosed.

**15.4 Cardholder Data.** In addition to the information security provisions elsewhere in this Agreement regarding Cardholder data, neither CLIENT 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 relevant Cardholder's consent as obtained by CLIENT, 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.

**15.5 Aggregated, Anonymized Data.** Notwithstanding any provision contained in this Agreement to the contrary, SERVICERS and their Affiliates may use and disclose aggregated, anonymized Card transaction and Cardholder data for SERVICERS' and their Affiliates' internal analysis and reporting.

**15.6 Intellectual Property.** All right, title, and interest in and to all intellectual property related to the Services (including 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 Agreement, or employed by SERVICERS in connection with the Services and any updates, changes, alterations or modifications to or derivative works from such intellectual property, will be and remain, as among the parties, SERVICERS' exclusive property. Except as specifically provided for herein, no license is hereby granted to any party to any patent, trademark, copyright, trade secret or other proprietary rights of any other party.

**15.7 Card Organization Marks.** CLIENT must comply with all Card Organization Rules regarding use of Marks owned by the Card Organizations. CLIENT's use, display, and reproduction of Card Organization Marks in advertising, acceptance decals, signs, or otherwise must be in accordance with the guidelines and standards set by each respective Card Organization. CLIENT's use and display of any Card Organization Marks will terminate upon the earlier of (a) termination of this Agreement, and (b) notice to CLIENT that the Card Organization has requested or required such termination.

**15.8 Breach.** SERVICERS and CLIENT acknowledge that breach of the restrictions on use or disclosure of the Disclosing Party's Confidential Information would result in immediate and irreparable harm to the Disclosing Party, and money damages would be inadequate to fully compensate for that harm. In such event, the Disclosing Party will be entitled to seek equitable relief, in addition to all other available remedies, to redress any breach.

**15.9** Notwithstanding the foregoing, SERVICERS acknowledge that CLIENT may be subject to the provisions of applicable state "open records" laws ("**Open Records Law**") and that under certain circumstances, CLIENT may be required to release a copy of this Agreement to a third party under the Open Records Law. In the event that CLIENT receives a request for confidential information from any third party under the Open Records Law, CLIENT 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 CLIENT. As soon as is reasonably possible following such notice, CLIENT will provide SERVICERS with copies of any documents and/or other materials that CLIENT believes to be responsive to such request. CLIENT 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 CLIENT's disclosure of such confidential information, and CLIENT shall provide SERVICERS with reasonable assistance. However, with respect to Cardholder account numbers, personal information and other Card transaction information, CLIENT 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.

## **16. Examinations, Audits and Corrective Action.**

**16.1 SERVICERS' Rights.** SERVICERS, the Card Organizations, any governmental authority with jurisdiction over SERVICERS, and each of their respective designees will have the right, during the term of this Agreement and for one (1) year thereafter, upon reasonable advance written notice and during normal business hours, to review and examine the facilities, books, records, operations and Merchant Equipment of CLIENT and Merchant Providers to determine or to verify CLIENT's and Merchant Providers' compliance with their respective obligations under this Agreement, Applicable Law, and the Card Organization Rules. The results of such review or examination, including any written reports, must be made available to the entity requesting it and to SERVICERS. All expenses related to such review or examination will be paid by CLIENT.

**16.2 Remediation.** CLIENT must promptly take corrective action acceptable to SERVICERS, the regulatory agency and the Card Organizations as applicable to rectify (i) any failure to comply with this Agreement 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. If corrective action is not promptly taken, and the corrective action relates to a Merchant Provider of CLIENT, SERVICERS may require CLIENT to stop using such Merchant Provider in connection with this Agreement until corrective action has been taken in accordance with this Section 16.2.

**17. Assignment of Agreement; Change of Control.**

**17.1 Assignment of Agreement by CLIENT.** Any transfer or assignment of this Agreement (or any portion of it), by operation of law or otherwise, by CLIENT without SERVICERS' prior written consent is voidable at either SERVICERS' sole discretion and will be deemed a Client Event of Default pursuant to Section 18.2(A)(ii) below. CLIENT will be liable to SERVICERS for all liabilities, Chargebacks, expenses, costs, fees and fines arising in connection with any and all Card transactions submitted to SERVICERS for processing by any assignee or transferee of this Agreement not previously approved as such by SERVICERS.

**17.2 CLIENT's Change of Control or Asset Sale.** CLIENT will provide to SERVICERS as much advance written notice as practicable of any (i) Change of Control or (ii) Asset Sale, and in any event as soon as possible (but not to exceed ten (10) Business Days) following such Change of Control or Asset Sale, as applicable. CLIENT must obtain SERVICERS' consent to such Change of Control or Asset Sale.

**17.3 Assignment of Agreement by a SERVICER.** Any SERVICER may assign or transfer this Agreement and its respective rights and obligations hereunder and may delegate its respective duties hereunder, in whole or in part, to any Person; provided, however, that SERVICERS agree to provide CLIENT with notice of such assignment as soon as practicable following such assignment.

**17.4 Binding Nature of Agreement.** Except as provided in the following sentence, this Agreement will be binding upon permitted successors and assigns and will inure to the benefit of the parties and their respective permitted successors and assigns. In the event of an assignment 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, such assignee will not have any right to continue or to assume or to assign this Agreement.

**18. Term; Events of Default.**

**18.1 Term.** This Agreement will be effective on the date it is fully executed by the parties. However, the Original Agreement shall continue to control and remain effective up to the Effective Date. The initial term of this Agreement shall commence on the Effective Date and continue for three (3) (the "**Initial Term**"). Thereafter, CLIENT may extend this Agreement for an additional two (2) year term (the "**Renewal Term**") by providing written notice to SERVICERS at least one hundred and twenty (120) days' notice prior to the end of the Initial Term. If Client does not provide such notice, but continues to use the Services after the expiration of the Initial Term, then this Agreement shall remain in effect until terminated by the parties hereto upon no less than one hundred twenty (120) days' notice to the other party(ies) and Client ceases to submit transactions to SERVICERS for processing hereunder.

**18.2 Events of Default.**

**(A) Client Event of Default.** If any of the following events shall occur and remain uncured following any applicable cure period (upon expiration of any applicable cure period, each, a "**Client Event of Default**"):

- (i) a material adverse change in the financial condition, business procedures, products or services of CLIENT; or
- (ii) irregular Card sales by CLIENT, excessive Chargebacks or any other circumstances which, in SERVICERS' sole discretion, may increase SERVICERS' exposure for CLIENT's Chargebacks or otherwise present a financial or security risk to SERVICERS; or
- (iii) any representation or warranty of CLIENT in this Agreement is breached in any material respect or was or is incorrect in any material respect when made, and, if the breach is capable of being cured, such breach remains uncured after thirty (30) days following receipt of notice from SERVICERS; or



- (iv) CLIENT defaults in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, and, if the default is capable of being cured, such default remains uncured after thirty (30) days following receipt of notice from SERVICERS; or
- (v) CLIENT defaults in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any respective Affiliate of SERVICERS, and, if the default is capable of being cured, such default remains uncured after thirty (30) days following receipt of notice from SERVICERS; or
- (vi) with respect to Data Compromise Losses, non-payment of such Data Compromise Losses within three (3) Business Days after notification from SERVICERS; or
- (vii) any proceeding in respect of bankruptcy, insolvency, receivership, winding-up, dissolution or assignment for the benefit of creditors, whether under the Bankruptcy Code or any similar domestic or foreign law, is commenced by or against CLIENT; or
- (viii) the independent certified accountants retained by CLIENT refuse to deliver an unqualified opinion with respect to the annual financial statements of CLIENT;

then, SERVICERS may (A) terminate this Agreement immediately upon written notice, and all amounts payable hereunder by CLIENT to SERVICERS will be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by CLIENT and (B) exercise all of their respective rights and remedies under this Agreement and Applicable Law.

**(B) Servicer Event of Default.** If any of the following events shall occur and remain uncured following any applicable cure period (upon expiration of any applicable cure period, each, a "Servicer Event of Default"):

- (i) any representation or warranty of SERVICERS in this Agreement is breached in any material respect or was or is incorrect in any material respect when made, and, if the breach is capable of being cured, such breach remains uncured after thirty (30) days following receipt of notice from CLIENT; or
- (ii) SERVICERS default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, and, if the default is capable of being cured, such default remains uncured after thirty (30) days following receipt of notice from CLIENT; or
- (iii) any proceeding in respect of bankruptcy, insolvency, receivership, winding-up, dissolution or assignment for the benefit of creditors, whether under the Bankruptcy Code or any similar domestic or foreign law, is commenced by or against SERVICERS;

then, CLIENT may (A) terminate this Agreement immediately upon written notice, and all amounts payable hereunder by SERVICERS to CLIENT will be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by SERVICERS and (B) exercise all of its respective rights and remedies under this Agreement and Applicable Law.

18.3 In addition to SERVICERS' other rights under this Agreement, including SERVICERS' rights under Section 18.2, if SERVICERS determine that a Client Event of Default in Section 18.2(A) has occurred, SERVICERS may immediately suspend the Services, credits or other payments of any and all funds, money and amounts now due or that hereafter become due to CLIENT pursuant to the terms of this Agreement, until SERVICERS have had reasonable opportunity to investigate such Client Event of Default and have determined that the exigent risk to SERVICERS giving rise to such suspension has abated. SERVICERS will notify CLIENT of any such suspension of the Services and/or funding pursuant to this Section as soon as practicable.

18.4 This Agreement may be terminated by SERVICERS, with as much notice as is reasonably practicable under the circumstances, if in their sole discretion such termination is necessary for SERVICERS to comply with their obligations under any Applicable Law including the Office of Foreign Assets Control ("OFAC") Regulations and Card Organization Rules.

18.5 If this Agreement is terminated for a Client Event of Default, CLIENT acknowledges that SERVICERS, subject to and in accordance with the Card Organization Rules, may be required to report CLIENT's business name, the names and other identification of its principals, and information regarding Merchant Providers and other Persons to the Card Organizations.

18.6 In their sole discretion, SERVICERS may suspend or terminate the Services under this Agreement for any Compromised Data Event.

18.7 Conflict of Interest. SERVICERS acknowledge that CLIENT may have the right to terminate this Agreement pursuant to §38-511 of the Arizona Revised Statutes for the reasons expressly set forth therein.

18.8 Termination for Non-Appropriation. Notwithstanding the foregoing, the terms of this Agreement are contingent upon the Pima County Board of Supervisors making the appropriations necessary for the performance of the Agreement. If sufficient appropriations and authorizations are not made by the Pima County Board of Supervisors, the Agreement may be terminated by either party upon thirty (30) days' written notice to the other party. However, the provisions of this Agreement governing processing and settlement of Card transactions, all related adjustments, fees and other amounts due from CLIENT, the resolution of any related Chargebacks, and disputes or other issues involving Card transactions,

compromise or disclosure of Cardholder Data will continue to apply even after termination of the Agreement, until all Card transactions made prior to the termination are paid in full. If such funds are not immediately available, CLIENT will use best efforts to seek appropriations as soon as reasonably practicable. For the avoidance of doubt, in the event this Agreement is terminated by either party pursuant to this paragraph, SERVICERS will have no obligation to provide Services to CLIENT as of the date of termination of this Agreement.

**19. Reserve Account; Security Interest; Set-Off.**

19.1 To the extent permitted under Applicable Law, CLIENT authorizes SERVICERS to establish a deposit account to be held in the name of SERVICERS, or any one of them, pursuant to the terms and conditions set forth in this Section 19 (a "Reserve Account"). SERVICERS will provide CLIENT with at least three (3) days' advance notice regarding the establishment of (or any adjustment to the amount of) any Reserve Account; provided, however, that SERVICERS may fund (pursuant to Section 19.2(i) or (ii)) the Reserve Account immediately and without prior notice (i) in the case of fraud pertaining to CLIENT or material fraudulent Card transactions, (ii) in the case of a Client Event of Default, or (iii) upon notice of termination of the Agreement by either CLIENT or SERVICERS. The amount of any Reserve Account will be set by SERVICERS, and may be adjusted by SERVICERS from time to time, in SERVICERS' sole discretion, based upon CLIENT's processing history and any potential risk of loss to SERVICERS.

19.2 The Reserve Account may be funded by all or any combination of the following, as elected by SERVICERS: (i) one or more deductions, recoupments, or off sets to or against any payments otherwise due to CLIENT; (ii) one or more debits to CLIENT's Settlement Account; (iii) CLIENT's delivery to SERVICERS of a letter of credit in a form satisfactory to SERVICERS and issued by a financial institution acceptable to SERVICERS; or (iv) cash delivered by CLIENT to SERVICERS. If SERVICERS have elected for the Reserve Account to be funded via a letter of credit or cash, the Reserve Account must be funded by CLIENT in the manner and within the timeframes specified by SERVICERS. Any Reserve Account will be held by SERVICERS until all current and contingent liabilities and other obligations of CLIENT under this Agreement, including for Card transactions under the Card Organization Rules and including for Data Compromise Losses, have been satisfied. Funds held in a Reserve Account established pursuant to this Agreement may be held in a commingled reserve account together with reserve funds of SERVICERS' other customers.

19.3 If funds in the Reserve Account at any time are not sufficient to cover Chargebacks, adjustments, fees, charges, fines, assessments, penalties or other liabilities and other amounts (including any Data Compromise Losses) that may be prospectively owed by CLIENT to SERVICERS, CLIENT agrees to immediately pay SERVICERS such sums upon request or, at SERVICERS' election, SERVICERS may fund the Reserve Account with such amounts in any manner set forth in the preceding Section.

19.4 CLIENT acknowledges and agrees that its failure to establish or maintain funds in the Reserve Account as required by SERVICERS hereunder will be a material default of CLIENT pursuant to Section 18.2(A) of this Agreement.

19.5 To secure CLIENT's performance of its obligations arising under or otherwise related to this Agreement, CLIENT hereby grants to each SERVICER, as collateral agent for the benefit of itself and the other SERVICER, and also to each SERVICER individually, security interests and rights of setoff and recoupment in and to each transaction and its proceeds, any and all amounts held in any Reserve Account, and all of CLIENT's now owned and hereafter acquired rights, title and interest in and to any Reserve Account. SERVICERS may enforce these security interests and rights of setoff and recoupment without notice or demand to the fullest extent permitted by Applicable Law. The security interests and rights of setoff and recoupment granted under this Agreement will survive the termination of this Agreement until all CLIENT's obligations arising under or related to this Agreement are paid and performed in full. CLIENT agrees and acknowledges that BANK shall be the depository bank with which all Reserve Accounts are maintained and BANK shall have the exclusive right to withdraw funds from, direct the disposition of, and close each Reserve Account.

19.6 CLIENT further authorizes SERVICERS at any time and from time to time, without notice or demand to CLIENT or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and apply any and all funds associated with the Card transactions contemplated in this Agreement against and on account of CLIENT's (or any of its Affiliates') obligations either to SERVICERS arising under or related to this Agreement or, in the case of BAMS, to BAMS or any wholly owned subsidiary of BAMS (each, a "BAMS Subsidiary") under any other agreement between CLIENT (or any of its Affiliates) and BAMS or any such BAMS Subsidiary for any services or the purchase or use of any equipment, whether or not such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured.

**20. Intentionally Omitted.**

**21. Information Security.**

21.1 Data Protection. CLIENT 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 (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").

CLIENT will use only services, Merchant Providers, and Merchant Equipment that have been certified as PCI DSS compliant by the Card Organizations.

**21.2 Costs.** In addition to CLIENT's obligations as set forth in Sections 8 (CLIENT Responsibility for Persons Used by CLIENT) and 10 (Fees; Adjustments; Collection of Amounts Due; Statements) of this Agreement, if CLIENT or a Merchant Provider (or other Person used by CLIENT) 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 CLIENT's belief that CLIENT has complied with the Card Organization Rules and Applicable Law or any other security precautions and is not responsible for the Compromised Data Event, CLIENT must, on the date specified by SERVICERS, pay SERVICERS for all related expenses, claims, assessments, fines, losses, costs, penalties and Issuer reimbursements imposed by the Card Organizations, regulators, attorneys general, or other Person(s) against SERVICERS (together, "**Data Compromise Losses**").

**21.3 Compromised Data Event Appeals.** If SERVICERS are allowed under applicable Card Organization Rules to contest or appeal any amount assessed by a Card Organization against SERVICERS, or any claim of an Issuer, which CLIENT is obligated to pay under this Section 21, CLIENT will be given the opportunity to advise whether CLIENT wishes SERVICERS to contest or appeal the claim, assessment, penalty or fine on CLIENT's behalf. If CLIENT asks SERVICERS to contest or appeal, all related costs will be paid by CLIENT and CLIENT will prepare such appeal for SERVICERS to submit on CLIENT's behalf. Any amount returned to SERVICERS as a result of the contest or appeal will be promptly refunded to CLIENT.

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

**21.5 System Scans.** In the event of a Compromised Data Event or if requested by any Card Organization, SERVICERS, SERVICERS' respective representatives or any forensic examiner approved by the PCI Data Security Council may conduct remote electronic scans of Merchant Systems, similar to those conducted under the PCI DSS and CLIENT must promptly cooperate to facilitate the scans.

## **22. Financial and Other Information.**

**22.1** To the extent CLIENT's financial statements are not publicly available, CLIENT agrees to provide SERVICERS with such annual and quarterly financial statements of CLIENT which CLIENT prepares in the ordinary course of business and in accordance with applicable state law. CLIENT 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. Any and all financial statements will be prepared in accordance with U.S. generally accepted accounting principles applicable to government entities. CLIENT authorizes SERVICERS to obtain from third parties financial and credit information relating to CLIENT as authorized under this Agreement. Such information will be used by SERVICERS in connection with their determination whether to accept this Agreement and their continuing evaluation of the financial and credit status of CLIENT. Pursuant to Applicable Law, including the USA PATRIOT Act, SERVICERS are obtaining information and will take necessary action to verify CLIENT's identity.

## **23. Responsibility of Parties.**

**23.1** CLIENT agrees to reimburse each SERVICER, and its Affiliates, employees, directors and officers for all Claims brought against such parties, and all related Losses, to the extent such Claims result from: (a) any breach of any warranty, covenant or obligation of CLIENT under this Agreement; (b) any misrepresentation by CLIENT under this Agreement; (c) any gross negligence or willful misconduct of CLIENT, its employees, or agents in connection with CLIENT's Card transactions; or (d) CLIENT's provision of goods and services to Cardholders.

**23.2** Each of the SERVICERS agrees to defend, indemnify and hold harmless CLIENT and its Affiliates, employees, directors and officers, from and against all Claims brought against such parties, and all related Losses, to the extent such Claims result from: (a) any breach of any warranty, covenant or obligation of that SERVICER under this Agreement; (b) any misrepresentation by that SERVICER under this Agreement; or (c) any gross negligence or willful misconduct of that SERVICER, its employees, or agents in connection with the provision of Services by that SERVICER.

**23.3** If a party receives notice of any Claim for which reimbursement or indemnification may be available under this Agreement (the "**reimbursed party**"), the reimbursed party will: (a) promptly notify the reimbursing party hereunder (the

"reimbursing party") of the Claim, and (b) reasonably cooperate with the reimbursing party in the investigation and defense of the Claim (which will be conducted at the reimbursing party's sole expense). To the extent applicable, the reimbursing party will, upon written notice from the reimbursed party, immediately undertake the defense of such Claim with counsel reasonably satisfactory to the reimbursed party. The reimbursing party will keep the reimbursed party reasonably informed of the progress and status of the Claim, and will provide to the reimbursed party information that the reimbursed party requests about the Claim, the Claim's progress, and the Claim's status, to the extent reasonable. The reimbursing party will be entitled to direct the defense and settlement of any Claim; provided, however, that the reimbursing party will not settle any Claim without the reimbursed party's written consent to the extent that the settlement involves more than the payment of money by the reimbursing party. In addition to the defense provided by the reimbursing party, the reimbursed party may elect to retain its own counsel, but the reimbursing party will not be responsible for any fees or expenses of such counsel.

**24. Warranties; Limitation on Liability; Exclusion of Consequential Damages.**

**24.1 Disclaimer of Warranties.** THIS IS A SERVICES AGREEMENT AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, SERVICERS DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO CLIENT OR ANY OTHER PERSON, INCLUDING 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.

**24.2 Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE 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 THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY WILL NOT EXCEED THE LESSER OF, (I) \$100,000; OR (II) THE AMOUNT OF SERVICERS FEES (AS SUCH TERM IS DEFINED IN SECTION 10.1 OF THIS AGREEMENT AND EXCLUDES THIRD PARTY BASED FEES) RECEIVED BY SERVICERS PURSUANT TO THIS AGREEMENT DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH CLIENT'S FIRST CLAIM UNDER THIS AGREEMENT AROSE.

**24.3 Exclusion of Consequential Damages.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL SERVICERS OR CLIENT 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 THE FOREGOING TYPES OF DAMAGES OR OTHER AMOUNTS ARE REFERRED TO HEREIN COLLECTIVELY AS "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. FOR THE AVOIDANCE OF DOUBT, (A) THE AMOUNTS DUE FROM CLIENT PURSUANT TO SECTION 10.4 (CARD ORGANIZATION FINES, ASSESSMENTS AND PENALTIES), AND (B) DATA COMPROMISE LOSSES (AS DEFINED IN SECTION 21.2), ARE NOT CONSEQUENTIAL DAMAGES (AS DEFINED HEREIN).

**25. Independent Contractor; Subcontractors; Third Party Beneficiaries.** The parties are independent contractors. No party will have any authority to bind any other party. SERVICERS may engage, subcontract with or use its Affiliates and/or other Persons (as hereinafter defined) to provide Services and perform any of its obligations under this Agreement; provided, however, that such Affiliates and/or Persons are required to comply with all Applicable Laws in the provision of Services and/or obligations under this Agreement. 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.

**26. Publicity.** None of the parties will initiate publicity relating to this Agreement without the prior written approval of the other parties, except that a party may make disclosures required by legal, accounting or regulatory requirements.

**27. Force Majeure.** SERVICERS and CLIENT will not be responsible for any failure to perform their respective obligations under this Agreement if such nonperformance results from any cause beyond the reasonable control of the party that seeks to have its nonperformance excused, which causes include failures or fluctuations in telecommunications or utilities, transmission links or other equipment; any outbreak or escalation of hostilities, war, riots, terrorism or civil disorders in any country; strikes, labor difficulties, inability to operate or inability to obtain service for its equipment; unusual delays in transportation; earthquake, fire, flood, elements of nature or other acts of God; any failure of the ACH Network or Federal Reserve System; and any act or omission of the other party, any third party, or any government authority (any of the foregoing, a "Force Majeure Event"). If any party's performance of its obligations under this Agreement is prevented, restricted, delayed or interfered with as a result of a Force Majeure Event, then that party will be excused from performing the affected obligation to the extent of the

prevention, restriction, delay or interference for as long as: (a) the Force Majeure Event persists; and (b) the affected party continues to use commercially reasonable efforts to resume performance as soon as practicable.

**28. Choice of Law; Venue; Waiver of Jury Trial.** The parties agree that this Agreement will be governed by and construed in accordance with the laws respecting national banks and, to the extent not so covered, by the laws of the State of [INSERT STATE IN WHICH CLIENT IS LOCATED] without regard to conflicts of law provisions. To the extent permitted under Applicable Law, each party agrees that any action or proceeding relating to this Agreement shall be brought exclusively in any court of competent jurisdiction in State of Arizona and the United States for the District of Arizona and for that purpose now irrevocably and unconditionally agrees and submits to the jurisdiction of such Arizona courts and waives any objection to the venue of such courts whether based on inconvenience of forum or other grounds. To the extent permitted by Applicable Law, the parties irrevocably waive any and all rights they may have to a trial by jury in any judicial proceeding relating to this Agreement. CLIENT additionally agrees to waive personal service of process and consents that service of process upon CLIENT may be made by certified or registered mail, return receipt requested, at the address provided in this Agreement. To the extent permitted under Applicable Law, CLIENT expressly waives its sovereign immunity with respect to actions or claims arising under this Agreement and consents to the resolution of such actions or claims in the courts specified in the foregoing sentence.

**29. Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) will be in writing, will be sent by mail, if to CLIENT at the address appearing on the first page of this Agreement with a copy to Treasurer, Pima County, 240 N. Stone Ave., Tucson AZ 857001, if to BAMS, at the following address: Banc of America Merchant Services, LLC, Attention: Executive Vice President Operations, 150 North College Street, Mail Code NC1-028-15-01, Charlotte, NC 28255, with a copy to Banc of America Merchant Services, LLC, Attention: General Counsel's Office, 150 N. College Street, Mail Code NC1-028-15-01, Charlotte, NC 28255, and if to BANK: Bank of America, N.A., 9200 Shelbyville Road, Suite 200, KY6-225-02-02, Louisville, KY 40222, Attention: Operations Manager, with a copy to Bank of America, N.A., Legal – Global Transaction Services, Mail Code NC1-027-20-05, Hearst Tower, 214 N. Tryon Street, Charlotte, NC, 28255. Any such notice will be deemed to have been given (i) the earlier of five (5) days after mailing or when actually received if sent by US mail, (ii) the next delivery day after it is deposited for delivery with a nationally recognized and reputable air courier (with electronic tracking requested), and (iii) when actually received if sent in any other manner.

**30. 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. Accordingly, CLIENT will receive a form 1099-k reporting CLIENT's gross transaction amounts for each calendar year. In addition, the Internal Revenue Code may require SERVICERS to undertake backup withholding if CLIENT does not provide BANK with the correct name and TIN that CLIENT uses when filing its income tax return that includes the transactions for CLIENT's business.

**31. Severability.** The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent.

**32. Entire Agreement; Interpretation.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter, as of the Effective Date supersedes any previous agreements and understandings and, except as provided in other Sections of this Agreement, can be changed only by a written agreement signed by all parties. Throughout this Agreement, 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. The word "including" means "including but not limited to," and the word "includes" means "includes but is not limited to." References to "days" mean calendar days unless otherwise indicated through the use of the phrase "Business Day." Headings are for convenience and reference only, and will 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 CLIENT-generated documents that SERVICERS may receive are for administrative convenience only and do not modify this Agreement and are expressly rejected by SERVICERS.

**33. Waiver.** A waiver by any of the parties of any of the covenants, conditions, or agreements to be performed by the other party or parties or any breach thereof will not be construed to be a waiver of any succeeding breach or of any other covenant, condition or agreement contained in this Agreement. No waiver will be effective unless made in writing by the party against whom it is being enforced.

**34. Survival.** The terms of this Agreement governing CLIENT's obligations 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 Agreement, (iv) the resolution of any Chargebacks, disputes or other issues involving Card transactions, (v) Compromised Data Events and (vi) all SERVICERS' rights regarding CLIENT's breach of any of its agreements, representations, warranties, covenants or other obligations under this Agreement. In addition to the above and any terms and provisions which by their terms or nature survive termination, the terms and provisions of Sections 3,

8-11 (inclusive), 13, 15, 16, 18-21 (inclusive), 23-25 (inclusive), and 28-34 (inclusive) will survive any termination of this Agreement.

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


36. **Mandatory Provisions for Arizona Public Contracts.** Notwithstanding any provision of the Agreement to the contrary, SERVICERS agree to abide the following terms and provisions that are required for contracts with governmental entities in the State of Arizona:

36.1 **No Boycott.** Pursuant to Arizona Revised Code §35-393.01, SERVICERS confirm that it engages in for-profit activity, has more than ten (10) employees, and the value of this Agreement is projected to be more than One Hundred Thousand Dollars (\$100,000). Accordingly, SERVICERS affirmatively state that they are not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of the Agreement. Provided, however, this provision does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

36.2 **Non-Discrimination.** SERVICERS will comply with Arizona Executive Order 2009-09, or any other Applicable Law requiring that all persons regardless of that person's age, race, creed, color, religion, sex, disability, or national origin shall have equal access to employment opportunities, and all other applicable employment laws, rules and regulations including the Americans with Disabilities Act. SERVICERS shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to age, race, creed, color, religion, sex, disability, or national origin.

36.3 **Compliance with Applicable Immigration Laws.** Each SERVICER warrants compliance with all applicable federal and state immigration laws and regulations that relate to their employees further warrants to the extent that it has business operation located within the State of Arizona, its compliance with Arizona Revised Code §23-214, subsection A. A breach of this warranty shall be deemed a material breach of this Agreement and the applicable SERVICER may be subject to penalties up to and including termination of the Agreement. CLIENT retains the legal right, as permitted by Applicable Law, to inspect the papers related to working on this Agreement of any employee who works on this Agreement to ensure that SERVICERS are complying with this warranty.

The parties hereto have caused this Agreement to be executed by their duly authorized officers.

<b>PIMA COUNTY, ARIZONA</b>	<b>BANK OF AMERICA, N.A.</b> By: <b>BANC OF AMERICA MERCHANT SERVICES, LLC</b> PURSUANT TO A LIMITED POWER OF ATTORNEY
By: _____ Name: _____ Title: <u>Chairman, Board of Supervisors</u>	By: _____ Name: _____ Title: _____
<b>ATTEST:</b>  By: _____ Name: _____ Title: <u>Clerk of the Board</u>	<b>BANC OF AMERICA MERCHANT SERVICES, LLC</b>  By: _____ Name: _____ Title: _____
<b>APPROVED AS TO FORM:</b>   By: _____ Name: <u>Regina L. Nassen</u> Title: <u>Deputy County Attorney</u>	

## ANNEX 1

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

**"Affiliate"** means a Person that, directly or indirectly, (i) owns or Controls a party to this Agreement, (ii) is owned or Controlled by a party to this Agreement or (iii) is under common ownership or Control with a party to this Agreement.

**"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, the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury), and all amendments thereto.

**"Asset Sale"** means CLIENT's sale, transfer or other disposal of all or substantially all of its assets.

**"Authorization"** means an approval by, or on behalf of, the Issuer to validate a Card transaction.

**"BAMS Software"** means Software licensed to CLIENT by BAMS, including any third party Software BAMS sublicenses to CLIENT.

**"BAMS Systems"** means any and all Card-related information reporting, operating and processing systems used by BAMS or Persons on BAMS' behalf, including, 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.

**"Bankruptcy Code"** means Title 11 of the United States Code, as amended from time to time.

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

**"Card"** means either a Credit Card or Debit Card.

**"Cardholder"** means a Person whose name is embossed on the Card and any authorized user of such Card.

**"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"), 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, 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 Debit Network Transactions, the rules, regulations, policies and procedures of the applicable Debit Network).

**"Change of Control"** means the acquisition or disposal, whether by way of merger, consolidation, amalgamation, purchase or otherwise, of Control of CLIENT or any direct or indirect parent entity of CLIENT, by or to any Person or group of affiliated Persons.

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

**"Chip Card"** means a Card with an embedded EMV-compliant chip containing memory and interactive capabilities used to identify and store additional data about a Cardholder's Card account.

**"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).

**"Control"** means to directly or indirectly own, have ownership of, or have voting or investment power over more than fifty percent (50%) of the shares, units, capital, voting, or other ownership interest in an entity.

**"Conveyed Transactions"** means transactions that BAMS authorizes, but which neither BAMS nor BANK sponsors and settles.

**"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 a refund or price adjustment given by CLIENT for a previous Card transaction (including for a return of merchandise or cancellation of services).

**"Data Compromise Losses"** has the meaning set forth in Section 21.2.

**"Debit Card"** means a Card that is tied to, and that authorizes the Cardholder to purchase goods and services using funds from, the Cardholder's bank account or prepaid account. A transaction made using a Debit Card is considered either a Debit Network Transaction or a Non-Debit Network Transaction.

**"Debit Network"** means the telecommunications and processing system of a shared electronic funds transfer network (such as Interlink®, NYCE®, or Star®) for processing and settling Debit Network Transactions.

**"Debit Network Transaction"** means a transaction made with a Debit Card that is routed through a Debit Network. A Debit Network Transaction made with use of a PIN may be referred to as a **"Debit Network PIN Transaction"** or as **"PIN Debit"**. A Debit Network Transaction made without use of a PIN, as permitted under the rules and requirements of the applicable Debit Network, may be referred to as a **"Debit Network PINless Transaction"** or as **"PINless Debit."**

**"Discount Rate"** means a percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-Debit Network Transactions, as further described in the Fee Schedule.

**"DNP Card Type"** and **"DNP Card Organization"** mean Discover, Diners Club International, JCB, Union Pay, BCCard, Dinacard, or any other Card Organization designated by Discover.

**"EMV"** means the global standard for Chip Card based payments developed by EuroPay, Mastercard, and Visa.

**"Fee Schedule"** means the fee schedules provided with this Agreement, including Schedule A and any attachments thereto, and all additions or changes SERVICERS make to them, whether contained in updated versions or in separate communications.

**"Issuer"** means the financial institution, Card Organization, or other entity which has issued a Card to a Cardholder.

**"Location"** means a physical location, internet address, division, processing method or business activity for which (i) CLIENT 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.

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

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

**"Merchant Provider"** means any Person engaged by CLIENT to provide services to CLIENT 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 CLIENT; or (iii) PIN encryption, including, Encryption Service Organizations (ESOs). "Merchant Provider" also includes any corporate entity, franchisor or other Person 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 CLIENT (except BAMS Systems), including 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 CLIENT's systems, whether owned by CLIENT or Merchant Providers or other Persons.

**"Non-Debit Network"** means a Card Organization through which a Non-Debit Network Transaction is processed.

**"Non-Debit Network Transaction"** means a transaction made with a Debit Card that is not routed through a Debit Network and that is processed and settled as a Credit Card transaction, against the Cardholder's bank account or prepaid account, as permitted by applicable Card Organization Rules.

**"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 retained by the Client.



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

**"PIN"** means the personal identification number used by a Cardholder to complete a Debit Network PIN Transaction.

**"Sales Draft"** means evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, CLIENT 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 CLIENT as the account to be debited and credited by SERVICERS for Card transactions, fees, Chargebacks and other amounts due hereunder or in connection herewith.

**"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.

**"Supplement"** means any concurrent or subsequent addendum, supplement, or schedule to this Agreement.

**"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 Card transactions.

**Schedule A to Merchant Services Agreement  
Fee Schedule**

***See Appendix 1 – Pricing (48 Pages)***

1. Sales plus interchange and assessments will be collected on the frequency set forth in the above fee schedule.
2. The processing fees set forth above are based on the average ticket and bankcard volume set forth in the above fee schedule.

**Important Information About Your Fees**

A significant amount of the fees that SERVICERS charge CLIENT for processing CLIENT'S transactions consists of charges that SERVICERS must pay to issuing banks (or that are otherwise charged to SERVICERS 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. For this reason, 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 Card transaction presented, specific information contained in the transaction, how and when the transaction is processed, CLIENT's industry and other factors. For a transaction to qualify at any specific interchange level, the applicable qualification criteria must be met. 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. CLIENT will pay retroactive increased interchange fees for any Card transactions that a Card Organization determines did not qualify for the rates originally used. Furthermore, if CLIENT inadvertently or intentionally accepts a Card transaction other than the type anticipated for its account (including a different Card type), then, as applicable, CLIENT will be charged a higher interchange, Discount Rate or non-qualified interchange fee, as well any applicable surcharge for that transaction, all as set forth in this Fee Schedule.

Note that the Card Organizations regularly add new interchange levels, and change the interchange rates and qualification criteria for existing interchange levels.

Fees will be charged for all authorization requests, whether or not approved, all Sales Drafts submitted for processing, all Credit Drafts and all Chargebacks.

Fees will be charged for all authorization requests, whether or not approved, all Sales Drafts submitted for processing, all Credit Drafts and all Chargebacks.

**3. Card Types:**

CLIENT's account will be enabled to accept the Card types checked below, subject to all other terms and provisions of the Agreement.

American Express\* ☒  
Fleet\* ☐

Diners Club\*\*\* ☐  
Voyager\*\*\* ☐

Discover\*\* ☐  
Wright Express\* ☐

JCB\*\*\* ☐

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

\*\*SERVICERS will settle Voyager transactions directly to CLIENT. All other Card types will be settled by the Issuers.

\*\*\*These are DNP Card Types and 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 CLIENT is classified by Discover Network as having a Discover Direct Strategic Relationship as further described in Section 9.1 (Settlement of Sales Drafts) of the Agreement.

**4. Equipment Costs:**

Any equipment costs set forth in the Fee Schedule: (a) are guaranteed only for ninety (90) from the Effective Date, after which they are subject to change; (b) do not include the cost of cables, accessories, or other supplies, all of which must be ordered and purchased separately; (c) do not include shipping, handling, or Taxes, all of which CLIENT is responsible for paying; (d) do not include services, such as programming, re-programming, testing, re-stocking/call-tag fees, base loads, injections, app loads,

TransArmor loads, or other equipment-related services; and (e) are not valid if CLIENT orders fewer units than the quantity (if any) indicated in the Fee Schedule or if CLIENT orders a make or model of equipment different than the make and model indicated in the Fee Schedule.

#### 5. Card Organization Pass Through Fees:

In addition to the Interchange rates, SERVICERS may pass through to CLIENT any fees assessed to SERVICERS by the Card Organizations, including new fees, fines, penalties and assessments imposed by the Card Organizations. These pass through fees include the following:

<b>VISA FEES:</b> The following fees result from charges assessed to SERVICERS from Visa and are subject to increases, decreases and additional new fees imposed by Visa.	
<u>Fee/Name</u>	<u>Fee/Description</u>
VISA ASSESSMENT – Debit & Prepaid	0.13% Fee assessed on the gross dollar amount of all Visa signature Debit and prepaid card transactions.
VISA ASSESSMENT – Credit	0.14% Fee assessed on the gross dollar amount of all Visa Credit card transactions.
VISA BASE II SYSTEM FILE TRANSMISSION FEE	\$0.0018 Fee assessed on all Visa transactions transmitted through the Visa BASE II settlement system, including sales / purchases, sales returns / refunds, sales reversals, chargebacks, and chargeback reversals.
VISA ZERO DOLLAR VERIFICATION FEE	\$0.025 Fee assessed on all Account Verification messages, including both approved and declined, AVS, and SMS account verification transactions. Account Verification transactions must be submitted for \$0 and are used to validate cardholder account numbers and other elements, such as CVV2 and AVS, prior to obtaining an actual Authorization.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) – Domestic/U.S. Credit	\$0.0195 Fee assessed on all Visa Credit card Authorization attempts on Credit cards issued in the U.S. Does not apply to \$0 Account Verification messages, Real Time Clearing pre-Authorization requests, Authorization reversals, authorization of purchase return or refund transactions, chargeback responses, and other administrative messages.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) – Domestic/U.S. Debit & Prepaid	\$0.0155 Fee assessed on all Visa signature Debit and prepaid card Authorization attempts on Debit and prepaid cards issued in the U.S. Does not apply to \$0 Account Verification messages, Real Time Clearing pre-Authorization requests, Authorization reversals, authorization of purchase return or refund transactions, chargeback responses, and other administrative messages.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) – International Credit	\$0.0395 Fee assessed on all Visa Credit card Authorization attempts on Credit cards issued outside of the U.S. Does not apply to \$0 Account Verification messages, Real Time Clearing pre-Authorization requests, Authorization reversals, authorization of purchase return or refund transactions, chargeback responses, and other administrative messages.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) – International Debit & Prepaid	\$0.0355 Fee assessed on all Visa signature Debit and prepaid card Authorization attempts on Debit and prepaid cards issued outside of the U.S. Does not apply to \$0 Account Verification messages, Real Time Clearing pre-Authorization requests, Authorization reversals, authorization of purchase return or refund transactions, chargeback responses, and other administrative messages.
VISA BASE II CREDIT VOUCHER FEE – Domestic/U.S. Credit	\$0.0195 Fee assessed on all Visa credit voucher (sales return / refund) transactions for Credit cards issued in the U.S.
VISA BASE II CREDIT VOUCHER FEE – Domestic/U.S. Debit & Prepaid	\$0.0155 Fee assessed on all Visa credit voucher (sales return / refund) transactions for signature Debit and

	prepaid cards issued in the U.S.
VISA BASE II CREDIT VOUCHER FEE – International Credit	\$0.0395 Fee assessed on all Visa credit voucher (sales return / refund) transactions for Credit cards issued outside of the U.S.
VISA BASE II CREDIT VOUCHER FEE – International Debit & Prepaid	\$0.0355 Fee assessed on all Visa credit voucher (sales return / refund) transactions for signature Debit and prepaid cards issued outside of the U.S.
VISA AUTHORIZATION SYSTEM MISUSE FEE	\$0.09 Per Authorization that is not followed by a matching Visa clearing transaction (or is not properly reversed in the case of a cancelled/voided transaction) as shown by a matching transaction ID. Billed on a one month lag.
VISA ZERO FLOOR LIMIT FEE	\$0.20 Fee assessed on all clearing transactions that are not authorized based on matching the Transaction ID on the Authorization to the Transaction ID on the Clearing transaction. Fee also applies if the Transaction ID is missing.
VISA INTERNATIONAL SERVICE FEES – BASE (FOR PURCHASE TRANSACTIONS)	1.00% of the source amount on U.S. Acquired Original Purchase transactions when the Issuer Country is different from the Merchant Country and the transaction is settled in U.S. dollars.
VISA INTERNATIONAL SERVICE FEES – ENHANCED (FOR PURCHASE TRANSACTIONS)	1.40% of the source amount on U.S. Acquired Original Purchase transactions when the Issuer Country is different from the Merchant Country and the transaction is not settled in U.S. dollars.
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.
VISA INTERNATIONAL ACQUIRER FEE (IAF)	0.45% Assessed on all transactions at a U.S. merchant location with a non-U.S. issued card. Billed with applicable international/interregional interchange fees.
VISA INTERNATIONAL ACQUIRER FEE (IAF) – HIGH RISK	0.45% Fee assessed on all transactions 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 TRANSACTION INTEGRITY FEE	\$0.10 charged on each signature Debit Card and Non-PIN Debit Card transaction (including Visa Consumer and Business debit cards and Visa Consumer and Commercial Prepaid Cards) and each Credit Card transaction (including Consumer Credit, Corporate, Purchasing, and Business cards) that does not meet the qualification criteria defined under the Visa U.S. Custom Payment Service (CPS) program. Fee will also apply to International Airline Program (IAP) transactions on U.S. issued cards at U.S. merchant locations.
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. Billed on a one month lag.
VISA PARTIAL AUTHORIZATION NON PARTICIPATION FEE (PANPF) FOR AFD MERCHANTS	\$0.01 Fee assessed on Automated Fuel Dispenser (MCC 5542) transactions that do not support partial Authorization.
VISA STAGED DIGITAL WALLET FEE	\$0.10 Fee assessed on all Visa Staged Digital Wallet purchase transactions that use a separate, non-Visa account number to initiate purchases for Visa cardholders.
VISA GLOBAL BUSINESS-TO-BUSINESS VIRTUAL PAYMENTS PROGRAM FEE	1.55% Fee assessed on transactions that qualify for the Visa Global Business-to-Business Virtual Payments Program for virtual card transactions between online travel agencies (OTAs), travel service providers and other travel payment providers (both domestic and international) and travel suppliers (merchants in MCCs 3000-3999, 7011, 7512, 7513, 4511, 4112, 4411, 4131,

	4582, 4722, 5962, 6513, 7012, 7032, 7033, 7298, 7519, 7991, 7997, or 7999). Implementation of this fee has been delayed to a future date.
VISA LATE ACCEPTANCE OR NO RESPONSE TO DISPUTE FEE	\$0.50 Fee assessed on each Visa chargeback for which either the merchant provides no response to the chargeback notification or replies back to the chargeback notification with acceptance of the liability more than 20 days after the date from which Visa initiates the chargeback with Bank of America Merchant Services. This date on which Visa initiates the chargeback with Bank of America Merchant Services should not be confused with, and may be earlier than, the date on which the merchant receives notice of the chargeback. As a best practice, merchants should respond to all chargebacks by the due date provided on the chargeback notification from Bank of America Merchant Services.
VISA LATE RESPONSE TO DISPUTE FEE	\$1.35 Fee assessed on each Visa chargeback for which the merchant replies back to the chargeback notification with documentation to refute the chargeback more than 20 days after the date from which Visa initiates the chargeback with Bank of America Merchant Services. This date on which Visa initiates the chargeback with Bank of America Merchant Services should not be confused with, and may be earlier than, the date on which the merchant receives notice of the chargeback. As a best practice, merchants should respond to all chargebacks by the due date provided on the chargeback notification from Bank of America Merchant Services.
<b>MASTERCARD FEES:</b> The following fees result from charges assessed to <b>SERVICERS</b> from Mastercard and are subject to increases, decreases and additional new fees imposed by Mastercard.	
<u>Fee/Name</u>	<u>Fee/Description</u>
MASTERCARD ASSESSMENT FEE	0.13% Fee assessed on the gross dollar amount of all Mastercard transactions.
MASTERCARD ASSESSMENT FEE ( $\geq$ \$1,000)	0.01% 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 Fee related to transmission of clearing data. Charged per kilobyte.
MASTERCARD CROSS BORDER FEE (U.S.)	0.60% Fee assessed on all Consumer, Commercial, Credit and Debit transactions that are processed with the country code of the merchant different from the country code of the cardholder, where the transaction is settled in U.S. dollars.
MASTERCARD CROSS BORDER FEE (Non U.S.)	1.00% Fee assessed on all Consumer, Commercial, Credit and Debit transactions that are processed with the country code of the merchant different from the country code of the cardholder where the transaction is not settled in U.S. dollars.
MASTERCARD NETWORK ACCESS AND BRAND USAGE (NABU) FEE	\$0.0195 Fee 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 ADDRESS VERIFICATION SERVICE (AVS) CARD NOT PRESENT FEE	\$0.01 Fee assessed on all Mastercard Card Not Present Authorizations that use the Address Verification Service (AVS) that are submitted for more than \$0.
MASTERCARD ADDRESS VERIFICATION SERVICE (AVS) CARD PRESENT FEE	\$0.01 Fee 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 Fee 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 CVC 2 and AVS, prior to obtaining an actual Authorization.
MASTERCARD ACCOUNT STATUS INQUIRY FEE – INTRAREGIONAL	\$0.025 Fee 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 CVC 2 and AVS, prior to obtaining an actual Authorization.
MASTERCARD PROCESSING INTEGRITY FEE – PRE-AUTHORIZATIONS	\$0.045 Fee assessed to each pre-Authorization if all of the following conditions are met: (i) Authorization request is fully approved by the Issuer, (ii) Authorization is identified within the Authorization request message as a pre-Authorization and (iii) the Authorization is not followed by either a clearing transaction or Authorization reversal within 30 calendar days. Fee does not apply to (i) Automated Fuel Dispensers (MCC 5542), (ii) contactless transit aggregated transactions or transit debt recovery transactions, (iii) offline approved transactions and (iv) private label transactions. Billed on a one month lag.
MASTERCARD PROCESSING INTEGRITY FEE – UNDEFINED AUTHORIZATIONS	\$0.045 Fee assessed to each undefined Authorization if all of the following conditions are met: (i) Authorization request is fully approved by the Issuer, (ii) Authorization is identified within the Authorization request message as an undefined Authorization and (iii) the Authorization is not followed by either a clearing transaction or Authorization reversal within 7 calendar days. Fee does not apply to (i) Automated Fuel Dispensers (MCC 5542), (ii) contactless transit aggregated transactions or transit debt recovery transactions, (iii) offline approved transactions and (iv) private label transactions. Billed on a one month lag.
MASTERCARD PROCESSING INTEGRITY FEE – FINAL AUTHORIZATIONS	0.25% with a minimum of \$0.04 Fee assessed to each final Authorization if all of the following conditions are met: (i) Authorization request is fully approved by the Issuer, (ii) Authorization is identified as a final Authorization in the Authorization request message, and (iii) the Authorization is not followed by either a clearing transaction or Authorization reversal within 7 calendar days or the final clearing amount is submitted for an amount different from the approved Authorization amount or submitted in a different currency than the Authorization amount. Billed on a one month lag.
MASTERCARD TRANSACTION PROCESSING EXCELLENCE FEE – EXCESSIVE AUTHORIZATION ATTEMPTS	\$0.10 Fee assessed on each declined authorization after 20 previously declined attempts have been made on the same card number at the same merchant location in a 24-hour period. Each excessive authorization attempt will also be assessed the Mastercard Processing Integrity Report Fee. Billed on a one month lag.
MASTERCARD TRANSACTION PROCESSING EXCELLENCE FEE – NOMINAL AMOUNT AUTHORIZATIONS	\$0.045 Fee assessed on each approved, card not present authorization that is submitted for \$1 or less and then subsequently reversed in an effort to validate card status. Each nominal amount authorization will also be assessed the Mastercard Processing Integrity Report Fee. Note: If nominal amount authorizations are being used as a method to check card status, this fee can be avoided by using Mastercard Account Status Inquiry transactions instead. Billed on a one

	month lag. Fee effective January 6, 2020.
MASTERCARD PROCESSING INTEGRITY FEE – DETAIL REPORT FEE	\$0.017 Fee applies to each Authorization that is subject to the Mastercard Processing Integrity Fee for pre-Authorizations, undefined Authorizations or final Authorizations or to the Transaction Processing Excellence Fees for Excessive Authorization Attempts and Nominal Amount Authorizations. Billed on a one month lag.
MASTERCARD LICENSE VOLUME FEE	0.0061% 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).
MASTERCARD e-COMMERCE SUSPECT FRAUD INDICATOR REBATE	\$0.015 Rebate for every e-Commerce/Card Not Present Authorization reversal that includes the suspect fraud indicator. The suspect fraud indicator is used in the e-Commerce/Card Not Present environment when an Authorization reversal is processed for an approved Mastercard Authorization where the merchant suspects fraud.
MASTERCARD ACQUIRER PROGRAM SUPPORT FEE	0.85% Fee assessed on all U.S. region acquired Mastercard Consumer Credit, Consumer Debit, and Commercial Card transactions for cards issued outside the U.S. region. Billed with applicable International/Interregional Interchange fees.
MASTERCARD CARD VALIDATION CODE 2 (CVC 2) FEE	\$0.0025 Fee assessed on all Authorizations that include Card Validation Code 2 (CVC 2) validation. CVC 2 is an optional service from Mastercard that was implemented to help reduce the risk of fraud and is part of the screening tools used by merchants to ensure that the person placing the order has the card. Fee does not apply to Account Status Inquiry transactions.
MASTERCARD SECURECODE™ (IDENTITY CHECK™) FEE	\$0.03 Fee assessed on all Mastercard Identity Check (formerly known as Mastercard SecureCode) verification requests that use the 3D Secure 1.0 protocol. Mastercard Identity Check is an optional service for e-Commerce merchants that allows for an additional level of shopping security by requiring cardholders to enter additional log-in credentials that are verified by the issuer when completing an online sale (if the issuer participates in the service). The existing 3D Secure 1.0 protocol only supports providing limited authentication data to issuers and is only supported when the transaction takes place via a web browser (i.e., not in-app purchases). Fee will increase to \$0.05, effective April 1, 2020.
MASTERCARD IDENTITY CHECK™ 2.0 FEE	0.01% Fee assessed on all Mastercard Identity Check (formerly known as Mastercard SecureCode) verification requests that use the 3D Secure 2.0 protocol. Mastercard Identity Check is an optional service for E-Commerce merchants that allows for an additional level of shopping security by requiring cardholders to enter additional log-in credentials that are verified by the issuer when completing an online sale (if the issuer participates in the service). The new 3D Secure 2.0 (or EMV 3D Secure) protocol facilitates sending exponentially more data in the authentication process, to enable issuers to make risk-based decisions when approving transactions. The new protocol also enables 3D Secure authentication to be used for in-app purchases and removes static passwords as a means to authenticate the cardholder.
MASTERCARD DIGITAL ENABLEMENT FEE	0.01% Fee assessed on the gross dollar amount of all Mastercard Card Not Present transactions.

MASTERCARD GLOBAL WHOLESALE TRAVEL BUSINESS-TO-BUSINESS FEE	1.57% Fee applies to transactions that qualify for the Mastercard Business-to-Business Global Wholesale Travel Transaction program for virtual card transactions between travel agents and travel suppliers (merchants in MCCs 3000-3999, 4112, 4131, 4411, 4511, 4582, 4722, 5962, 6513, 7011, 7012, 7032, 7033, 7298, 7512, 7513, 7519, 7991, 7997, and 7999). Transactions assessed this fee will not be subject to the Mastercard Network Access and Brand Usage (NABU) fee, the Mastercard Cross Border fee, the Mastercard Acquirer Program Support Fee, and the Mastercard Card Present and Card Not Present Address Verification Service (AVS) fees.
MASTERCARD ENTERPRISE SOLUTIONS FREIGHT PROGRAM FEE	0.50% Fee applies to transactions that qualify for the Mastercard Enterprise Solutions Freight Program for virtual card transactions between shippers, freight forwarders, consignees, freight handling agents, customs brokers, and other suppliers in the freight ecosystem. Eligible Merchants include Airlines (MCCs 3000-3350, 4511), Railroads (MCC 4011), Suburban and Local Commuter (MCC 4111), Passenger Railways (MCC 4112), Motor Freight Carriers, Trucking (MCC 4214), Courier Services, Freight Forwarders (MCC 4215), Transportation Services not elsewhere classified (MCC 4780), Other Services not elsewhere classified (MCC 7290), Tax Payments (MCC 9311), Government Services (MCC 9399), and Postal Services - Government Only (MCC 9402).
MASTERCARD MERCHANT LOCATION FEE	\$1.25 Fee assessed monthly per active merchant location. An active location is defined as a merchant location that processed at least one Mastercard transaction during the month. Merchant locations that have less than \$200 in Mastercard gross sales for the month are not subject to the fee for that month. Merchant locations in MCCs 8398 (Charitable Organizations) and 8661 (Religious Organizations) are not subject to this fee. Billed on a one month lag.
MASTERCARD HUMANITARIAN PROGRAM CLEARING FEE	0.25% Fee assessed on the gross dollar volume of Humanitarian prepaid card transactions that are used to help humanitarian aid organizations deliver aid more effectively and more efficiently.
MASTERCARD INTERCHANGE COMPLIANCE DOWNGRADE FEE	\$0.15 Fee assessed on every transaction that is adjusted back by the Mastercard Interchange Compliance process for having an inappropriate interchange program assigned. The Mastercard Interchange Compliance process matches clearing transactions with data from the corresponding authorization messages to verify the data for accuracy and consistency. If the process determines that an incorrect interchange program has been assigned to the transaction, the process adjusts the transaction back and provides a reason for why the interchange rate was not appropriate for the transaction.
MASTERCARD CLAIMS MANAGER FEE	\$1.35 Fee assessed on each Mastercard incoming chargeback. Fee will appear as "DISPUTE CASE FEE MASTERCARD DMS" on your merchant statement or reporting.
<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. Please note that Discover Network fees apply only to Discover transactions acquired by Bank of America Merchant Services.	
<b>Fee/Name</b>	<b>Fee/Description</b>
DISCOVER NETWORK ASSESSMENT	0.13% Fee assessed on the gross dollar amount of all Discover, JCB, UnionPay, Diners Club International, and Korea BCard transactions.



DISCOVER NETWORK DATA USAGE FEE	\$0.0195 Fee assessed on all Discover, JCB, UnionPay, Diners Club International, and Korea BCard sales and credit (sales return) transactions.
DISCOVER NETWORK INTERNATIONAL SERVICE FEE	0.80% Fee assessed on all Discover, Diners Club International, JCB, UnionPay, and Korea BCard transactions at a U.S. merchant location with a non-U.S. issued card.
DISCOVER NETWORK INTERNATIONAL PROCESSING FEE	0.50% Fee assessed on all Discover, Diners Club International, JCB, UnionPay, and Korea BCard transactions where the country code of the merchant is different from the country code of the card issuer. Billed with applicable international interchange fees.
DISCOVER NETWORK AUTHORIZATION FEE	\$0.0025 Fee Assessed on all Discover, JCB, UnionPay, Diners Club International and Korea BCard Authorizations.

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 Interchange Schedules are attached) 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" will mean the Merchant Services Agreement.
- b. **Information Regarding Certain Transaction Fees for the Above Card Types**
  - (i) Billable transactions include: purchases, returns, declines, reversals and authorizations.
  - (ii) Authorization fees apply to all attempted authorizations and approved authorizations.
  - (iii) Per item fees include data capture and settlement.
  - (iv) The Discount Rate applies to gross processing volume.
  - (v) 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 Merchant Services Agreement.
- c. **Information Regarding Supplies Charges**
  - (i) Supplies are provided at BAMS' then-current costs, plus a fee for shipping and handling, per shipment.
  - (ii) CLIENT will be responsible for payment of all shipping and handling costs associated with any equipment purchased, rented, leased or maintained by SERVICERS under this Agreement.
- d. In addition to the other fees specified in this Agreement, CLIENT agrees to pay SERVICERS for any other fees and charges applicable to any other services CLIENT requests or requires which are not covered in this Agreement.

### Transactions Supplement to Merchant Services Agreement (Government)

This Debit Network Transactions Supplement to Merchant Services Agreement ("Debit Supplement") supplements the Merchant Services Agreement (Government) (the "Agreement") and Schedule A thereto, and sets forth the terms applicable to Debit Network Transactions. BAMS is the service provider for Debit Network Transactions and BANK is the sponsoring member of the Debit Networks.

1. **Scope of Debit Supplement.** This Debit Supplement applies only to Debit Network Transactions, including PINless Debit transactions if CLIENT has been approved to accept PINless Debit transactions. This Debit Supplement does not apply to Non-Debit Network Transactions. This Debit Supplement and Debit Network Transactions are subject to the terms of the Agreement. To the extent the terms of this Debit Supplement directly conflict with the terms of the Agreement, this Debit Supplement will control with respect to Debit Network Transactions.
2. **Accepting Debit Cards.** When a Debit Card is presented CLIENT must read the account number electronically from the magnetic stripe or chip for Debit Network Transactions made via use of a PIN, and if the magnetic stripe or chip is unreadable CLIENT must request a different form of payment.
3. **Routing Debit Network Transactions.** The Debit Network used to process CLIENT's Debit Network Transactions will depend upon a variety of factors, including the availability of Debit Networks at the time of a transaction and whether a particular Debit Card is enabled for a particular Debit Network. Subject to Applicable Law, SERVICERS may choose any available Debit Network, including a Debit Network affiliated with either of them or their Affiliates, when routing CLIENT's Debit Network Transactions.
4. **Returns.** CLIENT must not prompt Cardholders to enter a PIN for Debit Network Transactions that are returns. If CLIENT allows refunds or returns on Debit Network Transactions, CLIENT must refund amounts to Cardholders in cash. CLIENT is responsible for securing its Terminals and instituting appropriate controls to prevent employees or others from submitting credits and voids that do not reflect bona fide returns or reimbursements of prior Debit Network Transactions.
5. **Settlement.** Debit Network Transactions will be settled in accordance with the settlement provisions and other provisions of the Agreement.
6. **Adjustments.** An adjustment is a transaction that is initiated to correct a Debit Network Transaction that was processed in error. CLIENT is responsible for all adjustments, adjustment fees, and other Third Party Based Fees charged by a Debit Network. Adjustments and related time frames are regulated by Debit Network Card Organization Rules and under Applicable Law (such as the Electronic Funds Transfer Act, or Regulation E).
7. **Fees.** CLIENT agrees to pay the fees for Debit Network Transactions and Non-Debit Network Transactions set forth on Schedule A (Fee Schedule) to the Agreement. Such fees are in addition to all other applicable Third Party Based Fees and Servicers Fees, which will be payable by CLIENT as set forth in the Agreement.
8. **Procedures Guide.** The Procedures Guide applies to Debit Network Transactions. Please refer to the Procedures Guide for additional operational provisions affecting Debit Network Transactions.

## EQUIPMENT PURCHASE AND RENTAL SUPPLEMENT TO MERCHANT SERVICES AGREEMENT

This Equipment Purchase and Rental Supplement to Merchant Services Agreement ("**Equipment Supplement**") supplements the Merchant Services Agreement (the "**Agreement**") entered into between Banc of America Merchant Services, LLC ("**BAMS**"), Bank of America, N.A. ("**Bank**"), and **PIMA COUNTY, ARIZONA** ("**CLIENT**"). This Equipment Supplement governs any equipment BAMS rents or sells to CLIENT ("**Equipment**") under any Standard Equipment Order Form ("**Order Form**"), but does not apply to any equipment that CLIENT leases. All sales and rentals of Equipment are made by BAMS, not by Bank; Bank does not sell or rent any Equipment and does not have liability related to Equipment. Capitalized terms used but not defined in this Equipment Supplement are defined in the Agreement.

1. **Purchased Equipment and Rental Equipment.** CLIENT will purchase or rent Equipment from BAMS as set forth in one or more Order Forms. Equipment that CLIENT purchases from BAMS may be referred to herein as "**Purchased Equipment**" and Equipment that CLIENT rents from BAMS may be referred to herein as "**Rental Equipment**". The Equipment is being sold or rented to CLIENT for use in CLIENT's business, not for household or personal use. The Order Form may contain additional terms and conditions applicable to Equipment, including terms and conditions applicable to Equipment fees and pricing.
2. **Supplies, Services, Shipping and Handling, and Taxes.** To purchase supplies from BAMS, including wires, paper rolls, wall mounts, and other items to be used with Equipment ("**Supplies**"), CLIENT is to use the phone number or other contact information provided by BAMS. Additional charges apply for Supplies; Supplies are not included with the purchase or rental of Equipment. In addition to paying for Equipment and Supplies, CLIENT must pay all: (a) sales, use, excise, personal property, stamp, documentary, and ad-valorem taxes; license and registration fees; tariffs, levies, and assessments; and similar charges, in each case however levied, designated, or based on amounts charged or on Equipment, Supplies, or use thereof (collectively, "**Taxes**"); (b) shipping and handling costs and charges for Equipment and Supplies; and (c) charges for Equipment-related services, including installation and de-installation, programming and re-programming, base loads, injections, app loads, and TransArmor loads.
3. **Payment of Amounts Due.** CLIENT hereby authorizes BAMS to collect any amounts due from CLIENT under this Equipment Supplement (including any amounts due under any Order Form) in any manner that BAMS is authorized to collect amounts from CLIENT under the Agreement, including by net settling against CLIENT's settlement funds before BAMS initiates a transfer of settlement funds to CLIENT's Settlement Account, debiting CLIENT's Settlement Account, debiting any Reserve Account, exercising BAMS' rights of set-off and recoupment, and sending CLIENT an invoice. BAMS may require CLIENT to pre-pay for Equipment in certain circumstances, provided that BAMS and Client will mutually agree to any pre-payment terms at the time of the applicable Equipment order.
4. **Effective Date and Term.** This Equipment Supplement becomes effective upon the Effective Date of the Agreement and will remain in effect until BAMS and CLIENT have satisfied all of their obligations under this Equipment Supplement and the Agreement. With respect to Rental Equipment: (a) the minimum rental term is six (6) months ("**Minimum Rental Term**"); (b) CLIENT must pay rental fees through the last day of the billing cycle during which BAMS receives returned Rental Equipment; (c) rental fees never are prorated based on when CLIENT receives or returns Rental Equipment, or for any other reason; and (d) **REGARDLESS OF WHEN BAMS RECEIVES RETURNED RENTAL EQUIPMENT, CLIENT MUST PAY RENTAL FEES, AT A MINIMUM, FOR THE SIX (6) MONTH MINIMUM RENTAL TERM.**
5. **Delivery and Acceptance; Title; Risk of Loss; Changes to Equipment.**
  - a. **Delivery and Acceptance.** Once it is available, the Equipment will be delivered to the address CLIENT designates under the Order Form or to an alternative address mutually agreed upon by CLIENT and BAMS. CLIENT is deemed to have accepted each unit of Equipment on the earlier of: (i) the seventh day after BAMS delivers the Equipment to the shipper for shipment to CLIENT or CLIENT's representative; (ii) the day after the Equipment is delivered to CLIENT or CLIENT's representative; and (iii) for Equipment that BAMS installs for CLIENT, the date of installation ("**Acceptance**").
  - b. **Title and Risk of Loss.** Equipment ships F.O.B. origin; risk of loss or damage to Equipment passes to CLIENT when Equipment is delivered to the shipper for shipment to CLIENT or CLIENT's representative. Title to Purchased Equipment passes to CLIENT after CLIENT pays in full for the Purchased Equipment. Title to Rental Equipment never passes to CLIENT.
  - c. **Changes to Equipment.** At any time for any reason BAMS may change Equipment model numbers or names, issue new Equipment models, discontinue Equipment, or otherwise stop making available or change Equipment.
6. **Site Preparation and Installation.** CLIENT is responsible for installing Equipment in accordance with BAMS', and the Equipment manufacturer's, requirements and specifications. If BAMS has agreed to install Equipment for CLIENT, before BAMS personnel arrive at the Site CLIENT must prepare the Site in accordance with BAMS', and the Equipment manufacturer's, requirements and specifications. As used herein, "**Site**" means the location(s) where Equipment and related items (e.g., printers) are to be installed or located.

**7. Maintenance, Use, Return, and Ownership of Equipment.**

- a. **Maintaining and Using Equipment.** CLIENT is responsible for maintaining the Equipment. CLIENT is responsible for safeguarding the Equipment from, and for insuring it via comprehensive insurance coverage against, loss, damage, unauthorized use, misuse, and theft. CLIENT must notify BAMS immediately if any of the foregoing occurs. Loss of, destruction of, theft of, or damage to Rental Equipment does not relieve CLIENT from its obligation to pay the full purchase price or rent payable hereunder. CLIENT is responsible for any expenses related to altering the Site, and other facilities and property, in connection with use of the Equipment. CLIENT may not make or permit any physical alteration or modification of Rental Equipment.
  - b. **Compliance.** CLIENT's use of the Equipment must comply with any operating or other instructions applicable to the Equipment, and with the Agreement, Applicable Law, and Card Organization Rules. CLIENT is responsible for obtaining permits for the Equipment.
  - c. **Defective Equipment and Returns.** If Equipment appears defective, CLIENT must call BAMS' Customer Service team immediately. CLIENT must pay to replace any defective Equipment not promptly returned to BAMS.
  - d. **Ownership.** Except for Purchased Equipment CLIENT has paid for in full, the Equipment will remain BAMS' personal property or the personal property of BAMS' Affiliates; it never will be considered a fixture affixed to CLIENT's property. CLIENT may not pledge, create, or permit any security interest, lien, or encumbrance on Rental Equipment, nor may CLIENT part with possession of or sublease Rental Equipment, without BAMS' prior written consent. Any such pledge, security interest, lien, encumbrance, or sublease is null and void without BAMS' prior written consent.
- 8. Return of Rental Equipment.** To return Rental Equipment CLIENT must call BAMS' Customer Service. CLIENT will be provided return instructions at that time. CLIENT will continue to be charged the Rental Equipment fee until the last day of the billing cycle during which BAMS receives the Rental Equipment from CLIENT. When returning Rental Equipment, CLIENT is responsible for all costs incurred, including shipping and handling, and CLIENT must deliver the Rental Equipment to BAMS in the same operating order, condition, and appearance that the Rental Equipment had when it was delivered to CLIENT; reasonable wear and tear excepted. CLIENT must pay to replace any Rental Equipment that CLIENT does not return to BAMS, or that CLIENT does return to BAMS but not in such operating order, condition, or appearance. The replacement cost will be the cost of new, replacement Equipment.
- 9. Software.** BAMS or other Persons retain 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 Equipment (collectively, "Software"), and CLIENT shall have only a non-exclusive, non-transferable, non-sub-licensable, revocable license to use the Software in CLIENT's operation of the Equipment for the purposes set forth in this Equipment Supplement. Nothing in this Equipment Supplement confers any title or ownership of any Software to CLIENT. CLIENT is bound by all Software terms and conditions of use and/or other license terms, whether provided by BAMS, the Equipment manufacturer, the Software owner, or another Person. CLIENT shall not reverse engineer, disassemble, or decompile the Software. CLIENT shall not give any Person access to the Software without BAMS' prior written consent. CLIENT's obligations under this Section 9 shall survive the termination of this Equipment Supplement. From time to time BAMS may "push" Software updates to the Equipment remotely and automatically; all such updates are subject to this Section 9. The Equipment and Software may not be compatible with, and may not be able to be used with, another processor's systems.
- 10. Limitation on Liability.** Notwithstanding any provision of this Equipment Supplement to the contrary, BAMS' liability arising out of or in any way connected with the Equipment will not exceed the purchase price paid to BAMS (for Purchased Equipment) or the prior twelve (12) month's rent paid to BAMS (for Rental Equipment) for the particular Equipment involved.
- 11. Indemnification.** CLIENT will indemnify and hold BAMS harmless from and against any and all Losses resulting from CLIENT's installation, ownership, possession, use, or operation of the Equipment; including CLIENT's loading onto Equipment software that was not provided with the Equipment and CLIENT's using Equipment in any manner that does not comply with this Equipment Supplement or the Agreement.
- 12. Default; Remedies.** If CLIENT materially breaches this Equipment Supplement or any Client Event of Default occurs, BAMS may proceed in any lawful manner against CLIENT to collect amounts due and BAMS may exercise all rights and remedies available to it under this Equipment Supplement, under the Agreement, at law, or in equity.

#### ADDENDUM REGARDING CLOVER® GO SERVICE AND READER

This Addendum Regarding Clover Go Service and Reader ("Clover Go Addendum") is made by and between PIMA COUNTY, ARIZONA ("Client") and Banc of America Merchant Services, LLC ("BAMS") and supplements the Merchant Services Agreement by and between Client, BAMS, and Bank of America, N.A. ("Bank") (as amended and supplemented from time to time, the "Merchant Agreement"). This Clover Go Service and Clover Go Reader includes pricing for the Clover Go Service. Any references to "you", "your", or "Merchant", when used herein, refer to BAMS. Unless stated otherwise, any reference to this Clover Go Addendum herein includes the Merchant Agreement.

The Clover Go Service (as defined in Section 1) are incorporated within the term "Services" in the Merchant Agreement but are provided to Client by BAMS and not Bank; Bank is not liable to Client in any way with respect to the Clover Go Service. For the purposes of this Clover Go Addendum, the term "Services" in the Merchant Agreement refers only to BAMS and not the Bank. 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 BAMS and Services provided by Bank.

#### CLIENT AND BAMS AGREE AS FOLLOWS:

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

"BofA Merchant Clover Go App" means the non-modifiable (object code) version of the Bank of America Merchant Services-branded Clover Go software application available on the Google Play Store or Apple App Store. Client must download the Clover Go App to the Client Device before the Client can use the Clover Go Service.

"Client Device" means any smart phone or other mobile device owned or controlled by the Client and identified by BAMS from time to time as compatible with and capable of supporting the BofA Merchant Clover Go App and Clover Go Reader.

"Clover Go Reader" means a Card reader Client obtains from BAMS for use with the BofA Merchant Clover Go App. The Clover Go Reader constitutes "Equipment" or "Merchant Equipment" under the Merchant Agreement.

"Clover Go Service" means the combination of the (a) mobile payments functionality that enables Client to use the Clover Go Reader, the BofA Merchant Clover Go App, and Client Device for purposes of acceptance of Card transactions on Client Device, as further described and defined in the Clover Go Terms; and (b) PAN Data Protection for Card transactions accepted using the Clover Go App, as further described in the Clover Go Terms.

"Clover Go Terms" means the Clover Go Terms of Service to which Client must agree upon downloading and activating the BofA Merchant Clover Go App before Client can use the BofA Merchant Clover Go App. The Clover Go Terms supplement, and are part of, the Merchant Agreement.

2. **Clover Go Service Requirements.** In order to accept Card transactions using the Clover Go Service, Client must (a) obtain a Clover Go Reader from BAMS; (b) download to the Client Device the BofA Merchant Clover Go App; and (c) agree to the Clover Go Terms as part of activation of the BofA Merchant Clover Go App. Card transactions accepted using the Clover Go Service are subject to the terms of the Merchant Agreement, including the Clover Go Terms; provided, however, that the Clover Go Service is not part of, and is not subject to the terms for, the Clover Service.

3. **Clover Go Readers and Fees.** Client agrees (a) to purchase from BAMS one or more Clover Go Reader(s) at the price set forth on the Schedule A to Clover Go Addendum attached hereto (plus applicable taxes) and (b) pay the Clover Go Service fees set forth on the Schedule A to Clover Go Addendum attached hereto which are in addition to all other applicable Third Party Based Fees and Services Fees, and other fees or charges set forth elsewhere in, and are part of the fee schedule to, the Merchant Agreement. Client shall also be responsible for all additional costs and expenses as set forth in the Merchant Agreement. The fees due under this Clover Go Addendum constitute amounts due under the Merchant Agreement which will be billed, collected and charged or paid as permitted under the Merchant Agreement.

4. **Product Disclaimers.** BAMS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT THE CLOVER GO SERVICE (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

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

**Schedule A to Clover Go Addendum**  
**Clover Go Service Fees**

Clover Go Service	Product/ Fee Code	Merchant Price (\$)
One-Time Set-up Fee (per MID)	62S	\$19.95
Monthly Mobile Payments Fee (per MID)	32Y	\$9.95
Clover Go Reader – RP457C – Bluetooth, EMV, Swipe, NFC (Per device)	AA129I	\$89.99
Clover Go NFC Dock for RP457C Reader (per docking station)	AA12AN	\$19.95
Clover Go NFC Clip for RP457C (per clip)	AA12AQ	\$11.99

## **CLOVER® SERVICE ADDENDUM**

This Clover Service Addendum ("Clover Service Addendum") is made by and between PIMA COUNTY, ARIZONA ("Client") and Banc of America Merchant Services, LLC ("BAMS") and supplements the Merchant Services Agreement by and between Client, BAMS, and Bank of America, N.A. ("Bank") (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 "you," "your" or "Merchant", when used herein, refer to Client; and any references in the Merchant Agreement (or any amendments, addenda or supplements thereto) to "us," "our" or "we", when used herein, refer to BAMS. Unless stated otherwise, any reference to this Clover Service Addendum herein includes the Merchant Agreement.

The Clover Service (as defined in Section 1) is incorporated within the term "Services" in the Merchant Agreement but is provided to Client by BAMS and not Bank; Bank is not liable to Client in any way with respect to the Clover Service. For the purposes of this Clover Service Addendum, the term "Servicers" in the Merchant Agreement refers only to BAMS and not the Bank. 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 BAMS and Services provided by Bank.

### **CLIENT AND BAMS AGREE AS FOLLOWS:**

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

"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, and that portion of the Clover Service website, through which Third Party Services apps and/or Service Plans may be subscribed to or purchased.

"Clover Integrated Service" means the combination of (i) the Clover Service for Card transaction processing services only, which BAMS will provide for Client, 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 Client with the Device or "pushed" to Client'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) Data Protection Services; (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 Client's business and to facilitate the provision of certain Services (e.g., payment processing) under the Merchant Agreement. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by Client separately from the Clover Service (e.g., any applications downloaded by Client 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 Merchant.

"Data Protection Services" means the TransArmor® Data Protection services described in Section 3 of this Clover Service Addendum.

"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 capable of supporting the Clover Service. Devices are subject to the Equipment terms in the Merchant Agreement.

"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.

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

"Purchaser" means a Person who makes a purchase of goods or services from Client, 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 Client's use of the Clover Service.

"Service Plan" means a limited, full or expanded version of the Clover Service available on the Clover App Market for a

Device.

"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.

"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 a PAN as described herein.

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

## **2. Clover Service Limitations and Requirements; Clover Service Plans.**

- 2.1 Client may access the Clover Service through Client's Device(s) using a wired (Ethernet) or wireless (Wi-Fi or cellular) connection to the Internet. Client is solely responsible for the payment of any fees that may be imposed by Client's Internet/data provider. Client's use of the Clover Service may be subject to: (a) the terms of Client's agreements with Client's Internet/data provider; and (b) the availability or uptime of the services provided by Client's Internet/data provider.
- 2.2 Client 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, Client assumes all risk, responsibility and liability associated with any transaction that Client chooses to conduct while the Clover Service is used offline.
- 2.3 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.
- 2.4 BAMS or BAMS' service providers may perform maintenance on the Clover Service from time to time which may result in service interruptions. Client 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, or bugs. Client agrees that BAMS or BAMS' service providers may contact Client in order to assist Client with the Clover Service and obtain information needed to identify and fix any errors.
- 2.5 Client shall at all times comply with any operating procedures, requirements, or guidelines regarding Client's use of the Clover Service that are posted on the Clover website or otherwise provided or made available to Client.
- 2.6 Client is solely responsible for compliance with all laws, rules, and regulations that are applicable to Client's business and notwithstanding Client's use of the Clover Service to facilitate the management of Client's business, BAMS disclaim any and all liability for Client's failure to comply with such laws, rules, and regulations.
- 2.7 Client is solely responsible for ensuring the accuracy of all information and data regarding Client's business that Client provides to BAMS or BAMS' service providers in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, Client is solely responsible for verifying that all information and data loaded onto a Device by BAMS or BAMS' service providers at Client's request are accurate prior to Client'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.
- 2.8 Client shall comply with the following requirements in connection with Client's use of the Clover Service:
  - 2.8.1 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; Client 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.
  - 2.8.2 With respect to each Purchaser who desires to receive marketing material or other communications from Client via text message or email, such Purchaser must check the appropriate consent check box displayed on the Device himself; Client is NOT permitted to add or modify a Purchaser's consent indication on his behalf.
  - 2.8.3 Client (or Client's agents acting on Client'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.
  - 2.8.4 NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE PURCHASER INFORMATION AND TO ALLOW PURCHASERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM CLIENT, SOME STATES MAY LIMIT CLIENT'S USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE PURCHASER HAS PROVIDED HIS CONSENT, AND/OR CLIENT'S DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. CLIENT ACKNOWLEDGES AND AGREES THAT (I) CLIENT'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) CLIENT IS SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) CLIENT WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

## **2.9 Service Plans.**

**2.9.1 Service Plan Requirement.** A Service Plan is required to activate and to use each Device. The same Service Plan is required for each Device associated with your Merchant Account. Certain Devices may not be compatible with all Service Plans. Each Service Plan is available from the Clover App Market and includes the applications listed for that Service Plan on the Clover App Market.

**2.9.2 Authorized Sublicensor.** BAMS is an Authorized Sublicensor of all Service Plans as referenced in the Clover End User License Agreement ("Clover EULA"). Fees for 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 Client.

**2.9.3 Authorized Sublicensor Terms.** Devices sold or rented to Client by BAMS or leased to Client by First Data Merchant Services LLC (through its First Data Global Leasing division) require activation via the Clover App Market. For each Service Plan, notwithstanding the terms of the Clover EULA 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 Client, and Client will be deemed to have purchased or obtained that Service Plan from BAMS, and not from Clover, (ii) BAMS, and not Clover, is responsible to Client for providing that Service Plan, and that Service Plan will not be a Third Party Service under this Clover Service Addendum; (iii) this Clover Service Addendum, 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 Client will be obligated to pay BAMS that fee as further described in Section 5 of this Clover Service Addendum; provided, however, that Clover will, on BAMS' behalf, collect that fee from Client, and Client's authorization for BAMS to debit the Settlement Account for amounts due BAMS under the Merchant Agreement will apply for any amounts debited from the Settlement Account by Clover for Service Plans.

**2.9.4 Effect of Service Plans for New Station Models on Service Plans for Other Devices.** If after February 26, 2020, you purchase or lease a Clover Station Pro or any later Device model (each a "New Station Model") for your Merchant Account, the pricing and manner of billing and charging for Service Plans for other Devices associated with that Merchant Account in effect prior to February 26, 2020 (including for any earlier Clover Station models) will change to the selected Service Plan and pricing and manner of billing and charging for the New Station Model.

- 3. Data Protection Services.** This section describes the TransArmor Data Protection services that are part of the Clover Service (also referred to herein as "Data Protection Services") and apply only to Card transactions processed using Clover Equipment, as further described in Section 3.1 hereof.

If Client desires to use Data Protection Services for Card transaction acceptance via means other than the Clover Service, then (a) Client must separately subscribe to the TransArmor Data Protection services, (b) Client must pay separate fees for the TransArmor Data Protection services and (c) the TransArmor Data Protection services terms will supersede this Section 3 (unless BAMS advises Client otherwise).

If Client desires to use Clover Security Plus (and Client is eligible for Clover Security Plus) with the Clover Service (or other services BAMS provides), then (x) Client must separately subscribe to Clover Security Plus, and Client will pay additional fees for Clover Security Plus, even for its use with the Clover Service, and (y) the Clover Security Plus terms will supersede the terms of this Section 3.

- 3.1 Encryption and Tokenization.** The Data Protection Services consist of Encryption and Tokenization. BAMS will provide Encryption at the time the PAN or magnetic stripe, as applicable, is first read by, or entered into, Client's Clover Equipment for an Authorization; provided, however, that depending on Client's point of sale solution and whether Client uses a Merchant Provider, the point at which Encryption occurs may vary. After BAMS receives Client's Authorization request, BAMS shall then return a Token to Client, in lieu of the PAN, with the Authorization response.

- 3.2 Grant of License.** Subject to the terms of this Section 3, BAMS grants to Client a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 3 to use Data Protection Services, and the associated Marks, whether provided by BAMS or a Person through BAMS, in the United States and subject to the terms of this Section 3.

Client 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 Section 3 or this Clover Service Addendum assigns, transfers or creates any such right, title or interest for Client (whether express or implied, or by implication, estoppel or otherwise); any rights associated with the Data Protection Services that are not expressly granted by BAMS within this Section 3 are withheld. Client shall not take any action inconsistent with the ownership, title or license rights associated with the Data Protection Services. Client 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 3.2 constitutes a material breach of this Section 3 and this Clover Service Addendum, and BAMS may immediately suspend or terminate Client's use of the Data Protection Services, this Section 3 or this Clover Service Addendum in the event of such breach.

Client 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 any 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 Section 3 or this Clover Service Addendum; or (v) use the Data Protection Services or any portion thereof as a standalone or non-integrated program. Client shall not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting BAMS' or Persons' (if any) proprietary interest in the Data Protection Services.

**USE OF THE DATA PROTECTION SERVICES IS NOT A GUARANTEE AGAINST AN UNAUTHORIZED BREACH OF CLIENT'S COMPUTERS OR MERCHANT SYSTEMS.**

- 3.3 **Responsibilities of Client.** Client 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 involved in the Services, (ii) replacing existing PANs within Merchant Systems involved in the Services with Tokens, and (iii) complying with applicable Card Organization Rules and applicable data security standards and reviews set forth in the Merchant Agreement and in the Card Organization Rules. Client shall implement any upgrades to the Data Protection Services within a commercially reasonable period of time after receiving the updates. Client 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. Client shall only use Merchant Systems, gateways or VARs that are certified for use with the Data Protection Services and are responsible for ensuring that Client's Merchant Systems, gateways and/or VARs are so certified. If Client submits Card transactions as batch files for processing, Client shall use batch file processing services, truncated report viewing and data extract creation tools provided by BAMS in connection with the Data Protection Services.
- 3.4 **General Termination.** BAMS' obligations to provide Data Protection Services 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 Data Protection Services. BAMS may terminate this Section 3 at any time for any reason.
- 3.5 **TransArmor Limited Warranty.** BAMS warrants that the Token returned to Client as a result of using the Data Protection Services cannot be used to initiate a financial sale Card transaction outside the Merchant Systems (the "TransArmor Limited Warranty"). The TransArmor Limited Warranty applies only to Authorization responses for which BAMS returns a Token to Client 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, Client must (a) obtain Authorization only or Authorization and settlement processing services from BAMS and (b) be in compliance with the material terms of the Merchant Agreement and this Section 3. BAMS shall indemnify and hold harmless Client from any and all direct damages, including third party claims, resulting from BAMS's breach of the TransArmor Limited Warranty, subject to the exclusion of consequential damages and limitations of liability set forth in the Merchant Agreement. The TransArmor Limited Warranty is void if Client (a) fails to comply with the operating instructions BAMS may provide for Tokenization, the terms of this Clover Service Addendum or the Merchant Agreement, or (b) is grossly negligent or engages in willful misconduct with respect to Tokenization or use of a Token.
- 3.6 **Data Protection Services Disclaimer.** IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE MERCHANT AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO DATA PROTECTION SERVICES: EXCEPT AS EXPRESSLY PROVIDED FOR THE LIMITED WARRANTY IN THIS SECTION 3, BAMS MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO THE DATA PROTECTION SERVICES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT OF THE DATA PROTECTION SERVICES OR THAT THE DATA PROTECTION SERVICES WILL FUNCTION UNINTERRUPTED OR ERROR-FREE; ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) ARE DISCLAIMED.
4. **Clover Equipment.** The terms of the Clover Equipment Purchase Agreement set forth in Schedule A-Clover to this Clover Service Addendum will apply to Devices and other equipment and/or peripherals related to the Clover Service (collectively, the "Clover Equipment") purchased by Client from BAMS, from time to time over the life of the Merchant 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-Clover is part of this Clover Service Addendum and the Merchant Agreement, will govern Client's purchase(s) of Clover Equipment, and will supersede any other language in the Merchant Agreement or elsewhere with respect to Client's purchase(s) of Clover Equipment. If Client leases any Clover Equipment, Client 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 Client leases any Clover Equipment or if Client provides Client's own equipment to use with the Clover Service (as approved by BAMS), Schedule A-Clover will not apply to Client with respect to such leased Clover Equipment or Client owned equipment. Please note that such lease agreement may have a different term length than the Merchant Agreement.

5. **Fees.** Client shall pay BAMS the fees for the Clover Service as set forth and further described in the Merchant Agreement and this Section 5 which is also made a part of the Fee Schedule by this reference thereto.

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

- 5.2 **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.

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

6. **Sublicense; Intellectual Property.**

- 6.1 BAMS grants to Client a non-transferable, non-assignable, non-exclusive, limited, royalty-free, revocable sub-license during the term of this Clover Service Addendum to access and use the Clover Service and any documentation provided by BAMS in connection therewith ("**Documentation**"), all subject to the terms of this Clover Service Addendum and the Merchant Agreement. Client may only use any Documentation in connection with Client's access to and use of the Clover Service. Client has no intellectual property rights or other right, title or interest in or to the Clover Service, the Documentation, or derivative works thereof (collectively, the "**Clover Service IP**"); and nothing in this Clover Service Addendum or the Merchant Agreement assigns, transfers or creates any such right, title or interest for Client (whether express or implied, or by estoppel or otherwise). Any and all right, license, title or interests associated with the Clover Service IP that are not expressly granted by BAMS within this Clover Service Addendum are expressly withheld. Client shall not take any action inconsistent with the ownership, title or license rights associated with the Clover Service IP. Client shall not file any action, in any forum, challenging ownership of the Clover Service IP. Client shall not use any Clover Service or Clover Service IP outside of the United States (and "United States" as used in the foregoing sentence excludes U.S. territories and possessions). Client shall use the Clover Service only for its business purposes and not for any household use. Client obtains no rights (license or otherwise) to trademarks, service marks, brand names or logos associated with the Clover Service, BAMS, or any of its service providers hereunder. Breach of any part of this Section constitutes a material breach of this Clover Service Addendum, and BAMS may immediately suspend or terminate Client's use of the Clover Service or this Clover Service Addendum in the event of such breach.

- 6.2 **Restrictions.** Client shall not, and shall not permit any third parties to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the Clover Service 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 Clover Service IP or any portion thereof; (iii) use altered versions of the Clover Service IP or portion thereof; (iv) use, operate or combine the Clover Service IP with other products, materials or services in a manner inconsistent with this Clover Service Addendum or the Merchant Agreement; (v) use the Clover Service or Clover Service IP, or any portion thereof, as a standalone or non-integrated program or in any other manner other than as contemplated by this Clover Service Addendum; or (vi) 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 unreasonably large or disproportional load on any BAMS platform or infrastructure. Client shall not permit any third parties to access the Clover Service IP. Client 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 Clover Service IP.

- 6.3 Client shall promptly notify BAMS in writing of any threat, or the filing of any action, suit or proceeding against Client regarding the Clover Service or Clover Service IP in which an adverse decision would reasonably be expected to have a material impact on BAMS or any of the Clover Service subcontractors.

7. **Client Representations, Warranties and Covenants.** Client represents and warrants to, and covenants with, BAMS that Client shall use the Clover Service only in accordance with this Clover Service Addendum, the Merchant Agreement, Applicable Law and applicable Card Organization Rules.

8. **Term and Termination.**

- 8.1 This Clover Service Addendum shall become effective on the day BAMS begins providing the Clover Service to Client and shall end when terminated as set forth herein. This Clover Service Addendum may be terminated at any time by either party upon thirty (30) days' written notice to the other party.

- 8.2 Notwithstanding the provisions of Section 8.1, upon as much advance notice as is commercially practicable, BAMS may suspend the Clover Service or terminate this Clover Service Addendum if (i) BAMS determines that Client is using the

Clover Service for any fraudulent, illegal, or unauthorized purpose, (ii) Client violates the terms of this Clover Service Addendum or an Event of Default occurs under the Merchant 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. Client acknowledges and agrees that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Merchant Agreement, thereby affording BAMS and BANK all rights and remedies as set forth in the Merchant Agreement triggered by such an Event of Default, which may include immediate termination of the Merchant Agreement (and this Clover Service Addendum) without notice. Further, this Clover Service Addendum will terminate automatically upon the termination of the Merchant Agreement. Upon termination of this Clover Service Addendum for any reason, Client 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.

9. **Account Registration.** BAMS may require Client to register and create a "Member" or "Merchant" account to use the Clover Service. If and when prompted by BAMS' registration process, Client agrees to (a) provide true, accurate, current and complete information about Client and/or Client's business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by Client is untrue, inaccurate, not current or incomplete, BAMS has the right to terminate Client's Clover Service account ("Account") and refuse any and all current or future use of the Clover Service.
10. **Privacy and Data Use.** All data that Client provides or are collected from Client in connection with Client'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)). Client acknowledges and agrees that BAMS and BANK may access such Account Data upon BAMS' request to Clover, and BAMS' use of Client's Account Data is governed by the terms set forth in the Merchant Agreement. Client grants BAMS permission to anonymously combine Client's Account Data with that of other merchants in order to improve BAMS' services to Client. Subject to compliance with applicable legal requirements and Card Organization Rules and notwithstanding any language to the contrary in the Merchant 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 Client, other merchants, or other third parties. If Client elects Clover Integrated Service, then, in addition to the above and other rights of BAMS under the Merchant Agreement with respect to sharing information, Client authorizes BAMS and Clover to share any information regarding Client'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 Client to receive the Clover Integrated Service.
11. **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 Client decides to use Third Party Services, Client 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 Client elects to use Third Party Services, information Client submits in Client's application to use Third Party Services will be provided to the provider(s) of such Third Party Services and not to BAMS. Client's access of any Third Party Services is at Client's own risk. Third Party Services are not governed by the terms and conditions of this Clover Service Addendum or the Merchant 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 CLIENT'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 CLIENT AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.
12. **Protecting Client's Information.** Client is solely responsible for ensuring that Client's account numbers, passwords, security questions and answers, login details and any other security or access information used by Client to use or access the Clover Service are kept safe and confidential. Client must prevent unauthorized access to, and use of, any Account Data. Client 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 Client sent it to BAMS. Client must immediately notify BAMS if Client 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 Client 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.
13. **Product Disclaimers.** BAMS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT,

MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT THE CLOVER SERVICE (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

14. **Indemnity.** Without limiting Client's indemnity obligations in the Merchant Agreement, Client agrees to indemnify and hold BAMS harmless from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees) arising out of or relating to:
- 14.1 Client's failure to comply with all terms and conditions in this Clover Service Addendum;
  - 14.2 Client's use, sharing or disclosure of any Purchaser Information obtained in connection with Client's use of the Clover Service;
  - 14.3 The content or delivery of any marketing messages that Client sends or causes to be sent to any Purchaser phone number or email address collected through the use of the Clover Service; or
  - 14.4 Any other party's access and/or use of the Clover Service with Client's unique username, password, or other appropriate security code.
15. **Notices.** BAMS may provide notices and other information regarding the Clover Service to Client via the method(s) described in the Merchant Agreement or in Section 19 below. Client's notices to BAMS shall be delivered via the method(s) described in the Merchant Agreement.
16. **Ideas.** Client may choose or BAMS may invite Client to submit comments or Ideas about the Clover Service, including, without limitation, about how to improve the Clover Service ("Ideas"). By submitting any Idea, Client agrees that: (a) BAMS expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) Client'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 Client. Client 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.
17. **Third Party Beneficiaries.** BAMS' Affiliates and any Persons BAMS uses in providing the Clover Service are intended third party beneficiaries of this Clover Service Addendum, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Clover Service Addendum, nothing in this Clover Service Addendum 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 Service Addendum.
18. **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).
19. **Electronic Consent.** Client consents and agrees that:
- 19.1 BAMS may provide all current or future Disclosures related to the Clover Service required by Applicable Law, as well as other information about Client's legal rights and duties to Client electronically.
  - 19.2 BAMS may send all current or future communications, billing statements, amendments to this Clover Service Addendum, notices, user documentation and other disclosures or information regarding the Clover Service or Client's use of the Clover Service (collectively, "Disclosures") to Client electronically (1) via e-mail, (2) by access to a website that BAMS designates in an e-mail or written notice BAMS sends to Client from time-to-time, (3) to the extent permissible by Applicable Law, by access to a website that BAMS will generally designate in advance for such purpose, or (4) as otherwise allowed by Applicable Law.
  - 19.3 If Client would like a paper copy of Disclosure following its electronic delivery, Client may print a copy or download the information for Client's records or Client may request from the BAMS representative responsible for Client's account ("BAMS Representative") a printed copy which BAMS shall provide to Client at no additional charge. However, BAMS shall continue to electronically deliver Disclosures unless and until Client withdraws its consent.
  - 19.4 If Client elects to receive Disclosures electronically, Client shall be responsible for providing BAMS with an accurate email address. Client shall contact the BAMS Representative to update Client's email address.
  - 19.5 Where required or requested, Client's electronic signature (via "click-through" or other method) on confirmations related to this Clover Service Addendum, other agreements, documents or Disclosures related to the Clover Service has the same effect as if Client had signed them in ink.
  - 19.6 At a minimum, Client has access to the following hardware and software in order to view, receive or print Disclosures electronically: (i) a valid email address (ii) a personal computer, tablet, smartphone (or similar device), (iii) the Internet (iv) an Internet browser (v) Adobe Acrobat Reader® and (vi) if Client wishes to print, a PDF capable printer. In the event that BAMS changes its hardware and software requirements, BAMS shall notify Client of such changes. Client shall be deemed to have access to such required hardware and software if Client continues to use any Equipment after the date

such change becomes effective. If Client does not have access to such required hardware or software, Client shall notify BAMS before the effective date of such changes, and at such time, Client shall be deemed to have withdrawn Client's consent, and BAMS shall react to such withdrawn consent, as set forth in Section 19.8 below

19.7 WITHDRAWING CONSENT FOR ELECTRONIC DELIVERY OF DISCLOSURES. IF CLIENT DOES NOT WISH TO RECEIVE DISCLOSURES FROM BAMS ELECTRONICALLY, CLIENT MUST CONTACT THE BAMS REPRESENTATIVE AND INSTRUCT BAMS TO DISCONTINUE DELIVERING DISCLOSURES TO CLIENT ELECTRONICALLY AND WHETHER CLIENT WISHES DISCLOSURES TO BE MAILED TO CLIENT AND AT WHAT ADDRESS, AFTER WHICH, BAMS SHALL NO LONGER PROVIDE DISCLOSURES ELECTRONICALLY AND SHALL MAIL TO CLIENT DISCLOSURES, AS CLIENT INSTRUCTS, AT NO ADDITIONAL CHARGE.

19.8 LEGAL EFFECT. BY CONSENTING TO THE ABOVE AND UNLESS AND UNTIL CLIENT WITHDRAWS CLIENT'S CONSENT AS DESCRIBED IN THIS SECTION 19.8, CLIENT AGREES THAT ELECTRONIC DISCLOSURES HAVE THE SAME MEANING AND EFFECT AS IF BAMS PROVIDED THE DISCLOSURES TO CLIENT IN WRITING VIA PAPER. WHEN BAMS SENDS CLIENT AN EMAIL OR OTHER ELECTRONIC NOTIFICATION ALERTING CLIENT THAT A DISCLOSURE IS AVAILABLE ELECTRONICALLY (AND THEREBY MAKES IT AVAILABLE); SUCH ACTION WILL HAVE THE SAME MEANING AND EFFECT AS IF BAMS PROVIDED THE DISCLOSURE TO CLIENT IN WRITING VIA PAPER, WHETHER OR NOT CLIENT CHOOSES TO VIEW, PRINT OR DOWNLOAD THE DISCLOSURE.

## 20. General.

20.1 Representations and Warranties. Client and BAMS each represent and warrant to the other that: (i) such party has all required corporate authority to execute this Clover Service Addendum and (ii) this Clover Service Addendum creates valid, legal and binding obligations that are enforceable against such party.

20.2 Prior Clover Service or Clover Service Plans Addenda. This Clover Service Addendum supersedes in its entirety any Clover Service Addendum and any Clover Service Plans Addendum executed by or provided to you prior to the Effective Date of the Merchant Agreement; provided, however, that if this Clover Service Addendum has been executed for a Merchant Account of Client other than the Client's Merchant Account(s) for which the Clover Service was being provided prior to February 26, 2020 (each an "Established Clover MID"), then the pricing and manner in which BAMS bills and charges Client for Service Plans for the Established Clover MID(s) in effect prior to February 26, 2020 will remain in effect for such Established Clover MID(s) only (unless and until Client purchases or leases a New Station Model as further described in Section 2.9.4 of this Clover Service Addendum).

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

**Schedule A to Clover Service Addendum  
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 Addendum to Merchant Services Agreement ("**Clover Service Addendum**").
2. **General.** This Clover Equipment Purchase Agreement is incorporated by reference into the Clover Service Addendum and governs all Clover Equipment that is identified below and/or in the Clover Equipment Documents and is sold to Client by BAMS, from time to time over the life of the Merchant Agreement, to use in connection with the Clover Service under the Clover Service Addendum. THE CLOVER EQUIPMENT IS BEING SOLD TO CLIENT FOR CLIENT'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 Client to upgrade Client's Clover Equipment or to purchase new Clover Equipment from time to time, for which Client 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 Service Addendum.

USE OF THE CLOVER EQUIPMENT IS AT CLIENT'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.** CLIENT ACKNOWLEDGES THAT THE CLOVER EQUIPMENT AND ANY SOFTWARE RESIDENT ON THE CLOVER EQUIPMENT CLIENT 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 CLIENT ELECTS TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THE CLOVER SUPPLEMENT, CLIENT ACKNOWLEDGES THAT CLIENT 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 Client, and Client 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 Client's Device(s) by BAMS will not be sold to Client outright but instead will be provided to Client pursuant to, and subject to the conditions of, Section 2 of the Clover Service Addendum. Client agrees to pay the purchase price specified for the Clover Equipment at the prices set forth in Section 12 of this Schedule A-Clover or as otherwise set forth on the Clover Equipment Documents (prices subject to change without notice). Client 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, Client 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. Client hereby authorizes BAMS to collect all amounts due from Client 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 Client under the Merchant Agreement.
6. **Delivery and Acceptance.** BAMS will deliver the Clover Equipment to the site designated by Client. Client will be deemed to have accepted each piece of Clover Equipment when it has been delivered to Client.
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 Service Addendum. 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 Client's responsibility. Client acknowledges and agrees that from time to time BAMS may "push" software updates to Client's Clover Equipment remotely and automatically in connection with Client's use of the Clover Service.
8. **Security Interest; Financing Statements.** Client hereby grants to BAMS a security interest in all Clover Equipment. Client authorizes BAMS to file financing statements with respect to the Clover Equipment in accordance with the Uniform Commercial Code, signed only by BAMS or signed by BAMS as Client's attorney-in-fact. BAMS' security interest in Clover Equipment will terminate automatically when BAMS receives full payment for the Clover Equipment.



9. **Limitation on Liability.** NOTWITHSTANDING ANYTHING IN THIS CLOVER EQUIPMENT PURCHASE AGREEMENT TO THE CONTRARY, BAMS' CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE 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 CLOVER EQUIPMENT PURCHASE AGREEMENT, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, WILL NOT EXCEED THE PURCHASE PRICE OF THE PARTICULAR PURCHASED CLOVER EQUIPMENT INVOLVED. IN NO EVENT SHALL BAMS 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 CLIENT UNDER THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO THE CLOVER EQUIPMENT.
10. **Indemnification.** In addition to the indemnification, defense, and hold harmless obligations of the parties set forth in the Merchant Agreement (which apply to this Clover Equipment Purchase Agreement), Client agrees to indemnify, defend, and hold BAMS 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) Client's installation, ownership, possession, use, or operation of the Clover Equipment; or (b) any breach by Client of any of its obligations hereunder; provided that the foregoing obligations do not apply to the extent Claims or Losses result from BAMS' gross negligence or willful misconduct or to the extent BAMS enforcing such obligations is prohibited under the law governing this Clover Equipment Purchase Agreement. Client acknowledges and agrees that the "use" and "operation" of the Clover Equipment against which BAMS agrees to indemnify, defend, and hold BAMS harmless include, without limitation, Client's loading onto Clover Equipment software that was not provided with the Clover Equipment; Client using such software, or using Clover Equipment or Software, to access the internet; and Client using Clover Equipment in any manner that does not comply with this Clover Equipment Purchase Agreement, the Merchant Agreement, or the Clover Service Addendum.
11. **Default; Remedies.** The occurrence of any the following shall be considered a "Default" under the Clover Service Addendum: (a) any debit of Client's Settlement Account for any amount due under this Clover Equipment Purchase Agreement, the Clover Service Addendum or the Merchant Agreement is rejected; (b) Client fails to pay any amount due under this Clover Equipment Purchase Agreement, the Clover Service Addendum or the Merchant Agreement when due; or (c) Client materially breaches any provision in this Clover Equipment Purchase Agreement, the Clover Service Addendum or the Merchant Agreement. Upon and any time after the occurrence of any Default, BAMS may, with or without notice, terminate this Clover Equipment Purchase Agreement and/or the Clover Service Addendum, proceed in any lawful manner against Client to collect amounts due, and exercise all other rights available to BAMS under this Clover Equipment Purchase Agreement, the Clover Service Addendum, the Merchant Agreement, at law, or in equity.
12. **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.

Item	Model Name	Merchant Price (\$)	No. Devices
<b>Clover Solutions</b>			
Clover Station 2 with Basic Printer (P500)	CLV STN 2 PTR P500	\$1,319.00	TBD
Clover Station 2 with NFC Display Printer (P550)	CLV STN 2 NFC PTR P550	\$1,369.00	TBD
Clover Station 2 w/ Basic Printer (P500) w/ Mini Wi-Fi	CLV STN 2 PTR P500 MINI WIFI	\$1,798.00	TBD
Clover Mini - Wi-Fi Only	AA105J	TBD	TBD
Clover Mini - 3G and Wi-Fi	AA105K	\$739.00	TBD
Clover Flex - LTE	AA12KH	\$564.00	TBD
<b>Optional Peripherals</b>			
Kitchen Printer (Mini and Stations)	CRK1PR	\$396.00	TBD
Clover 2D Hands Free BC Scanner (Mini and Stations)	AA11Z5	\$257.00	TBD
Clover 2D Handheld BC Scanner (Mini and Stations)	AA11Z4	\$191.00	TBD
Weight Scale (Mini and Stations)	AA101S	\$499.00	TBD
Kitchen Printer - Asian Chr (Mini and Stations)	AA1019	TBD	TBD
Clover Merchant Keypad (Mini Only)	AA110B	TBD	TBD
Clover Cash Drawer (Mini and Stations)	CLVCDR	\$125.00	TBD
<b>Additional Items</b>			
50' Ethernet Cable for Kitchen Printer	CRK8KP	\$6.54	TBD
Clover Employee Login Cards (Station, Mini, Flex) - Quantity of 10 cards included in package	AA11Z7	\$9.99	TBD
Clover Flex Travel Kit	AA12KV	\$29.56	TBD
Shipping and handling are not included in the prices for the Additional Items listed above. Client will be charged shipping and handling at our then-current rates (currently \$14.95 per order for standard delivery or \$24.95 per order for overnight delivery).			

#### Replacement Policy

**Purchase** - the equipment listed beneath the Clover Solutions header above that the Client purchases are eligible for a one year limited replacement warranty if set forth in the Clover Equipment Purchase Agreement signed by the Client, provided that the Client is responsible for associated shipping and handling charges (currently \$35 per replacement).

**Lease** - Clover Solutions listed above that the Client leases are eligible for replacement in accordance with the terms of the Client's lease agreement, provided that the Client is responsible for associated shipping and handling charges (currently \$35 per replacement).



#### **DATA FILE MANAGER ADDENDUM**

This Data File Manager Addendum ("DFM Addendum") is made by and between PIMA COUNTY, ARIZONA ("Client") and Banc of America Merchant Services, LLC ("BAMS") and supplements the Merchant Services Agreement by and between Client, BAMS, and Bank of America, N.A. ("Bank") (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 "you," "your" or "Merchant", when used herein, refer to Client; and any references in the Merchant Agreement (or any amendments, addenda or supplements thereto) to "us," "our" or "we", when used herein, refer to BAMS. Unless stated otherwise, any reference to this DFM Addendum herein includes the Merchant Agreement.

The Data File Manager Services (as defined in Section 2) are incorporated within the term "Services" in the Merchant Agreement but are provided to Client by BAMS and not Bank; Bank is not liable to Client in any way with respect to the Data File Manager Services. For the purposes of this DFM Addendum, the term "Servicers" in the Merchant Agreement refers only to BAMS and not the Bank. 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 BAMS and Services provided by Bank.

CLIENT AND BAMS AGREE AS FOLLOWS:

21. **Definitions.** Capitalized terms used but not defined in this DFM Addendum are defined in the Merchant Agreement.
22. **Data File Manager Services.** The Data File Manager Services will allow Client to create and generate customized raw data files containing summary or detailed information in connection with Client's payment processing based on set up tools that are provided by BAMS in connection with the application (collectively, "Data File Manager Services"). Specifically, the Data File Manager Services provide Client with an application that allows Client to access certain underlying payment processing data files directly in order to create, test and manage customized data file summary reports that can be uploaded to Client's systems to perform reconciliation, reporting or other management functions. Custom reports created by Client using the Data File Manager Services may be generated on a weekly, daily or as needed basis.
23. **Fees.** Client agrees to pay BAMS the fees for the Data File Manager Services as set forth on Schedule A to DFM Addendum, which are in addition to Third Party Based Fees, Servicers Fees, and other fees or charges set forth elsewhere in, and are part of the fee schedule to, the Merchant Agreement. Client shall also be responsible for all additional costs and expenses as set forth in the Merchant Agreement. The fees due under this DFM Addendum constitute amounts due under the Merchant Agreement which will be billed, collected and charged or paid as permitted under the Merchant Agreement.
24. **Client Representations, Warranties and Covenants.** Client represents and warrants to, and covenants with, BAMS that Client shall use the Data File Manager Services only in accordance with this DFM Addendum, the Merchant Agreement, Applicable Law and applicable Card Organization Rules.
25. **Special Termination Provisions.**
  - 25.1 In addition to the termination rights set forth in the Merchant Agreement, this DFM Addendum will automatically terminate upon any termination of the Merchant Agreement.
  - 25.2 BAMS shall have the right to terminate this DFM Addendum for any of the reasons set forth for termination of the Merchant Agreement. In addition, BAMS reserves the right to alter, immediately suspend or upon notice terminate the Data File Manager Services in the event Client violate the terms of this DFM Addendum, the Merchant Agreement or any agreement with third parties that are involved in providing the Data File Manager Services is terminated or otherwise no longer in effect, or BAMS is otherwise unable to continue to provide the Data File Manager Services.
26. **Implementation and Startup Expenses.** BAMS and Client agree to begin the process of implementing the Data File Manager Services within fifteen (15) days of the Effective Date of the Merchant Agreement. In order to minimize any potential delay in the implementation of the Data File Manager Services, Client hereby authorizes BAMS to undertake preparatory steps and incur reasonable and necessary expenses in connection with the development and implementation of the Data File Manager Services ("Startup Expenses"). If the Data File Manager Services are not implemented by the Implementation Date and BAMS and Client are unable to mutually agree, in writing, on an alternative Implementation Date, Client 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 File Manager Services, and BAMS shall be permitted to terminate this DFM Addendum. As used herein, "Implementation Date" means the date that is one hundred twenty (120) days after the Effective Date of the Merchant Agreement.
27. **Product Disclaimers.** BAMS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT THE DATA FILE MANAGER SERVICES (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

**28. General.**

- 28.1 Representations and Warranties. Client and BAMS each represent and warrant to the other that: (i) such party has all required corporate authority to execute this DFM Addendum and (ii) this DFM Addendum creates valid, legal and binding obligations that are enforceable against such party.
- 28.2 Counterparts/Electronic Originals. This DFM 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 DFM Addendum are effective as executed originals.
- 28.3 Full Force and Effect. The Merchant Agreement remains in effect as supplemented by this DFM Addendum. In the event of any conflict between the terms of this DFM Addendum and the terms of the Merchant Agreement, the terms of this DFM Addendum will control with respect to the Data File Manager Services. References to the Merchant Agreement after the date of this DFM Addendum include this DFM Addendum.

**Schedule A to DFM Addendum  
Data File Manager Services Fees**

Data File Manager Set-Up Fee	Per FDFG Mailbox Setup	\$2,200.00
Data File Manager Monthly Fee	Per User Per Month	\$200.00
Data File Manager Run Now File Fee	Per User Per Month Greater Than 8 MB	\$1,000.00

#### **PAYEEZY<sup>SM</sup> SERVICES ADDENDUM**

This Payeezy Services Addendum ("Payeezy Addendum") is made by and between PIMA COUNTY, ARIZONA ("Client") and Banc of America Merchant Services, LLC ("BAMS") and supplements the Merchant Services Agreement by and between Client, BAMS, and Bank of America, N.A. ("Bank") (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 "you," "your" or "Merchant", when used herein, refer to Client; and any references in the Merchant Agreement (or any amendments, addenda or supplements thereto) to "us," "our" or "we", when used herein, refer to BAMS. Unless stated otherwise, any reference to this Payeezy Addendum herein includes the Merchant Agreement.

The Payeezy Services (as defined in Section 2) are incorporated within the term "Services" in the Merchant Agreement but are provided to Client by BAMS and not Bank; Bank is not liable to Client in any way with respect to the Payeezy Services. For the purposes of this Payeezy Addendum, the term "Services" in the Merchant Agreement refers only to BAMS and not the Bank. 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 BAMS and Services provided by Bank.

CLIENT AND BAMS AGREE AS FOLLOWS:

6. **Definitions.** Capitalized terms used but not defined in this Payeezy Addendum are defined in the Merchant Agreement.
7. **Payeezy Services.** The Payeezy Services consists of an electronic gateway messenger system ("Payeezy Services") that allows Client to manage Card transaction information being transmitted when processing Client's payment transactions, and includes the following functionality: (i) a web-based application programming interface ("API") that allows third-party applications to process transactions through the Payeezy Services system and supports a range of processing functions (e.g., purchase, refund, pre-authorization functions) and further allows Client to implement custom business logic to manage these functions; (ii) a securely hosted web payment form (a "Payment Page") designed to accept Internet-based eCommerce transactions, redirecting the consumer to a payment form hosted by the gateway that uses a "Checkout" button on Client's website to submit payment posting requests to a designated URL and displays payment acceptance details and authentication information on the Client's website, the appearance of which and payment options displayed may be configured by Client using an online management interface provided by BAMS; and (iii) a real-time payment manager ("RPM") hosted application that is able to turn any Internet connected personal computer with a standard web browser into a point of sale device to process retail and MO/TO payments, allowing Client's employees to input payment transactions in a MO/TO, call center or back office environment, or to swipe Cards in a retail point of sale environment. Receipts for RPM processed transactions are provided, and can be printed or emailed to the cardholder. RPM is also a centralized administrative tool through which Client may access its Payeezy Services account (i.e., user administration, gateway reporting, and hosted payment page configurations).
8. **Software.**
  - 8.1 **Software Updates.** From time to time BAMS may release updates ("Updates") to the Software, which must be installed and integrated with Client's systems within 30 days of receipt of such Updates. Client acknowledges that failure to install Updates in a timely fashion may impair the functionality of the Payeezy Services, and associated Services provided under the Merchant Agreement and accessed through the Payeezy Services. BAMS will have no liability for Client's failure to properly install the most current version of the Software or any Update, and will have no obligation to provide support or services for outdated versions of the Software.
  - 8.2 **Software Return/Destruction.** Upon termination or expiration of this Payeezy Addendum, all licenses granted hereunder will immediately terminate and Client will either return or destroy the Software, certifying such destruction in writing to BAMS.
9. **Fees.** Client agrees to pay BAMS the fees for the Payeezy Services as set forth on Schedule A, which are in addition to Third Party Based Fees, Servicers Fees, and other fees or charges set forth elsewhere in, and are part of the fee schedule to, the Merchant Agreement. Client shall also be responsible for all additional costs and expenses as set forth in the Merchant Agreement. The fees due under this Payeezy Addendum constitute amounts due under the Merchant Agreement which will be billed, collected and charged or paid as permitted under the Merchant Agreement.
10. **Client Representations, Warranties and Covenants.** Client represents and warrants to, and covenants with, BAMS that Client shall use the Payeezy Services only in accordance with this Payeezy Addendum, the Merchant Agreement, Applicable Law and applicable Card Organization Rules.
11. **Sublicense; Intellectual Property.**
  - 11.1 BAMS grants to Client a non-transferable, non-assignable, non-exclusive, limited, royalty-free, revocable sub-license during the term of this Payeezy Addendum to access and use the Payeezy Services and any documentation provided by BAMS in

connection therewith ("**Documentation**"), all subject to the terms of this Payeezy Addendum and the Merchant Agreement. Client may only use any Documentation in connection with Client's access to and use of the Payeezy Services. Client has no intellectual property rights or other right, title or interest in or to the Payeezy Services, the Documentation, or derivative works thereof (collectively, the "**Payeezy Services IP**"); and nothing in this Payeezy Addendum or the Merchant Agreement assigns, transfers or creates any such right, title or interest for Client (whether express or implied, or by estoppel or otherwise). Any and all right, license, title or interests associated with the Payeezy Services IP that are not expressly granted by BAMS within this Payeezy Addendum are expressly withheld. Client shall not take any action inconsistent with the ownership, title or license rights associated with the Payeezy Services IP. Client shall not file any action, in any forum, challenging ownership of the Payeezy Services IP. Client shall use the Payeezy Services only for its business purposes and not for any household use. Client obtains no rights (license or otherwise) to trademarks, service marks, brand names or logos associated with the Payeezy Services, BAMS, or any of its service providers hereunder. Breach of any part of this Section constitutes a material breach of this Payeezy Addendum, and BAMS may immediately suspend or terminate Client's use of the Payeezy Services or this Payeezy Addendum in the event of such breach.

11.2 **Restrictions.** Client shall not, and shall not permit any third parties to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the Payeezy Services 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 Payeezy Services IP or any portion thereof; (iii) use altered versions of the Payeezy Services IP or portion thereof; (iv) use, operate or combine the Payeezy Services IP with other products, materials or services in a manner inconsistent with this Payeezy Addendum or the Merchant Agreement; (v) use the Payeezy Services or Payeezy Services IP, or any portion thereof, as a standalone or non-integrated program or in any other manner other than as contemplated by this Payeezy Addendum; or (vi) perform or attempt to perform any actions that would interfere with the proper working of the Payeezy Services, prevent access to or use of the Payeezy Services by other users, or, in BAMS' reasonable judgment, impose an unreasonably large or disproportional load on any BAMS platform or infrastructure. Client shall not permit any third parties to access the Payeezy Services IP. Client 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 Payeezy Services IP.

11.3 Client shall promptly notify BAMS in writing of any threat, or the filing of any action, suit or proceeding against Client regarding the Payeezy Services or Payeezy Services IP in which an adverse decision would reasonably be expected to have a material impact on BAMS or any of the Payeezy Services subcontractors.

11.4 Client shall not export or re-export the Payeezy Services IP or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Payeezy Services IP or underlying information or technology may be downloaded or otherwise exported or re-exported (i) to any country to which the United States has embargoed goods (or any national or resident thereof); (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (iii) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. If Client has rightfully obtained the Payeezy Services IP outside of the United States, Client agrees not to re-export the Payeezy Services IP except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which Client obtained the Payeezy Services IP. Client warrants that it is not located in, under the control of, or a national or resident of any such country or on any such list.

## 12. **Special Termination Provisions.**

12.1 In addition to the termination rights set forth in the Merchant Agreement, this Payeezy Addendum will automatically terminate upon any termination of the Merchant Agreement. Upon termination or expiration of this Payeezy Addendum, all licenses granted hereunder will immediately terminate and Client will either return or destroy the Software, certifying such destruction in writing to BAMS.

12.2 BAMS shall have the right to terminate this Payeezy Addendum for any of the reasons set forth for termination of the Merchant Agreement. In addition, BAMS reserves the right to alter, immediately suspend or upon notice terminate the Payeezy Services in the event Client violate the terms of this Payeezy Addendum, the Merchant Agreement or any agreement with third parties that are involved in providing the Payeezy Services is terminated or otherwise no longer in effect, or BAMS is otherwise unable to continue to provide the Payeezy Services.

13. **Implementation and Startup Expenses.** BAMS and Client agree to begin the process of implementing the Payeezy Services within fifteen (15) days of the Effective Date of the Merchant Agreement. In order to minimize any potential delay in the implementation of the Payeezy Services, Client hereby authorizes BAMS to undertake preparatory steps and incur reasonable and necessary expenses in connection with the development and implementation of the Payeezy Services ("**Startup Expenses**"). If the Payeezy Services are not implemented by the Implementation Date and BAMS and Client are unable to mutually agree, in writing, on an alternative Implementation Date, Client 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 Payeezy Services, and BAMS shall be permitted to terminate this Payeezy Addendum. As used herein, "Implementation Date" means the date that is one hundred twenty (120) days after the Effective Date of the Merchant Agreement.

- 14. Product Disclaimers.** BAMS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT THE PAYEEZY SERVICES (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

**15. General.**

- 15.1 Representations and Warranties.** Client and BAMS each represent and warrant to the other that: (i) such party has all required corporate authority to execute this Payeezy Addendum and (ii) this Payeezy Addendum creates valid, legal and binding obligations that are enforceable against such party.

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

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**Schedule A to Payeezy Addendum**

**Payeezy Services Fees**

Initial Set-Up Fee (per location) (40B)	\$99.00
Monthly Fee (per location) (40A)	\$16.00
Payeezy Transaction Processing Fee (per authorization) (0FC)	\$0.05

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## **TRANSARMOR® DATA PROTECTION SERVICES ADDENDUM**

This TransArmor Data Protection Services Addendum ("TransArmor Addendum") is made by and **PIMA COUNTY, ARIZONA** ("Client") and Banc of America Merchant Services, LLC ("BAMS") and supplements Merchant Services Agreement by and among Client, BAMS, and Bank of America, N.A. ("Bank") (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 "you," "your" or "Merchant", when used herein, refer to Client; and any references in the Merchant Agreement (or any amendments, addenda or supplements thereto) to "us," "our" or "we", when used herein, refer to BAMS. Unless stated otherwise, any reference to this TransArmor Addendum herein includes the Merchant Agreement.

The Data Protection Services (as defined in Section 2) are incorporated within the term "Services" in the Merchant Agreement but are provided to Client by BAMS and not Bank; Bank is not liable to Client in any way with respect to the Data Protection Services. For the purposes of this TransArmor Addendum, the term "Services" in the Merchant Agreement refers only to BAMS and not the Bank. 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 BAMS and Services provided by Bank.

### **CLIENT AND BAMS AGREE AS FOLLOWS:**

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

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

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

"**Group Member**" has the meaning set forth in Section 2.3 of this TransArmor Addendum.

"**Group Owner**" has the meaning set forth in Section 2.3 of this TransArmor Addendum.

"**Legacy Data**" has the meaning set forth in Section 2.2 of this TransArmor Addendum.

"**Legacy Data Conversion**" or "**LDC**" means Tokenization of PANs that are received on a bulk file basis, from Client or an Approved Person during implementation of or in connection with Client'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 Client or an Approved Person, on a bulk file basis, during the term of, or following termination of, this TransArmor Addendum, as requested by Client and approved by BAMS.

"**Merchant System**" means, for purposes of this TransArmor Addendum, any and all equipment, systems and facilities Client 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 Client, Merchant Providers or other Persons used by Client.

"**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.

"**Person**" means a third party individual or entity not a party to this TransArmor Addendum.

"**Shared Merchant System**" has the meaning set forth in Section 2.3 of this TransArmor Addendum.

"**Shared Token**" has the meaning set forth in Section 2.3 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 2.4 of this TransArmor Addendum.

17. **Data Protection Services.** The TransArmor Data Protection Services ("**Data Protection Services**") consists of (i) Encryption and Tokenization; (ii) Token Only; (iii) Get Token; (iv) Legacy Data Conversion and (v) Legacy Data Deconversion. BAMS shall provide the Data Protection Services elected by Client, subject to the terms of this TransArmor Addendum and any required approvals by BAMS. The Data Protection Services are available only for (a) Client's internal business purposes and (b) Card transactions Client sends to BAMS for Authorization, or Authorization and settlement, pursuant to the Merchant 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. Below are additional terms regarding certain aspects of the Data Protection Services.

17.1 **Encryption; Tokenization and Token Only.**

2.1.1 **Encryption.** If Client elects Encryption and Tokenization, BAMS shall provide Encryption at the time PAN or Magnetic Stripe, as applicable, is first read by, or entered into, Client's device for an Authorization or a Token Registration request; provided, however, that depending on Client's point of sale solution and whether Client uses a Merchant Provider, the point at which Encryption occurs may vary.

2.1.2 **Tokenization and Token Only.** After BAMS receives Client's Authorization or Token Registration request, whether Client elects Encryption and Tokenization or Token Only, BAMS shall then return a Token to Client, in lieu of the PAN, with the Authorization response or in response to a Token Registration request.

- 2.2 **Legacy Data Deconversion.** If Client uses Legacy Data Deconversion, then BAMS shall provide the PANs for deconverted Tokens (collectively, "**Legacy Data**") to Client or, at Client'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 Merchant Agreement. Client 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 Client or such Approved Person, in connection with Legacy Data Deconversion. BAMS shall not be responsible for any claims, losses or liabilities arising from Client's, or the Approved Person's, use, transmission, storage or handling of Legacy Data that BAMS provides in connection with Legacy Data Deconversion. Client 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 Merchant 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.)

- 2.3 **Shared Tokens; Shared Merchant System.** If Client is a Group Member or Group Owner, then, subject to BAMS' approval, Client may utilize Shared Tokens through a Shared Merchant System, and subject to the terms of this TransArmor Addendum, BAMS agrees to perform for Client the Data Protection Services and BAMS' other obligations hereunder, and Client agrees to perform Client'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, Client authorizes BAMS to use Client's transaction data and disclose Tokens generated for Client (and related PANs, if applicable) within the Shared Merchant System. If Client ceases to be a Group Member or Group Owner, then in either case, BAMS shall no longer be obligated to provide Shared Tokens to Client and may cease doing so without prior notice to Client.

- 2.4 **Transferred Tokens.** "**Transferred Token**" means a Multi-Pay Token that was originally generated by a Person providing to Client 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 Client and upon agreement between BAMS and such

Non-BAMS Acquirer. Upon Client'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.

18. **Fees.** Client agrees to pay BAMS the fees for the Data Protection Services as set forth on the attached Schedule A to TransArmor Addendum, which are in addition to Third Party Based Fees, Servicers Fees, and other fees or charges set forth elsewhere in, and are part of the fee schedule to, the Merchant Agreement. Client shall also be responsible for all additional costs and expenses as set forth in the Merchant Agreement. The fees due under this TransArmor Addendum constitute amounts due under the Merchant Agreement which will be billed, collected and charged or paid as permitted under the Merchant Agreement.

19. **Client Representations, Warranties and Covenants.** Client shall implement the Data Protection Services according to the operating instructions, which includes, without limitation, (i) implementing the Data Protection Services throughout the Merchant System (and, if applicable, the Shared Merchant System) involved in the Services, (ii) replacing existing PANs within the Merchant System 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 Merchant Agreement and in the Card Organization Rules. Client shall implement any upgrades to the Data Protection Services within a commercially reasonable period of time after receiving the updates. Client 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. Client shall only use Merchant Systems, gateways or VARs that are certified for use with the Data Protection Services. If Client submits Card transactions as batch files for processing, Client shall use batch file processing services, truncated report viewing and data extract creation tools provided by BAMS in connection with the Data Protection Services.

Client represents and warrants to, and covenants with, BAMS that Client shall use the Data Protection Services only in accordance with this TransArmor Addendum, the Merchant Agreement, Applicable Law and applicable Card Organization Rules.

**20. TransArmor Limited Warranty.**

- 20.1 BAMS warrants that the Token or Shared Token, as applicable, returned to Client 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 System (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 Client 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, Client must obtain Authorization only or Authorization and settlement processing services from BAMS and must be in compliance with the material terms of the Merchant Agreement and this TransArmor Addendum.

- 20.2 If Client uses Shared Tokens, Client 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.

- 20.3 BAMS shall indemnify and hold harmless Client 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 Merchant Agreement. The TransArmor Limited Warranty is void if Client (a) fails to comply with the operating instructions BAMS may provide for Tokenization, the terms of this TransArmor Addendum or the Merchant Agreement, or (b) is grossly 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.

**21. Sublicense; Intellectual Property.**

- 21.1 BAMS grants to Client a non-transferable, non-assignable, non-exclusive, limited, royalty-free, revocable sub-license during the term of this TransArmor Addendum to access and use the Data Protection Services and any documentation provided by BAMS in connection therewith ("Documentation"), all subject to the terms of this TransArmor Addendum and the Merchant Agreement. Client may only use any Documentation in connection with Client's access to and use of the Data Protection Services. Client has no intellectual property rights or other right, title or interest in or to the Data Protection Services, the Documentation, or derivative works thereof, (collectively, the "Data Protection Services IP"); and nothing in this TransArmor Addendum or the Merchant Agreement assigns, transfers or creates any such right, title or interest for Client (whether express or implied, or by estoppel or otherwise). Any and all right, license, title or interests associated

with the Data Protection Services IP that are not expressly granted by BAMS within this TransArmor Addendum are expressly withheld. Client shall not take any action inconsistent with the ownership, title or license rights associated with the Data Protection Services IP. Client shall not file any action, in any forum, challenging ownership of the Data Protection Services IP. Client shall not use any Data Protection Services or Data Protection Services IP outside of the United States (and "United States" as used in the foregoing sentence excludes U.S. territories and possessions). Client shall use the Data Protection Services only for its business purposes and not for any household use. Client obtains no rights (license or otherwise) to trademarks, service marks, brand names or logos associated with the Data Protection Services, BAMS, or any of its service providers hereunder. Breach of any part of this Section constitutes a material breach of this TransArmor Addendum, and BAMS may immediately suspend or terminate Client's use of the Data Protection Services or this TransArmor Addendum in the event of such breach.

- 21.2 **Restrictions.** Client shall not, and shall not permit any third parties to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the Data Protection Services 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 Data Protection Services IP or any portion thereof; (iii) use altered versions of the Data Protection Services IP or portion thereof; (iv) use, operate or combine the Data Protection Services IP with other products, materials or services in a manner inconsistent with this TransArmor Addendum or the Merchant Agreement; (v) use the Data Protection Services or Data Protection Services IP, or any portion thereof, as a standalone or non-integrated program or in any other manner other than as contemplated by this TransArmor Addendum; or (vi) perform or attempt to perform any actions that would interfere with the proper working of the Data Protection Services, prevent access to or use of the Data Protection Services by other users, or, in BAMS' reasonable judgment, impose an unreasonably large or disproportional load on any BAMS platform or infrastructure. Client shall not permit any third parties to access the Data Protection Services IP. Client 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 Data Protection Services IP.
- 21.3 Client shall promptly notify BAMS in writing of any threat, or the filing of any action, suit or proceeding against Client regarding the Data Protection Services or Data Protection Services IP, in which an adverse decision would reasonably be expected to have a material impact on BAMS or any of the Data Protection Services subcontractors.

## **22. Special Termination Provisions.**

- 22.1 In addition to the termination rights set forth in the Merchant Agreement, this TransArmor Addendum will automatically terminate upon any termination of the Merchant Agreement. Upon termination or expiration of this TransArmor Addendum, all licenses granted hereunder will immediately terminate and Client will either return or destroy the Software, certifying such destruction in writing to BAMS.
- 22.2 BAMS shall have the right to terminate this TransArmor Addendum for any of the reasons set forth for termination of the Merchant Agreement. In addition, BAMS reserves the right to alter, immediately suspend or upon notice terminate the Data Protection Services in the event Client violate the terms of this TransArmor Addendum, the Merchant Agreement or any agreement with third parties that are involved in providing the Data Protection Services is terminated or otherwise no longer in effect, or BAMS is otherwise unable to continue to provide the Data Protection Services.

23. **Implementation and Startup Expenses.** BAMS and Client agree to begin the process of implementing the Data Protection Services within fifteen (15) days of the Effective Date of the Merchant Agreement. In order to minimize any potential delay in the implementation of the Data Protection Services, Client 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 Client are unable to mutually agree, in writing, on an alternative Implementation Date, Client 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 of the Merchant Agreement.

## **24. Product Disclaimers.**

- 24.1 USE OF THE DATA PROTECTION SERVICES DOES NOT CAUSE CLIENT TO BE COMPLIANT WITH, OR ELIMINATE CLIENT'S OBLIGATION TO COMPLY WITH, THE DATA SECURITY REQUIREMENTS OR CARD ORGANIZATION RULES AS SET FORTH IN THE MERCHANT 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.
- 24.2 EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5, BAMS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT THE DATA PROTECTION SERVICES (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.