



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: 8/17/2015

or Procurement Director Award ☐

Contractor/Vendor Name (DBA): Bank of America - Bank of America Merchant Services

Project Title/Description:

Pima County Banking Services, to include credit, debit card transactions and associated services defined by the contract documents.

Purpose:

Amendment of Award: MA-PO-15*277, version # 1, County Banking Services, Additional Board of Supervisors (BOS) action is required to finalize the award originally approved and executed by the BOS on 4/21/2015.

The contractor, Bank of America, initially advised the Treasurer that the previously awarded contract provided all banking services identified. However, Bank of America has now determined that to assure that the award complies with Dodd-Frank Act directives regarding County card transactions a supplemental agreement with Bank of America Merchant Services (BAMS) is required for the credit/debit card services provided by the original award.

Procurement Method:

Program Goals/Predicted Outcomes:

Efficiently manage County funds and maximize revenues from County funds.

Public Benefit:

Provide efficient and fiscally responsible Banking Services

Metrics Available to Measure Performance:

Contractor performance shall be monitored by the County Treasurer to assure that optimum services are provided to the County

Retroactive:

No

Original Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Effective Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$ _____ ☐ Revenue Amount: \$ _____
Funding Source(s): _____

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☐ No ☐ Not Applicable to Grant Awards
Were insurance or indemnity clauses modified? ☐ Yes ☐ No ☐ Not Applicable to Grant Awards
Vendor is using a Social Security Number? ☐ Yes ☐ No ☐ Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): MA 15*277
Amendment No.: N/A AMS Version No.: 2
Effective Date: Upon execution by the BOS New Termination Date: N/A
☒ Expense ☒ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$0.00
Funding Source(s): This contract will result in net revenue

Cost to Pima County General Fund: 00.00

Contact: Walter Lewandowski Wally Lewandowski 7/29/15 7/30/15
Department: Procurement L.H. Williams 7/29/15 Telephone: 724-8197
Department Director Signature/Date: B. H. Ford 7/29/15
Deputy County Administrator Signature/Date: Janet Boyle 7-30-15
County Administrator Signature/Date: C. R. McElroy 7/31/15
(Required for Board Agenda/Addendum Items)



MASTER AGREEMENT

PIMA COUNTY, ARIZONA

THIS IS NOT AN ORDER - TRANSMISSION CONSTITUTES CONTRACT EXECUTION

Master Agreement No: 15000000000000000277

MA Version: 2

Page: 1

Description: PIMA COUNTYBANKING SERVICES

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Pima County Procurement Department
130 W. Congress St. 3rd Fl
Tucson AZ 85701

Issued By: WALTER LEWANDOWSKI
Phone: 5207248197
Email: walter.lewandowski@pima.gov

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Initiation Date: 07-01-2015
Expiration Date: 06-30-2018

NTE Amount: \$0.00
Used Amount: \$0.00

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BANK OF AMERICA N A

201 EAST WASHINGTON STREET

PHOENIX AZ 85004-2428

Contact: DAWN HADDOCK
Phone: 602-523-4113
Email: dawn.e.haddock@baml.com
Terms: 0.0000 %
Days: 30

Shipping Method: Vendor Method
Delivery Type: STANDARD GROUND
FOB: FOB Dest, Freight Prepaid

Modification Reason
Bank of America Merchant Services Agreement added to Master Agreement.

This Master Agreement incorporates the attached documents, and by reference all instructions, Standard Terms and Conditions, Special Terms and Conditions, and requirements that are included in or referenced by the solicitation documents used to establish this agreement. All Transactions and conduct are required to conform to these documents.

Number of Attachments: 3

Attachment Names: BofA Exhibit A Scope of Services.pdf, BofA Exhibit B Pricing.pdf, Executed Banking Services contract MA 15_277.pdf



MASTER AGREEMENT DETAILS

Master Agreement No: 15000000000000000277

MA Version: 2

Page: 2

Line	Description	Service From	Service To
1	Pima County Banking Services Service Contract Amt \$0.00	07-01-2015	06-30-2018

CONTRACTNO. MA-PO-150000 000000000 277**AMENDMENT NO.** _____

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

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

Pima County, Arizona

CUSTOMER's Legal Name

Doing Business As

100 West Congress

Street Address

Tucson

City

Arizona

State

85701

Zip Code

Arizona

State of Organization

86-6000543

Taxpayer Identification Number

CUSTOMER's business organization type

(corporation, LLC, partnership, non-profit or other entity)

Beth Ford, County Treasurer

Recipient/Title For Notices

(520) 724-4809

Facsimile Number

This MERCHANT PROCESSING AGREEMENT ("Agreement") is entered into by and among the undersigned customer ("CUSTOMER"), BANK OF AMERICA, NA ("BANK") and BANK OF AMERICA MERCHANT SERVICES, LLC ("BAMS" and, together with BANK and any other third party providers who enter into Supplements to this Agreement in order to perform services hereunder, collectively, "SERVICERS") for the Services described herein. Unless otherwise specified in this Agreement, (a) each SERVICER'S obligations under this Agreement shall be joint, but not several, and (b) each SERVICER shall have separate but equal rights against the CUSTOMER.

This Agreement governs processing services regarding credit, debit and certain other Card transactions and other services, as those services are further described in this Agreement, the Fee Schedule attached hereto as Schedule A (including any additions and changes thereto, the "Fee Schedule"), any and all concurrent and subsequent addenda, supplements or schedules to this Agreement (each, including the Fee Schedule, as amended from time to time, a "Supplement"), and the Card Organization Rules, all as elected by CUSTOMER and approved by SERVICERS (or their applicable Affiliate) (for the purposes of this Agreement, collectively, the "Services"). Unless otherwise expressly provided in this Agreement or any Supplement, (i) references to each Supplement shall be deemed to include this Agreement and (ii) references to this Agreement shall be deemed to include each Supplement. To the extent the terms of a Supplement directly conflict with the terms of this Agreement, the terms of that Supplement shall control.

BANK's obligations hereunder shall be limited to the sponsorship and settlement of certain Card transactions submitted in accordance with the terms and conditions of this Agreement and the Card Organization Rules, and BANK shall not have any obligation or liability of any nature in connection with any services of any kind provided by BAMS or its Affiliates hereunder or pursuant hereto. In performing this Agreement, without diminishing SERVICERS' obligations to CUSTOMER, SERVICERS may use the services of third parties, including, without limitation, their respective Affiliates.

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

1. **Definitions.** As used in this Agreement, capitalized terms will have the meaning set forth in Annex 1, the Operating Guide or Card Organization Rules, as applicable.
2. **Services.**
 - 2.1 During the term of this Agreement, CUSTOMER shall use SERVICERS as its exclusive provider of all Services for CUSTOMER, and CUSTOMER will not, directly or indirectly, offer or promote any other Services.
 - 2.2 Subject to Card Organization Rules, Services may be performed by BAMS or BANK subject to the agreements between them as the same may be modified from time to time. In addition to SERVICERS, one or more affiliates of BAMS may assist in providing Terminals or other equipment and local support functions in connection with this Agreement.
 - 2.3 SERVICERS will make the Services operational and available to CUSTOMER through a mutually agreed upon implementation plan. CUSTOMER agrees to at all times cooperate with SERVICERS and provide SERVICERS with all necessary information and assistance required by SERVICERS to provide the Services in accordance with the Card Organization Rules and Applicable Law, including, without limitation, making changes to Merchant Equipment as SERVICERS require. CUSTOMER will be responsible for (i) use of the Services by CUSTOMER, CUSTOMER's employees and agents and Merchant Providers, (ii) CUSTOMER's failure to properly access the Services in the manner prescribed by SERVICERS, and (iii) CUSTOMER's failure to supply accurate information regarding the Services.
3. **Election of Cards, Duty to Honor Cards and Use of Marks.**
 - 3.1 **Card Election.** CUSTOMER has elected and SERVICERS have approved CUSTOMER to accept those Card types and Services designated in this Agreement or the Supplements. CUSTOMER may change CUSTOMER's election of Card types and Services from time to time upon at least sixty (60) days' advance notice to SERVICERS; SERVICERS will use their reasonable efforts to accommodate CUSTOMER's requests in less than this time but SERVICERS will not be obligated to do so. Upon SERVICERS' approval of such new Card type or Service, the parties will execute a Supplement therefor. CUSTOMER will not seek Authorization for or submit a transaction of a new Card type until the parties have entered into a Supplement for it. Unless otherwise directed by SERVICERS, CUSTOMER will not seek Authorization for or submit a Card transaction of a Card type CUSTOMER desires to discontinue accepting later than the effective date of the notice to SERVICERS. With respect to inadvertent or unintentional acceptance of a transaction other than the type or service anticipated for CUSTOMER's account (including, without limitation, a different Card type), CUSTOMER will also

be subject to payment to SERVICERS of their then-current transaction fee(s) with respect to such Card, transaction and/or service and be liable, obligated and responsible under this Agreement for any such transaction or service to the same extent as CUSTOMER would be if it was of an anticipated Card type or service.

- 3.2 Honoring Cards Generally. CUSTOMER will honor a Card by accepting it for payment. CUSTOMER will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular Card type elected by CUSTOMER and approved by SERVICERS, in favor of any competing Card brand also elected and approved.
- 3.3 Cards Issued by US Card Issuers. For all Cards issued by U.S. Issuers, CUSTOMER will honor all Cards within the Card types elected and approved in accordance with this Agreement. For example, if CUSTOMER elects and is approved to accept Visa credit Cards, CUSTOMER will submit payments from Visa-branded credit Card Cardholders without regard to whether the credit Card is a Visa-branded rewards credit Card or Visa-branded business purpose credit Card.
- 3.4 Cards Issued by Non-US Card Issuers. CUSTOMER will honor all Cards issued by non-U.S. Issuers. For example, even if CUSTOMER elects to limit CUSTOMER's acceptance of MasterCard Cards to MasterCard credit Cards, CUSTOMER will accept for processing a MasterCard debit Card issued by a non-U.S. Card issuer.
- 3.5 Marks Generally. CUSTOMER and SERVICERS acknowledge that no party will acquire any right, title or interest in or to the Marks of any other party or of any Card Organization or SERVICERS' agents by virtue of this Agreement, without prior written consent. CUSTOMER will not assign to any third party any of the rights to use the Marks of SERVICERS, SERVICERS' agents or Card Organizations.

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

- 3.6 Special Provisions Regarding Discover Network Processed Cards. Services provided for transactions made with Discover branded Cards or DNP Card Types (as hereinafter defined) are processed by BAMS and not by BANK. DNP Card Types are Cards branded by Diners Club International®, JCB, China UnionPay, Korea Bank and Credit® or any other Card Organizations subsequently designated by Discover, and each of those Card Organizations is referred to as a "DNP Card Organization". The Services provided, transactions processed and other matters contemplated under this Agreement for Discover Cards and DNP Card Types and DNP Card Organizations are subject to the rest of this Agreement; provided, however, that BANK is not a party to this Agreement insofar as it relates to Services for transactions made with Discover Cards or DNP Card Types, and BANK is not liable to CUSTOMER in any way with respect to such Services.
4. **General Requirements and Restrictions for Card Transactions.**
 - 4.1 Accuracy of Data Submitted. CUSTOMER will be responsible for the quality and accuracy of all data provided to SERVICERS. SERVICERS may, at SERVICERS' option, return to CUSTOMER for correction before processing any data submitted by CUSTOMER which is incorrect, illegible or otherwise not in proper form. If CUSTOMER does not provide data in accordance with SERVICERS' specified format and schedule, SERVICERS will use reasonable efforts to reschedule and process the data as promptly as possible, but related expenses incurred by SERVICERS will be charged to CUSTOMER.
 - 4.2 Prohibitions on Increasing Price of Goods or Services. CUSTOMER will not increase the price of goods or services for a Card transaction or impose any fee for the service of accepting a Card except as allowed by the Card Organization Rules and Applicable Law. CUSTOMER may charge a surcharge, convenience fee or service fee for a Card transaction only as permitted by the Card Organization Rules and Applicable Law. If clearly disclosed to the Cardholder, CUSTOMER may offer a discount from the standard price for payments by cash.
 - 4.3 Payments from Cardholders. CUSTOMER agrees that CUSTOMER will not accept or process, any funds representing a Cardholder's payment to an Issuer.
 - 4.4 Prohibition on Aggregating and Factoring and Employee Transactions. CUSTOMER is prohibited from submitting or presenting, and agrees not to submit or to present, any Authorization requests for transactions and Sales Drafts arising from transactions between (i) CUSTOMER and Cardholders who are CUSTOMER's owners, partners, guarantors, officers or employees, other than genuine purchases, leases or rentals of goods or services from CUSTOMER or other payments to CUSTOMER, all in the ordinary course of CUSTOMER's business, and (ii) Cardholders and third parties for their goods or services or other payments to them.
 - 4.5 Draft Requirements. All Sales Drafts and Credit Drafts must include all Information required under and in accordance with the Operating Guide, Card Organization Rules and Applicable Law.
 - 4.6 U.S. Dollars. Unless otherwise agreed in advance and writing by SERVICERS, CUSTOMER must submit all Card transactions in U.S. dollars.

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

CUSTOMER acknowledges that it has received the Operating Guide, the terms of which are incorporated into this Agreement; any reference to this Agreement includes the Operating Guide. CUSTOMER agrees to comply with the terms of the Operating Guide, as amended or modified by SERVICERS from time to time. Notwithstanding any provision to the contrary contained in this Agreement, the parties hereto acknowledge and agree that the Operating Guide provides the principals of a sound Card program and contains the relevant subset of the Card Organization Rules. However, the Operating Guide is not a complete set of all Card Organization Rules. If CUSTOMER loses or otherwise misplaces the Operating Guide or notices of changes thereto, CUSTOMER shall be responsible for contacting SERVICERS to obtain replacement copies. From time to time, SERVICERS may change the Operating Guide, in whole or in part, and other operating procedures, by providing CUSTOMER with at least thirty (30) days' prior

written notice of the change. However, in the event of changes in the Card Organization Rules or due to security reasons, certain changes in Card procedures may become effective on shorter notice. If there is any conflict between the terms of this Agreement and the Operating Guide, the terms of this Agreement will govern, unless the conflict is directly related to a change in the Operating Guide which specifically addresses a procedure or requirement detailed in this Agreement.

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

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

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

6. Authorization.

- 6.1 CUSTOMER agrees to submit only Card transactions for which CUSTOMER has received an Authorization. Obtaining an Authorization will not ensure payment to CUSTOMER for a Sales Draft. The fact that an Authorization is obtained by CUSTOMER will not affect SERVICERS' rights thereafter to revoke Authorization of a Card transaction or to charge back the transaction to CUSTOMER. In no event will the fact that an Authorization is obtained by CUSTOMER be deemed to be SERVICERS' representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.
- 6.2 The Authorization number provided by SERVICERS shall be noted by CUSTOMER in the appropriate place on the Sales Draft. If Authorization is declined, CUSTOMER shall not complete the Card transaction.
- 6.3 CUSTOMER shall comply with any special Authorization procedures contained in the Card Organization Rules and any other sections or parts of this Agreement.
- 6.4 CUSTOMER acknowledges that Authorization, (i) indicates only the availability of credit at the time of Authorization; (ii) does not warrant that the person presenting the Card is the rightful Cardholder; and (iii) is not an unconditional promise or guarantee by SERVICERS that any Card transaction will not be subject to Chargeback.
- 6.5 If CUSTOMER obtains an Authorization by telephone, CUSTOMER shall record the approval number on the Sales Draft.

7. Electronic Commerce Transactions.

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

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

CUSTOMER's Internet web site must contain (a) a complete description of the goods or services offered, (b) CUSTOMER's returned merchandise and refund policy, (c) CUSTOMER's customer service contact information, including e-mail address and/or telephone number, (d) transaction currency, (e) export or legal restrictions (if known), (f) CUSTOMER's delivery policy and (g) CUSTOMER's country of domicile immediately prior to the Cardholder's accessing of payment instructions. In addition, CUSTOMER must disclose, at all points of Cardholder interaction (including any of CUSTOMER's supplier or subcontractor Internet web sites and any of CUSTOMER's promotional materials and invoices), to the Cardholder that CUSTOMER, and not any of any CUSTOMER's suppliers of goods or subcontractors for services, is the merchant of record and responsible for any Card transaction. CUSTOMER must also notify the Cardholder that CUSTOMER is responsible for (i) payment transactions, (ii) products and services, (iii) direct customer service, (iv) dispute resolution, and (v) all terms and conditions of the transaction. CUSTOMER must display on CUSTOMER's Internet web site(s) the Card Organization Marks, wherever CUSTOMER display payment options, in accordance with the Operating Guide and Subsection 3.5 of this Agreement.

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

CUSTOMER assumes all responsibility for identification of the Cardholder and the validity of the Card information for ECT. CUSTOMER agrees that each Authorization request will include a request for address verification and a positive response for it. CUSTOMER agrees to identify separately any high-risk transactions CUSTOMER submits. The high-risk transactions

include, but are not limited to, any under Merchant Category Code 5967 — Direct Marketing — Inbound Telemarketing Merchants.

8. Multiple Sales Drafts and Partial Consideration.

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

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

9. Pre-Authorized Orders.

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

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

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

9.4 CUSTOMER may not accept a Pre-Authorized Order from a Cardholder for the purchase of goods or services which are delivered or performed periodically unless the Cardholder completes and delivers to CUSTOMER a written request (and, when applicable, a written renewal request) identifying (i) the goods or services to be charged to the Cardholder's account, (ii) the amount of the preauthorized or recurring charges (unless such charges are for variable amounts), (iii) the frequency of the preauthorized or recurring charges and (iv) the duration of time for which the Cardholder's permission is granted. If CUSTOMER accepts any Pre-Authorized Orders for variable amounts, CUSTOMER must comply with the supplemental provisions set forth in the applicable Supplements.

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

10. CUSTOMER Responsibilities for Persons Used by CUSTOMER.

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

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

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

11. Cardholder Refunds and Credits.

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

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

12. Presentation of Card Transactions.

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

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

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

13. Settlement of Card Transactions.

13.1 **Settlement of Sales Drafts.** SERVICERS will settle with CUSTOMER for each Sales Draft acquired and accepted by SERVICERS under this Agreement after SERVICERS receive payment for that Sales Draft from the related Card Organization, subject to the terms of this Agreement. Unless SERVICERS agree in writing otherwise, SERVICERS will only acquire Sales Drafts for Visa, MasterCard and Discover Network Card types (including those of other Card Organizations processed under Visa, MasterCard or Discover Network Card Organization Rules); provided, however, that, if CUSTOMER has been classified by Discover Network as having a Discover Direct Strategic Relationship with Discover Network, SERVICERS will not acquire CUSTOMER's Discover Network transactions and they will be subject to CUSTOMER's agreement with Discover Network. CUSTOMER acknowledges and agrees that if SERVICERS have not agreed to or do not acquire transactions for any Card type (i) SERVICERS have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) CUSTOMER will pursue directly with the related Card Organization all claims and disputes regarding those transactions. CUSTOMER agrees to pay SERVICERS for per item processing, Authorization and other fees in the Fee Schedule for any non-acquired transaction services CUSTOMER receives from SERVICERS.

13.2 **Settlement Account and Its Operation.** CUSTOMER will designate, in writing, and maintain, the Settlement Account for the purposes of settling transactions under this Agreement. If the Settlement Account is with BANK, in the absence of any other written agreement with BANK, the terms and conditions that apply to BANK's deposit accounts of the same type will apply. As amounts become payable to CUSTOMER or to SERVICERS under this Agreement, SERVICERS may, unless otherwise agreed, make payments to or receive payments from CUSTOMER by crediting or debiting the Settlement Account without prior notice as provided herein. If CUSTOMER does not maintain a Settlement Account with BANK, payments between CUSTOMER and SERVICERS must be made in a manner satisfactory to SERVICERS. If CUSTOMER does not maintain sufficient balances in the Settlement Account to cover amounts owing under this Agreement, CUSTOMER must immediately pay all such amounts directly to SERVICERS, and if CUSTOMER does not do so, at SERVICERS' discretion SERVICERS may cease processing additional Card transactions until the amounts due are paid.

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

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

SERVICERS may debit the Settlement Account for the following purposes: (a) to correct accounting or other settlement errors, (b) for the amount of Credit Drafts, adjustments or Chargebacks, (c) fees and fines imposed upon SERVICERS by a Card Organization or Issuer as a result of CUSTOMER's actions or omissions and (d) as required under the Card Organization Rules.

13.3 **Settlement Amounts and Time for Settlement.** All settlements to CUSTOMER for Sales Drafts will occur on a daily basis and be based upon gross sales, minus Card Organization Based Fees, Credit Drafts, adjustments, Chargebacks, Discount Rate and other transaction fees set forth on the Fee Schedule, and fees, fines and other amounts imposed upon SERVICERS by a Card Organization or Issuer as a result of CUSTOMER's acts or omissions. SERVICERS will collect all other amounts due from CUSTOMER to SERVICERS, on a monthly basis, whether netted at settlement or separately debited as provided herein. All credits to CUSTOMER's Settlement Account or other payments to CUSTOMER are provisional and are subject to (i) SERVICERS' final audit and confirmation, (ii) fees and fines imposed

upon SERVICERS by a Card Organization or Issuer as a result of CUSTOMER's actions or omissions and (iii) any other obligations owed by CUSTOMER to SERVICERS.

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

13.4 Settlement Amounts Subject to Adjustments. This Agreement is a contract whereby SERVICERS are extending financial accommodations to CUSTOMER within the meaning of Section 365(c) of the Bankruptcy Code. CUSTOMER's right to receive any amounts due or to become due from SERVICERS or SERVICERS' respective Affiliates, whether or not those amounts are related to this Agreement, is expressly subject and subordinate to Chargeback, setoff, lien, security interest and SERVICERS' rights to withhold settlement funds under this Agreement, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

13.5 Suspension/Change in Payment Terms. In addition to any other remedies available to SERVICERS under this Agreement, CUSTOMER agrees that should any Event of Default (see Section 22) occur, SERVICERS may, with or without notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter become due to CUSTOMER pursuant to the terms of this Agreement, until SERVICERS have had reasonable opportunity to investigate such event.

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

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

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

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

14.3 Payment of Fees, Charges and Other Amounts. SERVICERS may debit the Settlement Account for, or withhold from funds SERVICERS owe CUSTOMER under this Agreement, all amounts CUSTOMER owes SERVICERS under this Agreement. If the Settlement Account has insufficient funds, SERVICERS may, without advance notice, withdraw the funds CUSTOMER owes SERVICERS from any other account (including any reserve account) CUSTOMER maintains with SERVICERS (or their respective Affiliates) or to which CUSTOMER has granted SERVICERS access. If sufficient funds are not available from those sources, CUSTOMER must pay the amount of any deficiency immediately upon demand.

14.4 Third Party Based Fee Changes. SERVICERS will provide CUSTOMER with at least thirty (30) days' advance notice of any increased or new Third Party Based Fees. However, SERVICERS' ability to provide such notice depends on SERVICERS' receipt of timely notice from the applicable Persons and in those instances, SERVICERS may not be able to provide CUSTOMER with thirty (30) days notice. In any event, any increased or new Third Party Based Fees will become effective and CUSTOMER shall be responsible for paying them as of the date specified in the notice.

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

14.6 ACH Credits or Debits. To the extent the Automated Clearing House ("ACH") settlement process is used to effect debits or credits to CUSTOMER's Settlement Account, CUSTOMER agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association ("NACHA"), as in effect from time to time. CUSTOMER hereby authorizes

SERVICERS to initiate credit and debit entries and adjustments as permitted under this Agreement to CUSTOMER's account through the ACH network and/or through direct institutions to the financial institution where CUSTOMER'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. CUSTOMER hereby authorizes the financial institution where CUSTOMER's Settlement Account is maintained to effect all such credits and debits to CUSTOMER's account. This authority will remain in full force and effect until SERVICERS have given written notice to the financial institution where CUSTOMER's Settlement Account is maintained that all monies due under this Agreement and any other agreements with SERVICERS or SERVICERS' Affiliates for any related services have been paid in full.

14.7 Taxes, Installation & De-Installation. CUSTOMER 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. CUSTOMER also agrees to pay any and all Taxes imposed on the ownership, possession or use of the Merchant Equipment. CUSTOMER authorizes SERVICERS, or SERVICERS' respective assigns, to increase the amount of CUSTOMER's preauthorized payment to reflect any and all increases in all applicable Taxes. CUSTOMER further agrees to pay any and all costs associated with the installation and de-installation of Purchased Equipment. CUSTOMER is not responsible for any taxes imposed on SERVICERS based on SERVICERS' net income.

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

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

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

If CUSTOMER elects to receive Electronic Statements for its merchant account(s) via electronic mail ("e-mail"), CUSTOMER represents and warrants to, and covenants with, SERVICERS and agrees that: (i) CUSTOMER will disable any spam filter (or similar device or software that could prevent delivery of e-mail from to CUSTOMER) and add "@cedardoc.com" (the specific addressee portion will vary due to automation) (and such other e-mail address or domain that we may specify from time to time or from which CUSTOMER otherwise receives and Electronic Statement from SERVICERS) as a safe e-mail address or domain with respect to the e-mail account CUSTOMER designates for SERVICERS to send Electronic Statements; (ii) CUSTOMER is responsible for the accuracy and validity of all e-mail addresses provided by CUSTOMER and/or its agents; (iii) CUSTOMER will ensure that the e-mail account(s) designated for SERVICERS to send CUSTOMER Electronic Statements are under CUSTOMER's ownership or control and will be regularly accessible and actively monitored by CUSTOMER's authorized representatives; (iv) CUSTOMER will not share or permit to be known by any Person not authorized to view Electronic Statements on CUSTOMER's behalf, or store as an "autofill" field on a web browser, any password or encryption key; (v) CUSTOMER will notify SERVICERS promptly if CUSTOMER has not received an Electronic Statement from SERVICERS in the time frame that CUSTOMER normally receives Electronic Statements from SERVICERS, but in no event later than five (5) Business Days after the close of the statement cycle; (vi) CUSTOMER will notify SERVICERS prior to any change of e-mail address(es) designated for receipt of Electronic Statements; (vii) Electronic Statements are subject to the reconciliation time frames described in Section 14.6 of the Agreement; and (viii) immediately after being transmitted from SERVICERS'S e-mail server, CUSTOMER will be solely responsible for preventing the disclosure, interception and viewing of Electronic Statements by any unauthorized Person or Person that is otherwise not in compliance with applicable law.

SERVICERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING CUSTOMER'S ACTUAL RECEIPT OF E-MAILED ELECTRONIC STATEMENTS THAT SERVICERS ATTEMPTS TO DELIVER TO CUSTOMER.

14.11 Duty Regarding Merchant Systems. CUSTOMER will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition within the Merchant Systems, and for notifying SERVICERS of any errors in the foregoing after receipt of the applicable report from SERVICERS. CUSTOMER will notify SERVICERS of all incorrect reports or output within two (2) Business Days after receipt of such reports or output. Within one (1) Business Day of the original transaction, CUSTOMER must balance each Location to the BAMS system for each business day that each Location is open. If CUSTOMER determines that transaction(s) have been processed in error, CUSTOMER will initiate the appropriate transaction for adjustment to

correct the transaction in question. CUSTOMER is responsible for all applicable adjustment fees per applicable Card Organization.

15. Chargebacks.

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

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

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

16. Representations; Warranties and Covenants.

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

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

16.2 SERVICERS represent and warrant to CUSTOMER that:

- (i) SERVICERS will perform their obligations pursuant to this Agreement in accordance with the Applicable Law and the Card Organization Rules.
- (ii) SERVICERS are validly existing, in good standing and free to enter into this Agreement;

17. Retention of Records.

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

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

18. System Testing and System Enhancements.

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

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

19. Confidentiality.

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

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

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

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

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

19.6 The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of the party that received such confidential information; (ii) was received from a Person free of any

obligation of confidence of the disclosing party and which Person, to the receiving party's knowledge, was not under an obligation to keep the information confidential; (iii) was already in the receiving party's possession prior to receipt from the disclosing party; (iv) is required to be disclosed by law, regulation or court order after giving the disclosing party as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by the receiving party's employees, consultants or agents without use of or reference to the disclosing party's confidential information.

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

20. Examinations, Audits and Corrective Action.

20.1 SERVICERS' Rights. SERVICERS or their respective designees will have the right, during the term of this Agreement and for one (1) year thereafter, upon reasonable advance written notice and during normal business hours, to conduct a review of the books, records, operations and Merchant Equipment of CUSTOMER, Merchant Providers and CUSTOMER's other third party service providers to determine or to verify CUSTOMER's and their compliance with CUSTOMER's obligations under this Agreement.

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

20.3 Remediation. CUSTOMER must promptly take corrective action acceptable to SERVICERS and the Card Organizations to rectify (i) any failure to comply with this 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.

20.4 Regulatory Agencies. Notwithstanding anything to the contrary in Sections 19 (Confidentiality) and 25 (Information Security) of the Agreement, CUSTOMER agrees to provide reasonable access to Merchant Systems and CUSTOMER's facilities and records and those of Merchant Providers during normal business hours for examination purposes to any state or federal agencies with jurisdiction over SERVICERS or any Card Organization, upon SERVICERS' prior written request.

21. Assignment.

- 21.1 Any transfer or assignment of this Agreement (or any portion of it) by CUSTOMER without SERVICERS' prior written consent, by operation of law or otherwise, is voidable at either SERVICER's sole discretion. In the event of such transfer or assignment, the party to whom the Agreement was transferred or assigned shall be bound to the terms and conditions of this Agreement to the same extent as if SERVICERS and such assignee or transferee, as the case may be, entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. Furthermore, CUSTOMER shall be liable to SERVICERS for all liabilities, Chargebacks, expenses, costs, fees and fines arising in

connection with such transferee's or assignee's, as the case may be, submission of Card transactions to SERVICERS for processing. SERVICERS are not required to continue this Agreement after CUSTOMER's merger or reorganization with or into another entity without SERVICERS' prior written consent, which will not be unreasonably conditioned, withheld, or delayed. CUSTOMER agrees to provide SERVICERS with at least 30 days' prior written notice of CUSTOMER's intention to take any of those types of actions.

21.2 Upon notice to CUSTOMER, another Visa and MasterCard acquirer may be substituted for BANK under whose sponsorship this Agreement is performed. Upon substitution, such other Visa and MasterCard acquirer shall be responsible for all obligations required of BANK, including without limitation, as may be expressly required by applicable Card Organization Rules. Furthermore, subject to Card Organization Rules, 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, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without the notice to or consent of CUSTOMER.

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

22. Term; Events of Default.

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

22.2 This Agreement shall remain effective through the initial term of three (3) years from the date of this Agreement. CUSTOMER may renew the Agreement for an additional two (2) years by providing SERVICERS with one hundred and twenty (120) days' written notice prior to the end of the initial term. If no such notice is provided, this Agreement shall automatically terminate upon the expiration of the initial term.

Equipment Assistance: In an effort to assist CUSTOMER with the costs of procuring certain Terminals (specifically identified below) BAMS shall subsidize up to \$5,000.00 in equipment costs which shall be used to offset the cost of purchasing new EMV-capable Terminals (the "Equipment Assistance"), subject to the following conditions:

- a. The Equipment Assistance shall be used to purchase up to eight (8) FD130/FD130 Duo point of sale terminals ("New Terminals"), which have a value of \$599.00 per terminal;
- b. CUSTOMER will provide BAMS with all information necessary for BAMS to deliver New Terminals to CUSTOMER and BAMS shall follow CUSTOMER's instructions regarding New Terminal deployment to CUSTOMER;
- c. CUSTOMER shall not be charged for the New Terminals by BAMS, except as expressly stated in subsections d., e., and f., below.
- d. In no event shall the Equipment Assistance exceed \$5,000.00, regardless of the number of New Terminals ordered by CUSTOMER, and once the Equipment Assistance amount has been depleted, CUSTOMER shall be responsible for payment to BAMS of the actual cost of purchasing the New Terminal (\$599.00 per device) and BAMS shall be entitled, at its option, to invoice CUSTOMER for such amounts or offset such amounts from transaction proceeds otherwise due and owing to CUSTOMER;
- e. The Equipment Assistance shall not be used to offset the cost of renting the New Terminals and CUSTOMER shall be responsible for payment to BAMS of the rental costs for each New Terminal rented (\$35.90 per device per month) and BAMS shall be entitled, at its option, to invoice CUSTOMER for such amounts or offset such amounts from transaction proceeds otherwise due and owing to CUSTOMER;
- f. In addition to any applicable Liquidated Damages, in the event the Agreement is terminated for any reason prior to the end of the initial three-year term, and termination is not the result of a contract breach by BAMS, CUSTOMER shall pay BAMS an amount equal to a pro rata portion of the Equipment Assistance determined by (a) multiplying by a factor of .028 (b) the number of months, including any partial month, between the last day of the initial three-year term and the effective date of termination of this Agreement; then multiplying the product of (a) "times" (b) by (c) the total amount of the Equipment Assistance received by CUSTOMER prior to such termination. Should CUSTOMER fail to pay such amounts, then CUSTOMER acknowledges and agrees that BAMS shall have the right to set off such amounts from any transaction proceeds that are validly due and owing CUSTOMER.

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

- (i) a material adverse change in the financial condition, business procedures, products or services of CUSTOMER; or
- (ii) irregular Card sales by CUSTOMER, excessive Chargebacks or any other circumstances which, in SERVICERS' sole discretion, may increase SERVICERS' exposure for CUSTOMER's Chargebacks or otherwise presents a financial or security risk to SERVICERS; or
- (v) any representation, warranty or covenant of CUSTOMER in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or
- (vi) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, (a) the Information Security requirements as detailed in Section 25 or (b) CUSTOMER's failure to pay SERVICERS for any amounts due and owing under this Agreement; or

- (vii) CUSTOMER shall default 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, including, but not limited to, any agreement governing check guarantee or check verification services; or
- (viii) CUSTOMER shall default in the payment when due, whether upon maturity or otherwise, of any material indebtedness for borrowed money or any material trade payable; or
- (ix) CUSTOMER shall: commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into a composition agreement or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; generally become unable to pay its debts or trade obligations as they become due; make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (x) a case or other proceeding shall be commenced against CUSTOMER, in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator or the like of CUSTOMER, or of all or any substantial part of the assets, domestic or foreign, of CUSTOMER, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding against CUSTOMER (including, but not limited to, an order for relief under the Bankruptcy Code) shall be entered; or
- (xi) the independent certified accountants retained by CUSTOMER shall refuse to deliver an unqualified opinion with respect to the annual financial statements of CUSTOMER;

then, upon the occurrence of (1) an Event of Default specified in subparagraphs (iv), (vi), (ix) or (x) above, SERVICERS may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder by CUSTOMER to SERVICERS shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by CUSTOMER, and (2) any other Event of Default, this Agreement may be terminated by SERVICERS by giving not less than ten (10) days' notice to CUSTOMER, and upon such notice all amounts payable hereunder by CUSTOMER to SERVICERS shall be due and payable on demand.

- 22.4 Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable and such provisions shall survive the expiration or termination of this Agreement.
- 22.5 Upon the occurrence of any Event of Default, whether or not it is cured, SERVICERS may, in their sole discretion, exercise all of their rights and remedies under this Agreement and Applicable Law, including, without limitation, exercising their rights under Section 23.
- 22.6 This Agreement also may be terminated by SERVICERS without notice or penalty, if in their sole discretion, such termination is necessary for SERVICERS to comply with their obligations under any Applicable Law, rule or regulation including, but not limited to, the Office of Foreign Assets Control ("OFAC") Regulations and Card Organization Rules. SERVICERS' termination of this Agreement pursuant to this Subsection 22.7 shall not be deemed a breach of contract by SERVICERS.
- 22.7 If this Agreement is terminated for cause, CUSTOMER acknowledges that SERVICERS may be required to report CUSTOMER's business name and the names and other identification of its principals to the terminated merchant files maintained by the Card Organizations. CUSTOMER expressly agrees and consents to such reporting in the event CUSTOMER is terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by a Card Organization. Furthermore, CUSTOMER agrees to waive and hold SERVICERS harmless from and against, any and all claims which CUSTOMER may have as a result of such reporting.
- 22.8 In addition to the provisions of the Agreement that survive termination, the terms and provisions governing CUSTOMER's obligations and liabilities and SERVICERS' rights regarding the following matters will survive termination until all these matters are resolved or settled and all amounts owed to SERVICERS regarding these matters are fully and irrevocably paid: (i) processing and settlement of Card transactions, Sales Drafts and Credit Drafts, (ii) adjustments, (iii) all amounts due to SERVICERS under this Agreement, (iv) the resolution of any Chargebacks, disputes or other issues involving Card transactions, (v) Compromised Data Events and (vi) all SERVICERS' rights regarding CUSTOMER's breach of any of its agreements, representations, warranties, covenants or other obligations under this 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 9, 14 through 21, inclusive, 23 through 31, inclusive, Subsection 22.7 and this Subsection 22.8 shall survive any termination of this Agreement. Upon termination of this Agreement, CUSTOMER agrees to immediately send SERVICERS all the data relating to Card transactions made up to the date of termination.
- 22.9 After termination of this Agreement for any reason whatsoever, CUSTOMER shall continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due to SERVICERS under this Agreement or which may be due to SERVICERS before or after such termination to either SERVICERS or any of SERVICERS' respective Affiliates for any related equipment or related services.
- 22.10 In the event CUSTOMER files for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency assignment for the benefit of creditors or similar laws, and CUSTOMER continues to use the Services, it is CUSTOMER's responsibility to open new accounts to distinguish pre and post filing obligations. CUSTOMER acknowledges that as long as it utilizes accounts established prior to such filing, SERVICERS will not be able to

systematically segregate CUSTOMER'S post-filing transactions or prevent set-off of the pre-existing obligations. In that event, CUSTOMER will be responsible for submitting an accounting supporting any adjustments that CUSTOMER may claim.

23. Reserve Account; Security Interest; Set-Off.

23.1 To the extent permitted under Applicable Law, CUSTOMER expressly authorizes SERVICERS to establish an account (the "Reserve Account") pursuant to the terms and conditions set forth in this Section 23. The initial amount of such Reserve Account shall be set by SERVICERS, in their sole discretion, based upon CUSTOMER processing history and the anticipated risk of loss to SERVICERS.

23.2 The Reserve Account shall be fully funded upon three days' notice to CUSTOMER, or in instances of fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to CUSTOMER's Settlement Account or any other accounts held by BANK or any of its Affiliates; (ii) one or more deductions or off sets to any payments otherwise due to CUSTOMER; (iii) CUSTOMER's delivery to SERVICERS of a letter of credit; or (iv) if SERVICERS so agree, CUSTOMER's pledge to SERVICERS of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to SERVICERS and shall be in a form satisfactory to SERVICERS. In the event of termination of this Agreement by either CUSTOMER or SERVICERS, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by BANK for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is consistent with BANK's liability for Card transactions in accordance with Card Organization Rules. CUSTOMER's funds held in a reserve account may be held in a commingled Reserve Account for the reserve funds of BANK's customers, without involvement by an independent escrow agent. SERVICERS will hold funds pursuant to this Section 23 in master account(s) with your funds allocated to separate sub accounts. CUSTOMER will not at any time during the term of this Agreement, or until all amounts due under this Agreement have been paid in full, grant or pledge any security interest or lien in the Reserve Account to any Person without SERVICERS' consent. CUSTOMER acknowledges and agrees that Section 14.8 (Duty to Review Statements) and Section 14.9 (Duty to Notify Servicers of Discrepancies or Adjustments) shall apply with respect to the Reserve Account.

23.3 If CUSTOMER's funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from CUSTOMER, or if the funds in the Reserve Account have been released, CUSTOMER agrees to promptly pay SERVICERS such sums upon request. In the event of a failure by CUSTOMER to fund the Reserve Account, SERVICERS may fund such Reserve Account in the manner set forth in Subsection 23.2 above. CUSTOMER acknowledges and agrees that its failure to establish or maintain funds in the Reserve Account as required by SERVICERS hereunder shall be a material default of CUSTOMER under this Agreement pursuant to Section 22.3(vi).

23.4 To secure CUSTOMER's performance of CUSTOMER's obligations under this Agreement, and any other agreement for the provision of related equipment or related service CUSTOMER grants SERVICERS security interests in each transaction and its proceeds, the Settlement Account, the Reserve Account (if any) and any other depository, reserve or bank account held by CUSTOMER with SERVICERS, the Settlement Account at any other financial institution, whether now existing or established in the future, and in the balances and proceeds of all those accounts, any funds due CUSTOMER from SERVICERS and any of CUSTOMER's property held by SERVICERS and SERVICERS' respective Affiliates. SERVICERS may enforce these security interests without notice or demand to the extent permitted by the Card Organization Rules and Applicable Law. The security interests granted under this Agreement will survive the termination of this Agreement until all CUSTOMER's obligations are irrevocably paid and performed in full. In addition, CUSTOMER's assent to the terms of this Agreement will be considered CUSTOMER's agreement to obtain and execute an appropriate control agreement, pursuant to Article 9 of the Uniform Commercial Code, among CUSTOMER, SERVICERS and any other financial institution, under which agreement SERVICERS, CUSTOMER and that other financial institution agree to the disposition of funds in the Settlement Account, the Reserve Account or any other account or property subject to the security interest in this Agreement without further consent by CUSTOMER, provided that such agreement will not obligate CUSTOMER to pay additional fees to SERVICERS.

23.5 In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, SERVICERS are hereby authorized by CUSTOMER at any time and from time to time, without notice or demand to CUSTOMER or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of CUSTOMER's obligations to SERVICERS and their respective Affiliates under this Agreement and any other agreement with SERVICERS or any of SERVICERS' respective Affiliates for any related equipment or related services (including any check guarantee and check verification services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. CUSTOMER agrees to duly execute and deliver to SERVICERS such instruments and documents as SERVICERS may reasonably request to perfect and confirm the lien, security interest, right of set-off, recoupment and subordination set forth in this Agreement.

24. Intentionally Omitted.

25. Information Security.

25.1 **Data Protection.** CUSTOMER must, and must ensure that Merchant Providers, have proper security measures in place for the protection of Cardholder data, and comply with the Data Security Standards adopted by the PCI Security Standards Council, LLC (as amended, the "PCI DSS"), which may be reflected in the Visa Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection Program ("SDP") and Discover Network's Information and Security Compliance ("DISC"). Additional information regarding the CISP, SDP programs and DISC is available at the Visa web site, www.visa.com/cisp, the MasterCard web site, www.mastercard.com/banksdp/, Discover Network's web site, www.DiscoverNetwork.com/fraudsecurity/disc.html, and at the PCI DSS web site: <http://www.PCIStandards.org>, as

updated from time to time. CUSTOMER will use only services and Merchant Equipment that have been certified as PCI DSS compliant by the Card Organizations when available.

- 25.2 Costs. In addition to CUSTOMER's obligations as set forth in Sections 28 (Responsibility of the Parties) and 14 (Fees; Adjustments; Collection of Amounts Due; Reconciliation) of this Agreement, if CUSTOMER or a Merchant Provider (or other Person used by CUSTOMER) is determined by any Card Organization, regardless of any forensic analysis or report, to be the source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information (together, "Compromised Data Event") and regardless of CUSTOMER's belief that CUSTOMER has complied with the Card Organization Rules, Applicable Law or any other security precautions and is not responsible for the Compromised Data Event, CUSTOMER must promptly pay SERVICERS for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against SERVICERS (together, "Data Compromise Losses").
- 25.3 Compromised Data Event Appeals. If SERVICERS are allowed under the applicable Card Organization Rules to contest or appeal any amount assessed by a Card Organization against SERVICERS, or any claim of an Issuer which CUSTOMER is obligated to pay under this Section 25, CUSTOMER will be given the opportunity to advise whether CUSTOMER wishes SERVICERS to contest or appeal the claim, assessment, penalty or fine. If CUSTOMER asks SERVICERS to contest or appeal, all related costs will be paid by CUSTOMER. Any amount returned to SERVICERS as a result of the contest or appeal will be promptly refunded to CUSTOMER.
- 25.4 Notice of Data Breach. CUSTOMER will (i) immediately notify SERVICERS of any suspected, alleged or confirmed Compromised Data Event and (ii) engage, at CUSTOMER'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 CUSTOMER's suspected or actual discovery of that Compromised Data Event. CUSTOMER must cooperate with the PFI so that it may immediately conduct an examination of Merchant Equipment, Merchant Systems, and CUSTOMER's and Merchant Providers' procedures and records and issue a written report of its findings. CUSTOMER agrees that upon CUSTOMER's suspected or actual discovery of a Compromised Data Event, CUSTOMER will not alter or destroy any related records and will maintain complete and accurate documentation regarding any modifications made to the records. CUSTOMER will share with SERVICERS information related to CUSTOMER's or any Card Organization's investigation related to any actual or suspected Compromised Data Event (including, but not limited to, forensic reports and systems audits), and SERVICERS may share that information with Card Organizations. SERVICERS may, in their sole discretion, suspend or terminate Services under this Bankcard Addendum for any Compromised Data Event.
- 25.5 System Scans. Upon notice to CUSTOMER, SERVICERS or SERVICERS' respective representatives may conduct remote electronic scans of Merchant Systems, similar to those conducted under the PCI DSS, to confirm compliance with the requirements of the PCI DSS and similar requirements of the Card Organizations. CUSTOMER must promptly cooperate with SERVICERS to facilitate the scans. Upon SERVICERS request, CUSTOMER will provide copies of scans conducted of its Merchant systems to confirm compliance with the PCI DSS.
- 25.6 Increased Fees for Non-Compliance. In addition to any other permitted action, if SERVICERS determine that CUSTOMER is not in compliance with any of the data security requirements imposed by this Agreement, the fees for authorizing and processing transactions under this Agreement may be increased by 25% (in addition to CUSTOMER's obligation to reimburse SERVICERS for any Data Compromise Losses and Issuer Costs) until such time as SERVICERS are satisfied that CUSTOMER has adequately corrected such noncompliance.
- 25.7 SERVICER Requirements. SERVICERS must comply with all applicable Card Organization Rules, including without limitation, those related to PCI DSS.

26. Compliance with Applicable Law. In performing its obligations under this Agreement, the parties agree to comply with all Applicable Law. To the extent that CUSTOMER'S obligations under this Agreement would cause CUSTOMER to violate any Applicable Law, CUSTOMER'S obligation to comply with such Applicable Law will prevail. CUSTOMER shall be solely responsible for (i) determining which laws and regulations apply to their activities under this Agreement and (ii) maintaining compliance with all Applicable Law. CUSTOMER further agrees to cooperate with, and to provide information requested by, any SERVICER as such SERVICER deems necessary to facilitate its compliance with all Applicable Law. CUSTOMER must not use the Services for transactions prohibited by Applicable Law or the Card Organization Rules, such as those prohibited for alcoholic beverages, tobacco products, gambling, Internet gambling (for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., as may be amended from time to time), drugs, weapons, adult-content material, or adult web sites, services or entertainment.

27. Financial and Other Information.

- 27.1 To the extent CUSTOMER's financial statements are not publicly available, CUSTOMER agrees to provide SERVICERS with such annual and quarterly financial statements of CUSTOMER which CUSTOMER prepares in the ordinary course of business and in accordance with applicable state law. CUSTOMER will provide such statements to SERVICERS within one hundred twenty (120) days after the end of each fiscal year, in the case of annual financial statements, or within forty-five (45) days after the end of each quarter in the case of quarterly statements. Such financial statements shall be prepared in accordance with U.S. generally accepted accounting principles applicable to government entities. CUSTOMER also shall provide such other financial statements and other information concerning CUSTOMER's business and CUSTOMER's compliance with the terms and provisions of this Agreement as SERVICERS may reasonably request. CUSTOMER authorizes SERVICERS to obtain from third parties financial and credit information relating to CUSTOMER, 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 CUSTOMER. Pursuant to Applicable Law, including the USA PATRIOT Act, SERVICERS are obtaining information and will take necessary action to verify CUSTOMER's identity. Upon request, CUSTOMER shall provide to SERVICERS or their representatives or regulators reasonable access to CUSTOMER's facilities and records for the

purpose of performing any inspection and/or copying of CUSTOMER's books and/or records deemed appropriate by SERVICERS.

28. Responsibility of the Parties.

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

28.2 SERVICERS agree to defend, indemnify and hold harmless CUSTOMER from and against all Claims brought against CUSTOMER, and all related Losses, to the extent such Claims result from: (a) any breach of any warranty, covenant or obligation of SERVICERS under this Agreement; or (b) any misrepresentation by SERVICERS under this Agreement.

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

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

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

29.2 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, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF, (I) \$100,000; OR (II) THE AMOUNT OF FEES (OTHER THAN THIRD PARTY BASED FEES) RECEIVED BY SERVICERS PURSUANT TO THIS AGREEMENT FOR THE SERVICES IN THE IMMEDIATELY PRECEDING 12 MONTHS.

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

30. Independent Contractor; Subcontractors; Third Party Beneficiaries. The parties are independent contractors. No party shall 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. 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.

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

32. Force Majeure. No party hereto shall be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, if applicable, the nonperformance, delay or error by a third party or in any other third party system (other than any Merchant Provider or Merchant Provider system) for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications, transmission links or other equipment; any outbreak or escalation of hostilities, war, riots, terrorism or civil disorders in any country; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, earthquake, fire, flood, elements of nature or other acts of God, any act or omission of the other party or any government authority, or other causes reasonably beyond the control of such party. The foregoing shall not apply with respect to CUSTOMER's obligation to make any payment due to SERVICERS pursuant to this Agreement.

33. Choice of Law and Venue. This Agreement will be governed by the laws respecting national banks and, to the extent not so covered, by the laws of the State of Arizona without regard to conflicts of law provisions. If any part of this Agreement is not enforceable, the remaining provisions still remain valid and enforceable. To the extent permitted under Applicable Law, the exclusive venue for any actions or claims arising under or related to this Agreement shall be in the courts of the State of Arizona, and each party submits to the jurisdiction of those courts in connection with such actions or claims. To the extent permitted under Applicable Law, CUSTOMER 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.

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

35. Attorney Fees Related to Contract Obligations. CUSTOMER shall be liable for any and all attorney's fees, collection costs and other costs and expenses paid or incurred by SERVICERS in the enforcement hereof, or in collecting any amount due from CUSTOMER to SERVICERS hereunder or resulting from any breach by CUSTOMER of any of the terms or conditions of this Agreement.

36. Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing, shall be sent by mail, if to CUSTOMER at the address appearing on the first page of this Agreement, if to BAMS, at the following address: Banc of America Merchant Services, LLC, 1307 Walt Whitman Road, Melville, New York 11747, Attention: Executive Vice President Operations, with a copy to Attention: General Counsel's Office, 150 N. College Street, Mail Code NC1-028-15-01; Charlotte, NC 28213, and if to BANK, 1231 Durrett Lane, Louisville, KY 40213, Attention: Operations Manager, with a copy to BANK's Legal Department-Merchant Services Group, at Bank of America, N.A., Bank of America Plaza, 101 South Tryon Street, Mail Code: NC1-002-29-01, Charlotte, North Carolina, 28255-0001. Any such notices shall be deemed to have been given when received.

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

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

38. Severability. The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

39. Entire Agreement; Waiver. This Agreement constitutes the entire agreement between the parties with respect to the subject matter, 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. Headings are for convenience and reference only, and shall not in any way affect the meaning or construction of any provision of this Agreement. Purchase orders, requests for production, pre-printed terms or other CUSTOMER-generated documents that SERVICERS may receive are for administrative convenience only and do not modify this Agreement and are expressly rejected by SERVICERS.

A waiver by any of the parties of any of the covenants, conditions, or agreements to be performed by the other 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.

40. Survival. This Section 40, Sections 14-21 (inclusive), Section 22.9, Sections 23-31 (inclusive), and Sections 33-40 (inclusive) will survive termination of this Agreement.

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

42. Card Organization Disclosure

Member Bank Information: Bank of America, NA

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

Important Member Bank Responsibilities

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

Important Merchant Responsibilities

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

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

PIMA COUNTY, ARIZONA
("CUSTOMER")

By: _____

Name: _____
(Please Print or Type)

Title: _____

Date: _____

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

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

Name: Ed Sylces
(Please Print or Type)

Title: SVP

Date: 7/24/2015

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

By: Ed Sylces

Name: Ed Sylces
(Please Print or Type)

Title: SVP

Date: 7/24/2015

APPROVED AS TO FORM

Deputy County Attorney

TOBIN ROSEN

**THIS CONTRACT IS SUBJECT TO
THE PROVISIONS OF A.R.S. § 38-511**

ANNEX 1

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

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

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

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

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

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

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

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

"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" - See either Credit Card or Debit Card.

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

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

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

"Card Validation Codes" means a three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa's Card Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; Discover's Card Validation Code is known as a CID. Card Validation Codes are used to deter fraudulent use of an account number in a non face-to-face environment (e.g., mail orders, telephone orders and Internet orders).

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

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

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

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

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

"Debit Network" means the telecommunications and processing system of a shared electronic funds transfer network.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Merchant Name:	Pima County	Average Ticket:	\$150.23
Contract Term (Years):	3	Annual Volume:	\$27,294,607
Transmission Method:	Blend	Fee Collection Frequency	Monthly
Pricing Method:	Interchange Plus		
Processing Fees:	*Authorization Fee- Per Authorization Attempt		
	**Per Item Fee- Per Settled Sale and Credit Transactions		
	***The discount rate is charged as a % of total gross dollar volume		
Card Type	Auth Fee*	Per Item Fee**	Discount Rate***
Visa	\$0.000	\$0.100	0.090%
MasterCard	\$0.000	\$0.100	0.090%
American Express	\$0.100	\$0.000	0.000%
Discover Full Service	\$0.000	\$0.100	0.090%
PIN Debit	\$0.250	\$0.000	0.000%
Per Occurrence Fees:	Amount	Description	
Chargeback Fee	\$5.00	Per Chargeback	
ACH Reject Fee	\$25.00	Per ACH Returned Item	
System Enhancements	\$150.00	Per Hour	
ACH Deposit Fee	Waived	Per ACH Deposit	
Non Qualified Surcharge	0.00%	% of Sale for Each Downgraded Transaction	
Voice Auth/ARU Fee	\$0.75	Per Voice Auth/ARU Item	
Monthly Fees:			
Additional Product Fees:			
Mobile Pay App Set Up Fee	\$19.95	Per User per Terminal ID	
Mobile Pay App Monthly Fee	\$9.95	Per User per Terminal ID	
All telecommunications costs/Third Party Fees will be passed through to CUSTOMER.			
Interchange Schedule and Qualification Attachments (Interchange Schedules)			
Visa and MasterCard Interchange	BAMS.MVD.F14.2.IC_Gross MSA		
Discover Interchange	BAMS.MVD.F14.2.IC_Gross MSA		
PIN Debit Switch and Interchange Fees	2015 BAMS Debit Network Standard Fees FD		

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

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

Important Information About Your Fees

Interchange

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

3. **Equipment Costs:**

<u>Terminal</u>	<u>Purchase</u>	<u>Rent</u>
FD 130	\$599.00 ea.	\$35.90 ea. (per month)
FD 130 Duo	\$599.00 ea.	\$35.90 ea. (per month)

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

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

<u>VISA FEES:</u> 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	0.11% Fee assessed on the gross dollar amount of all Visa transactions.
VISA KILOBYTE FEE	\$0.0025 Fee related to transmission of clearing data. Charged per kilobyte.
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 ZERO FLOOR LIMIT FEE	\$0.10 Fee assessed on all clearing transactions that are not authorized based on when the Transaction ID on the Authorization does not match the Transaction ID on the Clearing. Fee also applies when Transaction ID is missing altogether. Billed on a one month lag.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) - Credit	\$0.0195 Fee assessed on all Visa Authorization attempts. Does not apply to \$0 Account Verification messages, Real Time Clearing pre-Authorization requests, Authorization reversals, chargeback responses, and other administrative messages.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) – Debit & Prepaid	\$0.0155 Fee assessed on all Visa Authorization attempts. Does not apply to \$0 Account Verification messages, Real Time Clearing pre-Authorization requests, Authorization reversals, chargeback responses, and other administrative messages.
VISA AUTHORIZATION SYSTEM MISUSE FEE	\$0.045 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 INTERNATIONAL SERVICE FEES (FOR PURCHASE TRANSACTIONS)	0.40% of the source amount on U.S. Acquired Original Purchase transactions when the Issuer Country is different from the Merchant Country.
VISA INTERNATIONAL 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 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) – 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 US DEBIT INTEGRITY TRANSACTION FEE	\$0.10 charged on each signature debit Card, Non-PIN Debit Card transaction (including Visa Consumer and Business debit cards and Visa Consumer and Commercial Prepaid Cards) that does not meet the qualification criteria defined under the Visa U.S. Custom Payment Service (CPS) program.
VISA FIXED ACQUIRER NETWORK FEE	See Visa Fixed Acquirer Network Fee section of rate schedule for Visa/MasterCard/Discover Interchange referenced in Interchange Schedules section above. 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.
MasterCard Fees: The following fees result from charges assessed to SERVICERS from MasterCard and are subject to increases, decreases and additional new fees imposed by MasterCard.	
Fee/Name	Fee/Description
MASTERCARD ASSESSMENT FEE	0.11% Fee assessed on the gross dollar amount of all MasterCard transactions.
MASTERCARD ASSESSMENT FEE (>=\$1,000)	0.02% Fee assessed on the gross dollar amount of MasterCard Consumer and Commercial credit transactions that are \$1,000 or greater.
MASTERCARD KILOBYTE FEE	\$0.0035 Fee related to transmission of clearing data. Charged per kilobyte.
MASTERCARD CROSS BORDER FEE (US)*	0.40% 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. * Any combination of merchant location and issuer in USA, Puerto Rico, Virgin Islands, Guam, Marshall Islands and Northern Mariana Islands will be exempt from the Cross Border fee.
MASTERCARD CROSS BORDER FEE (Non US)*	0.80% 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. * Any combination of merchant location and issuer in USA, Puerto Rico, Virgin Islands, Guam, Marshall Islands and Northern Mariana Islands will be exempt from the Cross Border fee.
MASTERCARD NETWORK ACCESS AND BRAND USAGE (NABU) FEE	\$0.0195 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 AVS CARD NOT PRESENT ACCESS FEE	\$0.0075 Assessed on all MasterCard Card Not Present Authorizations that use the Address Verification Service (AVS) that are submitted for more than \$0.
MASTERCARD AVS CARD PRESENT ACCESS FEE	\$0.005 Assessed on all MasterCard Card Present Authorizations that use the Address Verification Service (AVS) that are submitted for more than \$0.
MASTERCARD ACCOUNT STATUS INQUIRY FEE - INTERREGIONAL	\$0.03 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 CVC2 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 CVC2 and AVS, prior to obtaining an actual Authorization.
MASTERCARD PROCESSING INTEGRITY FEE	\$0.055 Fee assessed on all MasterCard authorized transactions which are not followed by a matching MasterCard clearing transaction (or not reversed in the case of a cancelled transaction). Automated Fuel Dispensers (5542) are not subject to this fee. Rate includes additional \$0.01 reporting cost from MasterCard for each transaction. Billed on a one month lag.
MASTERCARD LICENSE VOLUME FEE	0.005% of MasterCard volume. Fee based on a good faith effort to recover and allocate among our customers MasterCard's annual fees for licensing and third party processing and calculated by multiplying your settled MasterCard dollar volume by the percentage rate (which rate may be adjusted to reflect changes in those MasterCard fees and/or our allocation).
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 e-COMMERCE SUSPECT FRAUD INDICATOR REBATE	\$0.015 Rebate of \$0.015 for every e-Comm/Card Not Present authorization reversal that includes the suspect fraud indicator. The suspect fraud indicator is used in the e-Comm/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% 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.
Discover Network Fees: The following fees result from charges assessed to SERVICERS from Discover Network and are subject to increases, decreases, and additional new fees imposed by Discover Network. Please note that Discover Network fees apply only to Discover transactions acquired by Bank of America Merchant Services.	
Fee/Name	Fee/Description
DISCOVER NETWORK DATA USAGE FEE	\$0.0185 Fee assessed on all Discover, JCB, UnionPay, Diners Club International, and Korea BCCard sales and credit (return) transactions.
DISCOVER NETWORK ASSESSMENT	0.105% Fee assessed on the gross dollar amount of all Discover, JCB, UnionPay, Diners Club International, and Korea BCCard transactions.
DISCOVER NETWORK INTERNATIONAL SERVICE FEE	0.55% Fee assessed on all Discover, Diners Club International, JCB, UnionPay, and Korea BCCard transactions at a U.S. merchant location with a non-U.S. issued card.
DISCOVER NETWORK INTERNATIONAL PROCESSING FEE	0.40% Fee assessed on all Discover, Diners Club International, JCB, UnionPay, and Korea BCCard 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 BC card Authorizations.

5. **General Pricing Information:**

- a. **Interchange Schedules.** The fees and assessments and qualifying criteria set forth above and in the rate schedules referenced in the Interchange Schedules section above which are annexed hereto by such references thereto may be changed from time to time as a result of Card Organization changes. References in those rate schedules to the "Program Guide" and "Application" shall mean the Agreement.
- b. **Information Regarding Certain Transaction Fees for the Above Card Types**
 - (i) Billable transactions include: purchases, returns, declines, reversals, terminal balancing totals and Authorizations.
 - (ii) Authorization fees apply to all attempted Authorizations and approved Authorizations.
 - (iii) Authorization 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 BAMS and/or any applicable Person and will be collected by BAMS as set forth in the 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) CUSTOMER shall be responsible for payment of all shipping costs associated with any equipment purchased, leased or maintained by BAMS under this Agreement.

Other Card Services Supplement to Merchant Processing Agreement and Attachment I

Debit Transactions Supplement to Merchant Processing Agreement and Attachment II

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

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

OTHER CARD SERVICES SUPPLEMENT TO MERCHANT PROCESSING AGREEMENT:

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

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

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

2. ISSUER CONSENTS:

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

3. AUTHORIZATION SERVICES ONLY:

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

4. PROCESSING AND SUBMISSION TO ISSUERS:

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

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

5. DISCOVER PROCESSING PROVISIONS:

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

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

ATTACHMENT I TO SCHEDULE A:

American Express*	<u> X </u>	Diners Club***	<u> </u>	Discover®	<u> </u>
JCB***	<u> </u>	Fleet*	<u> </u>	Voyager**	<u> </u>
Wright Express*	<u> </u>				

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

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

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

1. FEES: See Schedule A.

General Pricing Information:

Billable transactions include: purchases, returns, declines, reversals, Authorizations & Terminal balancing totals.

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

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

BANC OF AMERICA MERCHANT SERVICES, LLC
(BAMS)

By: _____

Title: _____

Date: _____

[Signature]
SVR
7/24/2015

PIMA COUNTY, ARIZONA
(CUSTOMER)

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

[Signature]
Deputy County Attorney
TOBIN ROSEN

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

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

DEBIT TRANSACTIONS SUPPLEMENT TO AGREEMENT:

1. Special Provisions For PIN Debit Card

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

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

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

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

- All PIN Debit Card transactions must be authorized and processed electronically. There is no voice Authorization or Imprinter procedure for PIN Debit Card transactions.
- CUSTOMER may not complete a PIN Debit Card transaction that has not been authorized. If CUSTOMER cannot obtain an Authorization at the time of sale, CUSTOMER should request another form of payment from the Cardholder or process the transaction as a Store and Forward or Resubmission, in which case CUSTOMER assumes the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.
- CUSTOMER may not complete a PIN Debit Card transaction without entry of the PIN by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. CUSTOMER cannot accept the PIN from the Cardholder verbally or in written form.
- The Debit Network used to process PIN Debit Card transaction will depend upon, among other things, SERVICERS' business considerations the availability of the Debit Network at the time of the transaction and whether a particular PIN Debit Card is enabled for a particular Debit Network, the routing requirements established by the Debit Networks and the Issuers, or other factors. CUSTOMER agrees that SERVICERS may, in their sole discretion, utilize any Debit Network available to SERVICERS for a given PIN Debit Card transaction.
- CUSTOMER must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- CUSTOMER may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, CUSTOMER must request another form of payment from the Cardholder.
- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.
- CUSTOMER acknowledges that CUSTOMER shall not perform or attempt to perform PIN Debit Card return transactions on PIN Debit Card sales transactions. CUSTOMER shall not prompt Cardholder to enter PIN for return transactions. To the extent CUSTOMER allows refunds or returns on PIN Debit Card sales transactions, CUSTOMER shall return/refund such amounts to the Cardholder in cash. **CUSTOMER IS RESPONSIBLE TO SECURE CUSTOMER'S TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

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

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

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

There are several reasons for adjustments being initiated:

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

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


ATTACHMENT III TO SCHEDULE A TO AGREEMENT:

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

PIMA COUNTY, ARIZONA
(CUSTOMER)

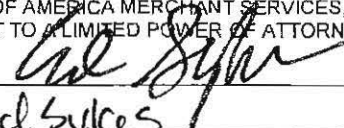
By: _____
Title: _____
Date: _____

BANC OF AMERICA MERCHANT SERVICES, LLC
(BAMS)

By: 
Title: SVP
Date: 7/24/2015

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

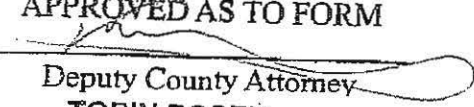
By: BANC OF AMERICA MERCHANT SERVICES, LLC,
PURSUANT TO A LIMITED POWER OF ATTORNEY

By: 
Name: Ed Sylves
(Please Print or Type)

Title: SVP

Date: 7/24/2015

APPROVED AS TO FORM


Deputy County Attorney
TOBIN ROSEN

EQUIPMENT PURCHASE AND RENTAL SUPPLEMENT TO MERCHANT PROCESSING AGREEMENT

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

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

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

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

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

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

5. Payment of Amounts Due.

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

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

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

6. Use and Return of Equipment; Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. **Default; Remedies.**

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

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

PIMA COUNTY, ARIZONA
(CUSTOMER)

By: _____

Title: _____

Date: _____

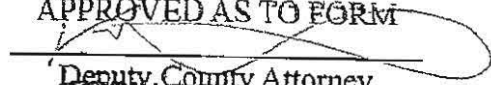
BANC OF AMERICA MERCHANT SERVICES, LLC
(BAMS)

By:  _____

Title: SVP

Date: 7/24/2015

APPROVED AS TO FORM


Deputy County Attorney
TOBIN ROSEN

GLOBAL GATEWAY e4 SERVICES ADDENDUM TO MERCHANT PROCESSING AGREEMENT (GOVERNMENT)

THIS GLOBAL GATEWAY e4 SERVICES ADDENDUM TO MERCHANT PROCESSING AGREEMENT ("GGe4 Addendum") dated _____, 2015 ("Effective Date") is among BANC OF AMERICA MERCHANT SERVICES, LLC ("BAMS"), BANK OF AMERICA, N.A. ("Bank") and PIMA COUNTY, ARIZONA ("Customer"); and supplements the Merchant Processing Agreement dated _____ ("Agreement") among Customer, BAMS and Bank.

BAMS AND CUSTOMER AGREE:

1. **Definitions.** Capitalized terms used but not defined in this GGe4 Addendum are defined in the Agreement.
2. **Global Gateway e4 Services.**
 - 2.1 **Services.** BAMS will provide Customer with an electronic gateway messenger system ("GGe4 Services") that allows Customer to manage Card transaction information being transmitted when processing Customer'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 GGe4 Services system and supports a range of processing functions (e.g., purchase, refund, pre-authorization functions) and further allows Customer 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 Customer's website to submit payment posting requests to a designated URL and displays payment acceptance details and authentication information on the Customer's website, the appearance of which and payment options displayed may be configured by Customer 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 Customer'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 Customer may access its GGe4 Services account (i.e., user administration, gateway reporting, and hosted payment page configurations).
 - 2.2 **Provider.** The GGe4 Services are provided to Customer by BAMS and not Bank. Bank is not a party to this GGe4 Addendum insofar as it applies to the GGe4 Services, and Bank is not liable to Customer in any way with respect to the GGe4 Services. For the purposes of this GGe4 Addendum, the term "Servicers" in the Agreement refers only to BAMS and not the Bank.
3. **GGe4 Services Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS GGe4 ADDENDUM, THE GGe4 SERVICES ARE PROVIDED "AS IS" AND BAMS MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO THE GGe4 SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, NON-INFRINGEMENT OR THAT THEY WILL FUNCTION UNINTERRUPTED OR ERROR-FREE; AND ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) ARE DISCLAIMED.
4. **Fees.** Payment of fees for the GGe4 Services will be as set forth in the Agreement. The fees for processing transactions related to the GGe4 Services are described on Schedule A to this GGe4 Addendum. In addition to the fees described on Schedule A to this GGe4 Addendum, Customer will be responsible for all additional costs and expenses as set forth in the Agreement.
5. **Sublicense; Intellectual Property; Representations and Warranties.**
 - 5.1 **Software License; Use Restrictions.** BAMS hereby grants Customer a royalty free, non-exclusive, nontransferable, revocable, limited license to use the software (including Updates, as defined below, "Software") and documentation that BAMS, its affiliates or partners involved in provision of the GGe4 Services, provides to Customer during the term of this GGe4 Addendum for the sole and limited purpose of submitting payment transactions to BAMS for processing using the GGe4 Services; all subject to the terms of this GGe4 Addendum and the Agreement. Customer may only use the GGe4 Services in connection with the processing services Customer receives under the Agreement. Customer has no right, title or interest in or to the GGe4 Services, any related software, materials, documentation, or derivative works thereof; and nothing in this GGe4 Addendum or the Agreement assigns, transfers or creates any such right, title or interest for Customer (whether express or implied, or by estoppel or otherwise). Any and all right, title or interests associated with the GGe4 Services that are not expressly granted by BAMS within this GGe4 Addendum are expressly withheld. Customer will not take any action inconsistent with the ownership, title or license rights associated with the GGe4 Services. Customer will not file any action, in any forum, challenging ownership of the GGe4 Services, any related software, materials, documentation or derivative works thereof. Breach of this Section

constitutes a material breach of this GGe4 Addendum and the Agreement, and BAMS may immediately suspend or terminate Customer's use of the GGe4 Services, this GGe4 Addendum or the Agreement in the event of such breach.

- 5.2 Customer will not, and will not permit others to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the GGe4 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 GGe4 Services or any portion thereof; (iii) use altered versions of the GGe4 Services or portion thereof; (iv) use, operate or combine the GGe4 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 GGe4 Addendum or the Agreement; or (v), other that intended by its nature, use the GGe4 Services, or any portion thereof, as a standalone or non-integrated program. Customer will not permit others to access the GGe4 Services, any related software, materials or documentation, or derivative works thereof. Customer will not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting BAMS' or other third parties' proprietary interests in the GGe4 Services.
- 5.3 BAMS reserves the right to alter, immediately suspend or upon notice terminate the GGe4 Services in the event Customer violates the terms of this GGe4 Addendum, the Agreement or if BAMS terminates any agreement with third parties that are involved in providing the GGe4 Services, or BAMS is otherwise unable to continue to provide the GGe4 Services.
- 5.4 **Software Updates.** From time to time BAMS may release updates ("Updates") to the Software, which must be installed and integrated with Customer's systems within 30 days of receipt of such Updates. Customer acknowledges that failure to install Updates in a timely fashion may impair the functionality of the GGe4 Services, and associated Services provided under the Agreement and accessed through the GGe4 Services. BAMS will have no liability for Customer'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.
- 5.5 **Software Return/Destruction.** Upon termination or expiration of this GGe4 Addendum, all licenses granted hereunder will immediately terminate and Customer will either return or destroy the Software, certifying such destruction in writing to BAMS.
6. **Termination.** In addition to the termination rights set forth in the Agreement, this GGe4 Addendum will automatically terminate upon any termination or expiration of the Agreement.
7. **Full Force and Effect.** The terms of the Agreement are integrated within this GGe4 Addendum and the Agreement remains in effect as supplemented hereby. In the event of any conflict between the terms of this GGe4 Addendum and the Agreement, this GGe4 Addendum will control with respect to the GGe4 Services. References to the Agreement after the date of this GGe4 Addendum include this GGe4 Addendum.
8. **Representations and Warranties.** Customer and BAMS each represent and warrant: (i) they have corporate authority to execute this GGe4 Addendum; and (ii) executing this GGe4 Addendum does not constitute a material conflict with, breach or default under any documents, agreements or other instruments which are binding upon the parties.
9. **Counterparts.** This GGe4 Addendum may be executed in any number of counterparts, each of which is deemed an original and all of which constitute one and the same instrument. Facsimile, electronic or other copies of this executed GGe4 Addendum are effective.

EXECUTED:


PIMA COUNTY, ARIZONA

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

Deputy County Attorney
TOBIN ROSEN

BANC OF AMERICA MERCHANT SERVICES, LLC

By: 
Name: Ed Sykes
Title: SVP

SCHEDULE A

FEES FOR GGe4 SERVICES

Fees

Initial Set-Up Fee (per location)	\$99.00
Monthly Fee (per location)	\$16.00
Global Gateway Transaction Processing Fee (per authorization)	\$ 0.05

MOBILEPAY SERVICES ADDENDUM TO MERCHANT PROCESSING AGREEMENT (GOVERNMENT)

THIS MOBILEPAY SERVICES ADDENDUM ("MobilePay Addendum") dated _____, 2015 ("Effective Date") is among Pima County, Arizona ("Customer"); Banc of America Merchant Services, LLC ("BAMS"); and the member bank identified in the Merchant Processing Agreement ("Agreement") ("Bank") (collectively BAMS and Bank are the "Servicers"); and supplements the Agreement among Customer, BAMS and Bank.

1. **Definitions.** Capitalized terms used but not defined in this MobilePay Addendum are defined in the Agreement.
2. **MobilePay Services.** The MobilePay Services will provide Customer with access to a mobile payment gateway that enables Customer to use a wireless services compatible, web-enabled mobile device with a data plan and web browser capable of processing XHTML Mobile Profile pages in order to: (a) log onto a secure website application, (b) enter certain consumer credit card transaction information for which it is prompted, (c) submit the transaction information to BAMS for processing, (d) receive an authorization or decline message for transactions submitted to BAMS for processing, (e) receive an electronic receipt for authorized transactions; and (f) send such electronic receipt to the consumer e-mail address(es) after the transaction is complete (collectively, the "MobilePay Services"). The MobilePay Services are for Customer's internal business use only and apply only to Card transactions that Customer sends to BAMS for authorization and settlement pursuant to this MobilePay Addendum and the Agreement.

The MobilePay Services are provided to Customer by BAMS and not Bank. Bank is not a party to this MobilePay Addendum insofar as it applies to the MobilePay Services, and Bank is not liable to Customer in any way with respect to the MobilePay Services. For the purposes of this MobilePay Addendum, the words "we", "our" and "us" refer only to the BAMS and not the Bank.

Customer must implement any upgrades to the MobilePay Services within a commercially reasonable period of time after receiving the updates.

4. **Fees.** Payment of the fees for the MobilePay Services will be as set forth in the Agreement. The fees for the MobilePay Services are:

MobilePay Services	Product/ Fee Code	Merchant Price (\$)	No. Terminal IDs / Devices	Total Fee (\$)
Application Based (w/ Mag Stripe Reader)				
BAMS Mobile Pay Application (max 10 users)**	AVFDMB	n/a		n/a
One Time Set-Up Fee (per user/terminal ID)	62S	\$19.95	TBD	TBD
Monthly Fee (per user/terminal ID)	32Y	\$9.95	TBD	TBD
Magnetic Stripe Reader (per device)	BABEMS	\$23.95	TBD	TBD
Web Browser Based (key entry only)				
Web Version Single User**	FDMSUP	n/a	1	n/a
Web Version Multiple Users (max 5 users per terminal ID)	FDMPMU	n/a	n/a	n/a
One Time Set-Up Fee (per terminal ID)	31H	n/a	n/a	n/a
Single User Monthly Fee (per user/terminal ID)	398	n/a	n/a	n/a
Multi-User Monthly Fee (per terminal ID)	396	n/a	n/a	n/a

**Each user requires their own terminal identification (terminal ID) number to ensure appropriate set-up

5. **MobilePay Services Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS ADDENDUM, BAMS MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO THE MOBILEPAY SERVICES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT BY THE MOBILEPAY SERVICES OR THAT THEY WILL FUNCTION UNINTERRUPTED OR ERROR-FREE; AND ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) ARE DISCLAIMED AS SET FORTH IN THIS ADDENDUM AND THE AGREEMENT.
6. **Intellectual Property.** BAMS grants to Customer a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this MobilePay Addendum to use the MobilePay Services, and the associated trademarks or service marks identified in the Operating Guide, within the United States and subject to the terms of this MobilePay Addendum and the Agreement. Customer has no right, title or interest in or to the MobilePay Services, any related software, materials, documentation, or derivative works thereof; and nothing in this MobilePay Addendum or the Agreement assigns, transfers or creates any such right, title or interest for Customer (whether express or implied, or by implication, estoppel or otherwise). Any rights associated with the MobilePay Services that are not expressly granted by BAMS within this MobilePay Addendum are withheld. Customer will not take any action inconsistent with the ownership, title or license rights associated with the MobilePay Services. Customer will not file any action, in any forum, challenging ownership of the MobilePay Services, any related software, materials, documentation or derivative works thereof. Breach of this Section constitutes a material breach of this MobilePay Addendum and the Agreement, and BAMS may immediately

suspend or terminate Customer's use of the MobilePay Services, this MobilePay Addendum or the Agreement in the event of such breach.

Customer will not, and will not permit others to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the MobilePay 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 MobilePay Services or any portion thereof; (iii) use altered versions of the MobilePay Service or portion thereof; (iv) use, operate or combine the MobilePay Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with this MobilePay Addendum or the Agreement; or (v) use the MobilePay Services, or any portion thereof, as a standalone or non-integrated program. Customer will not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting BAMS' or other third parties' (if any) proprietary interest in the MobilePay Services.

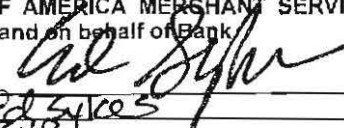
7. **Full Force and Effect.** The Agreement remains in effect as amended and supplemented by this MobilePay Addendum. In the event of any conflict between the terms of this MobilePay Addendum and the Agreement, this MobilePay Addendum will control with respect to the MobilePay Services. References to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

EXECUTED:

PIMA COUNTY, ARIZONA

BANC OF AMERICA MERCHANT SERVICES, LLC
for itself and on behalf of Bank

By: _____
Name: _____
Title: _____

By: 
Name: Ed Sykes
Title: SVP

APPROVED AS TO FORM


Deputy County Attorney

TOBIN ROSEN

TRANSARMOR SERVICES ADDENDUM TO MERCHANT PROCESSING AGREEMENT (GOVERNMENT)

THIS TRANSARMOR SERVICE ADDENDUM ("TransArmor Addendum") dated _____, 2015 ("Effective Date") is among Pima County, Arizona ("Customer"); Banc of America Merchant Services, LLC ("BAMS"); and Bank of America, N.A. ("Bank") (collectively BAMS and Bank are the "Servicers"); and supplements the Merchant Processing Agreement ("Agreement") between Customer, BAMS and Bank dated _____, 2015.

1. **Definitions.** Capitalized terms used but not defined in this TransArmor Addendum are defined in the Agreement.
2. **TransArmor Services.** The "TransArmor Services" will provide Customer with (a) encryption of point-of-sale data, including, historical transaction data, card number, and track 1 and track 2 magnetic stripe data, related to payments or non-monetary electronic transactions (e.g., loyalty transactions) when such data is uploaded and sent to BAMS for processing; and (b) tokenization of the authorization response that BAMS provides to Customer in connection with processing the point-of-sale or non-monetary, electronic transaction data Customer submits by converting and replacing BAMS' authorization response data with a token value (a "Token"). The TransArmor Services are incorporated within the term Services in the Agreement. BAMS will provide Customer with an encryption key that must be used to encrypt Card data upon upload for transmission to BAMS in connection with the TransArmor Services. Customer may not use encryption keys that BAMS does not provide to Customer in connection with the TransArmor Services. The TransArmor Services are for Customer's internal business use only and apply only to Card transactions that Customer sends to BAMS for authorization and settlement pursuant to this TransArmor Addendum and the Agreement.

TransArmor Services do not include, and specifically exclude, point-of-sale data or authorization responses processed in connection with electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless mode, WEX transactions, Voyager transactions, or other Card transaction types that BAMS determines are not capable of being tokenized using the TransArmor Services. Further, the TransArmor Services are provided to Customer by BAMS and not Bank. Bank is not a party to this TransArmor Addendum insofar as it applies to the TransArmor Services, and Bank is not liable to Customer in any way with respect to the TransArmor Services. For the purposes of this TransArmor Addendum, the words "we", "our" and "us" refer only to the BAMS and not the Bank.

Use of the TransArmor Services does not cause Customer to be compliant with, or eliminate Customer's obligation to comply with, the data security requirements or Card Organization Rules as set forth in the Agreement. Use of the TransArmor Services does not eliminate the risk of, and is not a guaranty against, an unauthorized breach of Customer's Merchant Systems. Customer must implement the TransArmor Services according to the Operating Guide, which includes, without limitation, (i) implementing the services throughout Customer's Merchant Systems involved in the Services, (ii) replacing existing Card numbers within Customer's Merchant Systems involved in the Services with Tokens, and (iii) complying with applicable data security standards and reviews set forth in the Agreement and Card Organization Rules. Customer must implement any upgrades to the TransArmor Services within a commercially reasonable period of time after receiving the updates. Customer may not retain Card account numbers following implementation of the TransArmor Services and must use Tokens in lieu of Card account numbers for all activities related to the Services provided by BAMS subsequent to receipt of a Token associated with a Card transaction; including, without limitation, settlement, retrieval, chargeback and adjustment processing and transaction reviews. Customer may only use Merchant Systems, gateways or VARs that are certified for use with the TransArmor Services. If Customer submits Card transactions as batch files for processing, Customer must use batch file processing services, truncated report viewing and data extract creation tools provided by BAMS in connection with the TransArmor Services.

3. **TransArmor Limited Warranty.** BAMS warrants that the Token returned to Customer as a result of using the TransArmor Service cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside Customer's Merchant Systems involved in BAMS' payment processing (the "TransArmor Limited Warranty"). The TransArmor Limited Warranty applies only to authorization responses for which BAMS returns a Token to Customer and the subsequent use of such Token to initiate a financial sale transaction as described in the TransArmor Limited Warranty. To be eligible for the TransArmor Limited Warranty, Customer must obtain authorization and settlement processing services from BAMS and must be in compliance with the terms of Customer's Agreement and this TransArmor Addendum.

BAMS will indemnify and hold Customer harmless from direct damages, including third party claims, resulting from BAMS' breach of the TransArmor Limited Warranty; provided, in no event will BAMS' cumulative liability for its breach of the TransArmor Limited Warranty exceed the lesser of (i) the limitation of liability set forth in the Agreement or (ii) the amount of fees received by BAMS for the TransArmor Services in the immediately preceding 12 months. The indemnity obligation set forth in the preceding sentence is Customer's express and sole remedy for BAMS' breach of the TransArmor Limited Warranty. BAMS will not be liable under any theory at law or in equity for any special, indirect, incidental, consequential (including lost profits, revenue or business

opportunities), exemplary or punitive damages in connection with a breach of the TransArmor Limited Warranty, regardless of whether such damages were foreseeable or Customer was advised of the possibility of such damages. The TransArmor Limited Warranty is void if Customer (a) fails to comply with the Operating Guide for the tokenization process, the terms of this TransArmor Addendum or the Agreement, or (b) is grossly negligent or engage in willful misconduct with respect to the tokenization process or use of a Token. The TransArmor Limited Warranty and BAMS' indemnity obligations and limitations related to it are independent of the parties' data security or confidentiality obligations set forth in the Agreement.

4. **Fees.** Payment of fees for the TransArmor Services will be as set forth in the Agreement. The fees for the TransArmor Services are:

Implementation Fee: WAIVED

Transaction Fee (per transaction): \$0.03

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

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

Customer will not, and will not permit others to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the TransArmor 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 TransArmor Services or any portion thereof; (iii) use altered versions of the TransArmor Service or portion thereof; (iv) use, operate or combine the TransArmor Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with this TransArmor Addendum or the Agreement; or (v) use the TransArmor Services, or any portion thereof, as a standalone or non-integrated program. Customer will not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting BAMS' or other third parties' (if any) proprietary interest in the TransArmor Services.

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

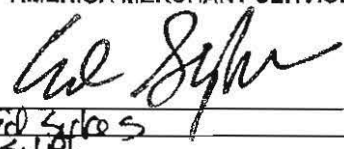
(Signatures follow on next page)

EXECUTED:

PIMA COUNTY, ARIZONA

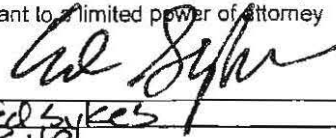
By: _____
Name: _____
Title: _____

BANC OF AMERICA MERCHANT SERVICES, LLC


By: 
Name: Ed Sykes
Title: SVP

BANK OF AMERICA, N.A.

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

By: 
Name: Ed Sykes
Title: SVP

APPROVED AS TO FORM


Deputy County Attorney

TOBIN ROSEN