

Product Guide

1. Introduction

This Product Guide forms part of your Agreement with Bank of America, N.A. (“Bank”, “us” or “our”), and sets out the additional products and services (“**Additional Service**”) that we may provide to you in connection with the Merchant Services.

2. Definitions:

Terms used in this Product Guide but not defined have the meanings attributed to them in your Agreement.

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

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

“**Bank API**” means an API provided by us.

“**Customer**” means any potential, current or former customer of Merchant. Customer includes Cardholders.

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

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

“**Intellectual Property Rights**” means our rights in relation to intellectual property in connection with the Additional Services as set out in Section 10.

“**Offline Transaction**” means a transaction that is initiated when the Device is not connected to the internet, and/or the Merchant Equipment cannot connect the Bank Services.

“**Third Party POS System App**” means a point of sale application provided by a third party.

“**Updates**” means any update, maintenance, improvement or bug fixes to any Software.

3. Election of Additional Services

a) Each addendum to this Product Guide sets out the specific terms and conditions that apply to each Additional Service that you have chosen to receive.

b) The Additional Services that you can elect to receive include:

- i) Merchant Equipment (Addendum A);
 - ii) Mobile Point of Sale (MPOS) (Addendum B);
 - iii) Data Protection (Addendum C);
 - iv) Cellular Service (Addendum D);
 - v) PCI Assist (Addendum E);
 - vi) Bank of America Gateway (Addendum F);
 - vii) Value Added Services (Addendum G);
 - viii) Point of Sale Solution (“**POS Solution**”) (Addendum H);
 - ix) Fraud Management Tool (Addendum I);
 - x) Virtual Terminal (Addendum J);
 - xi) Third Party Software and Solutions (Addendum K);
 - xii) Gift Card Services (Addendum L).
- c) We reserve the right to add or remove any Additional Service made available to you at any time.

4. Acceptance of terms and conditions

The use or activation by you of any Additional Service, such as accepting payments by way of an Additional Service, represents your agreement to the terms and conditions set out in this Product Guide. Any of your obligations set out in this Product Guide relating to the use of the Additional Service are in addition and not in substitution of any other obligations imposed on you by the Agreement.

5. Restrictions

You shall not and shall not permit any Person to:

- a) access or attempt to access any Additional Service or any part of any Additional Service that is not intended to be available to you;
- b) in connection with any Additional Service, send or store: (a) infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (b) any malicious code (including, but not limited to, any viruses, trojans, worms, bots, ransomware, viruses or spyware) (“**Malicious Code**”);
- c) access or use (in any format) any Additional Service or any part of any Additional Service through any time-sharing service, service bureau, network, consortium, or other means;
- d) without our prior written consent, use, ship or access any Additional Service or any part of any Additional Service outside of the United States;
- e) perform or attempt to perform any actions that would interfere with the proper working of the Additional Service, prevent access to or the use of the Additional Service by other users, or impose a large load on Bank’s infrastructure, network capabilities or bandwidth;
- f) use the Additional Service or any part of any Additional Service except as permitted in this Product Guide;

- g) access or use the any Additional Service in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other rights of any third party, or that violates any applicable Law;
- h) access or use the any Additional Service in order to build any commercially available product or service;
- i) rent, lease, lend, sell, resell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Additional Service, or any part thereof, to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- j) use the Additional Service for any other purpose than for your business.

6. Third Party Services

- a) The Additional Services may incorporate or contain links to services, products, Software or promotions provided by third parties and not by us (“**Third Party Services**”). Each provider of a Third Party Service is responsible for ensuring that such Third Party Service will function properly with the Bank API (where applicable) and the Additional Services.
- b) We may in our absolute discretion support or require the use of Third Party Services, including Third Party POS System Apps, in connection with the Merchant Services and/or any Additional Services. We disclaim any liability in connection with any Third Party Services and will not be responsible for any effect or impact on the Merchant Services and/or Additional Services as a result of your use of a Third Party Service or any access to or use of Merchant Data in connection with the Third Party Services.
- c) If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with the Third Party Services including obtaining and maintaining any required third party hardware and/or Software that is required for the Third Party Services to work with the Additional Service and/or the Merchant Services. Merchant acknowledges and agrees that the Third Party Services may require access to or use of Merchant Data and Merchant’s use of the Third Party Services constitutes the Merchant’s consent to such access and use and to Bank’s transmission of Merchant Data to the provider of the Third Party Services.
- d) ANY ACCESS OR CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH YOUR USE OF THIRD PARTY SERVICES IS ACCESSED OR DOWNLOADED AT YOUR OWN RISK. WE WILL NOT BE RESPONSIBLE FOR ANY ACTION OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND EXPRESSLY DISCLAIM ALL LIABILITY RELATED TO ANY THIRD PARTY SERVICES, INCLUDING ANY LIABILITY RELATED TO THE NON-FUNCTIONING OF ANY THIRD PARTY SERVICES OR TO ACCESS TO OR USE OF MERCHANT DATA BY OR IN CONNECTION WITH THE THIRD PARTY SERVICES OR THE PROVIDER THEREOF. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROVIDER OF A THIRD PARTY SERVICE OR THIRD PARTY SERVICE ADVERTISED OR OFFERED THROUGH THE PRODUCT OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING. WE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES.
- e) We will not provide any assistance or customer service to you related to your use of Third Party Services.

7. Offline Transactions

- a) Offline Transactions will be queued and submitted for authorization when Internet connectivity to the Merchant Services is restored. There are several risks associated with accepting Offline Transactions:

- i) When you accept an Offline Transaction, you accept the risk of a declined or partial payment when the Device is back online. For example, if a Card is expired or cancelled, or if the PIN is incorrect, the payment will be declined.
 - ii) The Cardholder could chargeback the amount with the Issuer, denying they carried out the transaction.
 - iii) There is also the potential for increased pricing with Offline Transactions.
- b) You assume all risk, responsibility and liability associated with any Offline Transaction that you choose to conduct while the Device is offline.

8. Small Business Online Banking

- a) In order to receive Merchant Services and Additional Services, you must follow our online registration process to register and create an "Online ID" which will be necessary for you to view your merchant account online (Business Advantage 360, our Small Business Online Banking Solution, "**BA360 Account**").
- b) You agree to:
- i) provide true, accurate, current and complete information about yourself and/or your business; and
 - ii) maintain and update this information to keep it true, accurate, current and complete.
- c) You agree that you will ensure that all relevant information and settings as entered into your BA360 Account are up to date to ensure that Card transactions are processed accurately and without error. We are not responsible for any liability incurred relating to the inaccuracy of any such information or settings, or if any such information or settings are out of date.
- d) If any information provided by you is untrue, inaccurate, not current or incomplete, we have the right to terminate your BA360 Account and refuse any and all current or future use of any Additional Service.

9. Maintenance

- a) From time to time, we may perform maintenance on an Additional Service which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. We may contact you in order to assist you with any Additional Service and obtain information needed to identify and fix any errors.
- b) We may, at our discretion, release enhancements, improvements or other Updates to any Additional Service. If we notify you that such Update requires an installation, you shall integrate and install such an Update into your systems within thirty (30) days of your receipt of such notice. Failure to install any Updates in a timely fashion may impair the functionality of the Additional Service. We shall have no liability for your failure to properly install the most current version of any Software or any Update, and we shall have no obligation to provide support or services for any outdated versions.
- c) Certain Software can automatically install, download, and/or deploy updated and/or new components, which may include a new version of the Software itself. You shall not, in any event or in any manner, impede the Update process. You agree to assume full responsibility and indemnify us for all damages and losses, of any nature, for all adverse results or third party claims arising from your impeding the Update process.

10. Intellectual Property Rights

- a) All right, title and interest in and to all confidential information and intellectual property related to the Additional Service (including Marks, all Software, the content of any materials, web screens, layouts,

processing techniques, procedures, algorithms, and methods and any Updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us at any time or employed by us in connection with the Additional Service, shall be and remain, as between us and you, our or our affiliates', our vendors' or licensors' (as applicable) sole and exclusive property and all rights, title and interest associated with the Additional Service not expressly granted by us in this Product Guide are deemed withheld ("**Intellectual Property Rights**"). You may not use Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.

- b) You shall not, and shall not permit any third party to: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying Suggestions or algorithms of the Additional Service, (or any part), except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Additional Service (or any part) or the Marks; (c) create derivative works of or based on the Additional Service (or any part), or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Additional Service (or any part); (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Additional Service (or any part) except as permitted in this Product Guide; or (f) remove, relocate, or otherwise alter or obscure any proprietary rights notices from the Additional Service (or any part) or the Marks.
- c) If we provide you with copies of or access to any Software or documentation, unless otherwise expressly stated in writing, that Software and documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the Additional Service and solely for you to access and use the Software and documentation to receive the Service for its intended purpose on Devices owned or licensed by you.
- d) You shall not take any action inconsistent with the stated title and ownership in this Section 10(d). You will not file any action, in any forum that challenges the ownership of any part of the Additional Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of your Agreement.

11. Suggestions in relation to the Additional Services

We may invite you to or you may choose to submit comments or Suggestions about any Additional Services, including without limitation about how to improve them or our other products ("**Suggestions**"). By submitting any Suggestion, you acknowledge that your disclosure is gratuitous, unsolicited, and without restriction; that it will not place us under any fiduciary or other obligation; and that we are free to use the Suggestion without any additional compensation to you, or to disclose the Suggestion on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, we do not waive any rights to use similar or related Suggestions previously known to us, or developed by our employees, or obtained from sources other than you.

12. Communicating with Customers through Additional Services

- a) You must comply with Applicable Law, including by obtaining any legally required consent, when collecting and using Customer contact details to communicate with your Customers through the Additional Services. You must promptly honor any Customer opt-out.
- b) You may not use the Additional Services to send marketing communications except to contact information provided directly to you by the Customer and only with the proper Customer consent as required by Applicable Law.

13. Service Limitations and Requirements

- a) The Additional Services do not function with every Device. We may alter which Devices are approved as compatible with the Additional Services in our discretion from time-to-time.

- b) You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Additional Services that are posted on the Bank's website or otherwise provided or made available to you.
- c) You are solely responsible for verifying that all information and data loaded onto a Device (e.g., menus) by us, our vendors, or our service providers at your request are accurate prior to your business use of such Device. We, our vendors, and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.
- d) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device or POS Solution; you are NOT permitted to add or modify any Customer information (including phone number and email address) on behalf of a Customer.
- e) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device or POS Solution; you are NOT permitted to add or modify a Customer's consent indication on the Customer's behalf.
- f) You (or your agents acting on your behalf) may only send marketing materials or other communications to the phone number, street address, and/or email address provided by the Customer if the Customer has specifically consented by Customer's checking the applicable box displayed on the Device or POS Solution.
- g) Notwithstanding the capability of the Additional Services to collect and store Customer information and to allow your Customers to elect to receive marketing materials, some states may LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED and/or your disclosure of such information to third parties, even if the Customer has provided consent. You acknowledge and agree that: (i) your use of Customer information obtained in connection with the Additional Service may be subject to Applicable Law; (ii) you are solely responsible for knowing such Applicable Law; and (iii) you will at all times strictly comply with Applicable Law in this regard.

14. Additional Service Disclaimer

USE OF THE ADDITIONAL SERVICES IS AT YOUR OWN RISK AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ADDITIONAL SERVICES ARE PROVIDED "AS IS" AND WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT THE ADDITIONAL SERVICES ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR DOES NOT INFRINGE THE RIGHTS OF ANY PERSON.

15. Indemnity

You will indemnify, defend, and hold us harmless (and our employees, directors, agents, affiliates and representatives) from and against all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to:

- a) your wrongful or improper use of any Additional Services;
- b) any transaction submitted by you through an Additional Service (including without limitation the accuracy of any product information that you provide or any claim or dispute arising out of products or services offered or sold by you);

- c) your violation of any third-party right, including without limitation any right of privacy, publicity right or Intellectual Property Rights;
- d) your use of any personal information obtained in connection with your use of any Additional Service;
- e) the activities under any online account or any other party's access and/or use of any Additional Service with your unique username, password, API key, or other appropriate security code;
- f) your use of Marketing Services;
- g) your failure to maintain reasonable security in connection with the use of the Additional Service; or
- h) any other party's access and/or use of any Additional Service with your user name, password, Access Credentials and any other sign on credentials/access controls for the Additional Service or any Software provided or approved by us to authenticate access to, and use of, any Additional Service.

Addendum A

MERCHANT EQUIPMENT

1. Merchant Equipment Generally. This Addendum A governs any Devices, Device Software and other Merchant Equipment that you buy from us or an authorized third party partner under the Agreement, Fee Schedule, subsequent purchase, and/or other documentation provided in connection with the purchase of Merchant Equipment (individually and collectively, “**Merchant Equipment Documents**”), except to the extent provided otherwise in the Merchant Equipment Documents. THE MERCHANT EQUIPMENT IS SOLD TO YOU FOR YOUR BUSINESS USE; THE MERCHANT EQUIPMENT IS NOT PERMITTED TO BE USED FOR HOUSEHOLD OR PERSONAL PURPOSES.
2. Purchased Merchant Equipment. Throughout the term of the Agreement, we will sell to you, and you will buy from us or an authorized third party partner, the Merchant Equipment identified in the Merchant Equipment Documents (“**Purchased Merchant Equipment**”), free and clear of all liens and encumbrances (subject to Section 8 of this Addendum A) except that any Software provided or made available in connection with the Merchant Equipment will be governed by the other terms of the Product Guide.
3. Supplies. Some supplies may be included with the hardware you purchase. We will sell you additional supplies, such as paper rolls, replacement cables, and other items to be used with Merchant Equipment (“**Supplies**”), as requested by you and as agreed to by us from time to time.
4. Payment; Additional Amounts. You must pay the purchase price for Purchased Merchant Equipment and all amounts charged for Supplies. In addition to the foregoing, you must pay all: (a) taxes, however levied, designated, or based on amounts charged or on Merchant Equipment, Supplies, or use thereof; (b) shipping and handling costs and charges for Merchant Equipment and Supplies (where applicable); (c) charges for services, including installation and de-installation, programming and re-programming, base loads, injections, app loads; and (d) any other costs described in the Fee Schedule. We may require you to pay in full before we ship Merchant Equipment and Supplies to you, or we may permit you to pay after we ship. We may require you to pay with a credit card/debit card, debiting your Settlement Account, via ACH transfer, or in any other manner we are permitted to collect any other amounts under the Agreement.
5. Delivery and Acceptance; Installation; Risk of Loss; Title; Changes to Merchant Equipment. After the Merchant Equipment has been prepared for shipment to you, we will deliver it to the address identified in the Merchant Application or to an alternative address mutually agreed upon by you and us. You are deemed to have accepted each unit of Merchant Equipment on the earlier of: (a) the seventh day after we deliver the Merchant Equipment to the shipper for shipment to you or your representative; (b) the day after the Merchant Equipment is delivered to you or your representative; and (c) for Merchant Equipment that we install for you, the date of installation (“**Acceptance**”). Merchant Equipment ships F.O.B. origin; risk of loss or damage to Merchant Equipment passes to you when Merchant Equipment is delivered to the shipper for shipment to you or your representative. Title to Purchased Merchant Equipment passes to you after you pay in full for the Purchased Merchant Equipment. If installing Merchant Equipment, you and your representatives must do so in accordance with our, and the Merchant Equipment manufacturer’s, requirements and specifications. At any time for any reason we may change Merchant Equipment model numbers or names, issue new Merchant Equipment models, discontinue Merchant Equipment, or otherwise change Merchant Equipment.
6. Use, Maintenance, and Return of Merchant Equipment.
 - 6.1 Your use of the Merchant Equipment must comply with any operating or other instructions applicable to the Merchant Equipment, the Agreement, Applicable Law, and Card Network Rules. You are responsible for obtaining permits for the Merchant Equipment.
 - 6.2 You are responsible for maintaining Merchant Equipment. You are responsible for safeguarding the Merchant Equipment from, and for insuring it via comprehensive insurance coverage against loss, damage, unauthorized use, misuse, and theft. You must notify us immediately if any of the foregoing occurs. You are

responsible for any expenses related to altering the location where Merchant Equipment is located, and other facilities and property, in connection with use of the Merchant Equipment.

6.3 You may not make or permit any physical alteration or modification of Merchant Equipment, materially change where Merchant Equipment is installed, or materially move Merchant Equipment without our prior written consent. On commercially reasonable advance notice, we or our representatives may enter your premises to examine or repair Merchant Equipment for legal or regulatory (including Card Network) compliance.

6.4 If Merchant Equipment or other communications Merchant Equipment appears defective, you must call our Customer Service team promptly. You must pay to replace any defective Merchant Equipment not promptly returned to us and must pay all legal and/or collection costs incurred by us or the Merchant Equipment owner in connection with recovering Merchant Equipment.

7. Merchant Equipment Returns. Your right to return Merchant Equipment is limited to the Replacement Warranty set forth below in Section 13 of this Addendum A, or as may otherwise be agreed to by us in our sole discretion from time to time. Any Merchant Equipment we agree to accept for return will be subject to our then-current restocking fee.
8. Security Interest. You hereby grant to us a security interest in all Merchant Equipment and the related Software to secure payment of the purchase price and authorize us to file financing statements with respect to the Merchant Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact. Our security interest in Purchased Merchant Equipment will terminate automatically when we receive full payment for the Purchased Merchant Equipment.
9. Your Responsibilities. You are solely responsible for verifying all information and data loaded onto a Device including Device Software by us or our service providers at your request are accurate prior to your business use of such Device or Device Software. Bank and its merchant providers disclaim any and all liability arising out of any inaccuracies with respect to any information or data you provide.
10. Software. From time to time we may “push” Updates to Devices, Device Software and other Merchant Equipment remotely and automatically. Such “pushed” Updates are not sold to you outright but instead are licensed to you as provided under Section 9 of this Product Guide.
11. Disclaimer of Warranties and of Compatibility with Other Payment Processors. Pursuant to Section 30.1 of your Agreement, we do not provide and we expressly disclaim all representations and warranties related to Merchant Equipment, except as provided in Section 13 of this Addendum A. Merchant Equipment and software you obtain from us may not be compatible with another payment processor’s systems. We do not have any obligation to make such software and Merchant Equipment compatible with any other processing system. If you use a payment processor other than us, you may not be able to use the Merchant Equipment and software purchased under the Agreement.
12. Limitation of Liability. NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, OUR LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE MERCHANT EQUIPMENT OR RELATED SOFTWARE SHALL NOT EXCEED THE PURCHASE PRICE PAID TO US FOR THE PARTICULAR MERCHANT EQUIPMENT INVOLVED. THESE LIMITS ARE PART OF THE LIMITATION ON LIABILITY SET FORTH IN SECTION 30.2 OF YOUR AGREEMENT, NOT AN ADDITIONAL LIMITATION ON LIABILITY.
13. Limited Two-Year Replacement Warranty on Certain Merchant Equipment. Purchased Merchant Equipment, is warranted against material defects for the two year period commencing on the date such Purchased Merchant Equipment is shipped to you (“**Replacement Warranty**”). Except as set forth below, if such Purchased Merchant Equipment becomes materially defective within the warranty period, we will replace it free of charge with refurbished Merchant Equipment of the same type. The Replacement Warranty: (i) does not include damage to Purchased Merchant Equipment resulting from accident, misuse, negligence, or abuse, or from breach of the Agreement; (ii) does not apply to Purchased Merchant Equipment that has become obsolete; and (iii) does not apply to defects that are not material. The Replacement Warranty is non-transferable and terminates on the two year anniversary of the date the

Purchased Merchant Equipment is shipped to you. Upon expiration of the Replacement Warranty, you must pay the full price to replace any Purchased Merchant Equipment. In addition, notwithstanding the Replacement Warranty, it may be necessary for you to upgrade your Purchased Merchant Equipment or purchase new Merchant Equipment from time to time, for which you will be charged. If you make a claim under the Replacement Warranty requesting replacement Merchant Equipment, you must return to us the Purchased Merchant Equipment that you claim is materially defective. We will examine and test the Purchased Merchant Equipment that you return. You will be charged the full price of replacement Merchant Equipment if we do not receive the allegedly defective Purchased Merchant Equipment from you within ninety (90) days of the date replacement Merchant Equipment is shipped to you. We may collect shipping and handling charges, any Merchant Abuse Fees (as defined in Section 14 of this Addendum A), and any other amounts arising under this Section in any manner that we may collect any other fees and amounts arising under the Agreement. For more information on making a claim under the Replacement Warranty, please contact our Customer Service.

14. Merchant Abuse Fee. IF YOU RETURN PURCHASED MERCHANT EQUIPMENT TO US PURSUANT TO THE REPLACEMENT WARRANTY, AND WE REASONABLY DETERMINE BASED ON OUR EXAMINATION AND TESTING THAT THE MERCHANT EQUIPMENT YOU HAVE RETURNED HAS BEEN DAMAGED OR IS NOT FUNCTIONING PROPERLY DUE TO ACCIDENT, MISUSE, NEGLIGENCE, ABUSE, OR BREACH OF THE AGREEMENT, OR THAT ANY MERCHANT EQUIPMENT DEFECTS ARE NOT MATERIAL, YOU WILL BE CHARGED THE FEES ASSOCIATED WITH A REPLACEMENT DEVICE (“MERCHANT ABUSE FEES”).
15. Help Desk Support. We or third parties designated by us will provide help desk support only for Purchased Merchant Equipment; we will not provide any such support or related services for any other products or Merchant Equipment. If you decide to work with a Third Party Service and have any issues with the services provided via your Third Party Service provider, contact your Third Party Service provider to resolve any issues.

Addendum B

MOBILE POINT OF SALE SOLUTION (MPOS SOLUTION)

1. The Mobile Point of Sale (MPOS) Solution consists of a Bank of America Mobile Card Reader and the “Bank of America Point of Sale – Mobile” app which must be downloaded to a mobile device in order to use the MPOS Solution. The Mobile Card Reader requires a compatible Android or iOS mobile device (smartphone or tablet with a minimum version of iOS 13 and Android 8) supplied by you to operate. You may access the MPOS Solution to process transactions through your mobile device identified by us as compatible with and capable of accessing and/or supporting the MPOS Solution using Bluetooth technology to connect the mobile device to the Mobile Card Reader. Message and data rates may apply and you are solely responsible for the payment of any fees that may be imposed by your mobile device provider.
2. In order to use the MPOS Solution, a Merchant Services account from Bank and a Small Business checking account from Bank must be opened. Merchant deposits must settle to the Bank of America Small Business checking account. PIN Debit, EBT and gift card transactions are not supported (other than Gift Cards as described in Addendum L). For contactless payments, the Mobile Card Reader D135 will only accept Visa and MasterCard.
3. To download the app, search for “BofA Point of Sale - Mobile” in the Apple App Store or the Google Play App Store.
4. The MPOS solution connects your mobile device to the card reader via Bluetooth technology. There is no Ethernet or wireless capability.
5. We may alter which Mobile Devices are approved as compatible for the use of MPOS at our discretion.
6. You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the MPOS solution provided or made available to you.
7. You agree that we shall not have any liability to you arising directly or indirectly from or otherwise concerning (a) any termination, suspension, delay or disruption of the MPOS Solution (including billing for the MPOS solution), any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the MPOS Solution or Mobile Card Reader, or any communications network, facility or Merchant Equipment beyond our or third party’s reasonable control; (c) your failed attempts to access the MPOS Solution or to complete transactions via the MPOS Solution; or (d) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by you.

Addendum C

DATA PROTECTION

1. **Definitions.** As used in this Addendum C or otherwise in connection with the Data Protection Services or components thereof, the following capitalized terms have the following meanings:

“Approved Person” means a person or role authorized to interact with data protection matters on your behalf of the merchant business.

“Data Protection Services” has the meaning set forth in Section 2 of this Addendum C.

“De-tokenization” means the translation of Tokens and return of the PANs associated with such Tokens back to you or an Approved Person, on an individual or bulk record basis, during the term of, or following termination of, the Data Protection Services, as requested by you.

“Encryption” means the obscuring of sensitive data through a software application. In relation to the service provided, the sensitive data subject to encryption includes but is not limited to: (1) track data contained on the magnetic stripe or (2) data contained on the EMV chip.

“Get PAN” means the conversion of a Token and return of the PAN associated with such Token back to you or an Approved Person (as defined for the particular Service involved) based on your (or such Approved Person’s) requests received on a per transaction basis, subject to our prior approval. These types of translations are handled as a special circumstance and might be subject to additional fees. Performing a Get PAN request might introduce additional PCI scope into your environment.

“Get Token” a process by which you may obtain a Token or a Multi-Pay Token without requesting an Authorization, which results in a non-financial Card transaction that permits you to store a Token for a single future financial Card transaction, or to store a Multi-Pay Token for future financial Card transactions, involving your related Cardholder.

“Legacy Data” is defined as credit or debit card data that the merchant holds in their environment that pre-dates this Agreement.

“Legacy Data Conversion” or **“LDC”** means the tokenization of PANs that are received on a bulk file basis, from you or an Approved Person during implementation of or in connection with your use of the Data Protection Services.

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

“PAN” means the Primary Account Number associated with a credit or debit card.

“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 transaction receipt or Credit Draft that the Merchant provides to the Cardholder.

“Token” is a randomly generated value that is used to replace sensitive data with a referential value that has no inherent value. There is a direct one-to-one mapping between Tokens and the values they represent.

“Merchant Token / PAN Token” is a Token that is used to replace a PAN as described herein. A Token generated for a PAN is unique to that merchant and is persistent across transactions.

“Billing Token” is a Token that is used to replace card holder billing data. Billing data includes:

- Merchant / PAN Token
- Card expiration date
- Billing address

Billing Tokens are an optional value added service available through the Tokenization Management Services. Billing Tokens requires a per Token creation fee. If applicable, the fee will be presented to you prior to account opening in the fee schedule. The per Token creation fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle.

“Customer Token” is a Token that is used to replace customer data. Customer data includes:

- Billing Token
- Customer Name
- Shipping Address
- Email Address
- Other merchant defined data

Customer Tokens are an optional value added service available through the Tokenization Management Services. Customer Tokens requires a per Token creation fee. If applicable, the fee will be presented to you prior to account opening in the fee schedule. The per Token creation fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle.

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

“Token Only request” means a request for Authorization, without Encryption, for which a Token or Multi-Pay Token is returned. Token Only requests are available only for Card not present transactions that are sales.

“Token Registration” has the meaning attributed to “Get Token” in accordance with Section 1 of this Addendum C.

2. Data Protection Services. The **“Data Protection Services”** consist of Encryption and Tokenization; Token Only; Get Token; Get PAN; Legacy Data Conversion; and Legacy Data De-tokenization. We will provide the Data Protection Services elected by you, subject to the terms of this Addendum C and any required approvals by us. The Data Protection Services are available only for your internal business purposes and for Card transactions you send to us for Authorization, or Authorization and settlement, pursuant to the Agreement, whether each such financial transaction occurs at the time of the related Authorization request or at a later time after Token Registration for the related PAN. The Data Protection Services are not available for electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless mode, WEX transactions, Voyager transactions, private label Card transactions, or other Card transaction types that we determine are not capable of Tokenization. Below are additional terms regarding certain aspects of the Data Protection Services.
3. Encryption. Tokenization and Token Only. We shall provide Encryption at the time PAN or magnetic stripe or chip, as applicable, is first read by, or entered into, your Device for an Authorization or a Token Registration request. After we receive your Authorization or Token Registration request we will return a Token to you, in lieu of the PAN, with the Authorization response or in response to a Token Registration request.
4. Person. We shall not be responsible for any claims, losses, or liabilities arising from your, or the Approved Person’s, use, transmission, storage, or handling of Legacy Data. You agree that any and all uses of Legacy Data is not a breach of the confidentiality provisions of the Agreement.

5. Your Responsibilities. You shall implement the Data Protection Services according to the operating instructions, including: (a) implementing the Data Protection Services throughout the Merchant Systems involved in the Services; and (b) replacing existing PANs within Merchant Systems involved in the Services with Tokens. You shall implement any upgrades to the Data Protection Services within a commercially reasonable period of time after receiving the Updates. You shall not retain PANs following implementation of the Data Protection Services and shall use Tokens or account truncation (as applicable) in lieu of PANs for all activities related to the Services subsequent to receipt of a Token associated with a Card transaction, including settlement, retrieval, Chargeback and adjustment processing and transaction reviews. You shall only use Merchant Systems, gateways, or value-added resellers that are certified for use with the Data Protection Services. If you submit Card transactions as batch files for processing, you shall use batch file processing services, truncated report viewing, and data extract creation tools provided by us in connection with the Data Protection Services.

Addendum D

CELLULAR SERVICE

1. Cellular Service. We will provide you access to cellular data communication services (“Cellular Services”) offered by certain cellular telephone and data networks that allow you to: (a) use Merchant Equipment that we have enabled and approved for use with Cellular Service (for purposes of this Addendum D, “Cellular Service for Merchant Equipment”) in order to process, in accordance with the terms of the Agreement, Card transactions that you submit to us through cellular vendors we have selected (“Cellular Vendors”).
2. Cellular Fees. The Portable A920 comes with a cellular SIM card. Cellular Service is required to enable the Portable A920’s cellular communication functionality. Cellular Service is an optional value-added service which requires a per device monthly fee. If applicable, the fee will be presented to you prior to account opening in the fee schedule. The per device fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle. If you cancel Cellular Service prior to the end of the month, a pro-rated fee is not available and you will be charged for the full month.
3. Changes, Interruptions, and Suspensions. We, the Cellular Vendors, and the Cellular Networks reserve the right, at any time and from time to time, to: (a) change any and all aspects of the Cellular Services, Cellular Networks, Wireless Merchant Equipment, including accessibility and functionality; (b) interrupt the Cellular Service and your access to the Cellular Networks for maintenance activities; and (c) suspend the Cellular Service and your access to the Cellular Networks for any lawful reason, including to protect any network’s integrity, to comply with Applicable Law, to comply with Card Network Rules, and to protect us and Cellular Networks from potential liability or harm. We will give you commercially reasonable notice of any suspension of access to Cellular Service and Cellular Networks.
4. Limitations of the Cellular Service. You acknowledge and agree that: (a) because Cellular Services use radio transmissions, Cellular Service cannot be provided unless your Cellular Merchant Equipment is in the range of an available Cellular Network that has sufficient network capacity to handle your communication; and (b) weather, topography, buildings, your Cellular Merchant Equipment (including its location), and other conditions that we and Cellular Vendors do not control may result in failed transmissions or other problems.

Addendum E**PCI ASSIST**

1. PCI Assist, our PCI compliance program for Level 3 and 4 Merchants. PCI Assist is available to you if you are a PCI Level 3 or Level 4 Merchant. A “**PCI Level 3**” Merchant is defined as a merchant that processes between 20,000 and 1,000,000 e-commerce transactions annually and less than 1,000,000 transactions of all types annually. A “**PCI Level 4 Merchant**” is defined as a merchant that processes under 1,000,000 transactions of all types annually and under 20,000 e-commerce transactions annually. PCI Assist is not available to Level 1 or Level 2 Merchants, the definitions of which can be found on the major Card Network websites Visa, MasterCard, Amex, and Discover. If you cease being a PCI Level 3 or Level 4 Merchant, we will stop providing you the PCI Assist Service. PCI Assist will provide you access to the Bank of America PCI Assist Portal, an online portal and tool for PCI compliance validation assistance. The Bank of America PCI Assist Portal will provide you with access to on-line PCI DSS self-assessment questionnaires (“**SAQs**”) that you can use to validate your PCI DSS requirements; including, if applicable, access to vulnerability scanning services.
2. Data Disposal. From time-to-time, your account data or information which is over 18 months old may be deleted from PCI Assist. In addition, only a limited amount of your account data or information may be available online. Therefore, you should print and download your PCI Assist account data and information on a periodic basis. You specifically agree that we are authorized to delete or dispose of the data or information gathered in connection with your use of PCI Assist from time-to-time. We are not responsible for the deletion or disposal of your data or information from PCI Assist. You assume full responsibility to: (a) backup and protect your PCI Assist -related data against loss, damage, or destruction; and (b) proactively plan for and respond to any adverse impacts on PCI Assist, including impacts related to loss of data.
3. Authorized Disclosure. In conjunction with PCI Assist, certain "pass" or "fail" determinations will be made regarding your online security and the electronic vulnerability of your IP addresses. We and our Third Party Service providers may share these "pass/fail" results, point of sale data, and other information collected via scans conducted using the PCI Assist Portal with Card Network and Card Network sponsor banks.
4. Access and Scanning.
 - 4.1 Consent to Access and Scan. You grant us and our service providers the right to access and perform scans of the IP addresses, URLs, and/or domain names identified within your profile or otherwise identified to us for scanning, whether electronically or by any other means and whether during or after initial enrollment. You represent and warrant to us that you are authorized to grant such rights.
 - 4.2 Consents and Authorizations from Third Parties. You will obtain all third party consents and authorizations, including from data centers, co-locations, and hosts, needed for us or our service providers to provide PCI Assist. We and our service providers will not be required to execute agreements with any such Third Parties.
 - 4.3 Limitations. You may use PCI Assist only to scan IP addresses, URLs, and domain names owned by and registered to you. Your failure to provide a complete list of and complete access to your IP addresses will significantly impair the scanning provided by PCI Assist and may produce incomplete or inaccurate results. You acknowledge that accessing, retrieving, transmitting, and scanning IP addresses and other data involves inherent risks, including risks related to system or network performance and availability and data corruption; by our providing PCI Assist, you assume all such risks and any related Losses.
 - 4.4 Indemnification. You agree to defend, indemnify, and hold us and our service providers harmless from any Claims and related Losses that arise from our access, scans, or other activities related to PCI Assist not being authorized.
5. Disclaimer of Liability; No Guarantee of Compliance. You acknowledge and agree that we are not responsible or liable for: (a) your failed attempts to access, or to complete transactions using, PCI Assist; (b) any failure to transmit, obtain, or collect data; or (c) any delays in using PCI Assist and related Losses. Your use of PCI Assist does not guarantee your compliance with Card Network Rules, including PCI DSS; does not



eliminate your PCI DSS and other data security compliance obligations; and does not impact your liability for Data Compromise Losses and other Third-Party Fees, for which you are fully liable.

Addendum F

BANK OF AMERICA GATEWAY

1. Description of the Bank of America Gateway. The Bank of America Gateway services and related Software may include: (i) Card transaction data submission, Authorization, and data settlement related to the Merchant Services we provide under the Agreement; (ii) secure acceptance, fraud management, Cardholder authentication, and Cardholder information management tools for Card transactions and your Cardholder registrations and updates; (iii) Card account number Tokenization; (iv) the Account Updater Services, if selected by you; and (v) additional services that may become available in the future (collectively, “**Bank of America Gateway**”). The Bank of America Gateway also includes any features described in the documentation for the Bank of America Gateway.
2. Disclaimers Applicable to the Bank of America Gateway.
 - 2.1 WE HAVE NO OBLIGATION TO ATTEMPT TO MONITOR OR REGULATE THE CONTENT OR PROVISION OF YOUR PRODUCTS OR SERVICES. WE AND BANK OF AMERICA GATEWAY SUBCONTRACTORS SHALL HAVE NO LIABILITY IN CONNECTION WITH YOUR OFFERING OR SALE OF YOUR PRODUCTS AND SERVICES.
 - 2.2 NOTWITHSTANDING SECTION 30.2 OF YOUR AGREEMENT, WE DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY LOSS (HOWEVER OCCURRING, INCLUDING NEGLIGENCE) ARISING FROM OR RELATED TO: (I) YOUR FAILURE TO PROPERLY ACTIVATE, INTEGRATE, OR SECURE YOUR BANK OF AMERICA GATEWAY ACCOUNT(S); OR (II) FRAUDULENT TRANSACTIONS PROCESSED THROUGH YOUR USE OF THE BANK OF AMERICA GATEWAY.
3. Tax Calculation Services. Tax Calculation Services, which provides real-time tax calculations for orders placed with your business, works by pricing the tax rates for a specific country, region/county, state and city with the customer’s order and automatically provides the amount of tax that will be charged. Tax Calculation Services is an optional value-added service which requires a per calculation transaction fee. The per calculation fee will be charged whenever a calculation is completed, even if the customer does not complete the transaction. During the Tax Calculation Services set up process, you will have the opportunity to choose at which step in the checkout process the tax calculation would be completed and the fee would be charged. If applicable, the fee will be presented to you prior to account opening in the fee schedule. The per calculation fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle. This service is only available with the Card Not Present Integration Toolkit option.
4. Delivery Address Verification. Delivery address verification allows the verification of typed address and to correct invalid city/state/ZIP/Postal code combinations. This is available for order originating in roughly over 200 countries and territories. A fee is applicable for the tax calculation service and such fee will be disclosed to you in the fee schedule. The per-transaction fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle.
5. Digital Payments. Digital Payments is an optional value-added service which allows acceptance of digital payments such as Apple Pay, Google Pay, Samsung Pay, Visa Checkout, etc. on the client’s e-commerce website. There is no fee for this service, but additional integration work may be required. Apple Pay is a trademark of Apple Inc., registered in the U.S. and other countries. Google Pay is a trademark of Google LLC. Samsung Pay is a registered trademark of Samsung Electronics Co., Ltd. Visa is a registered trademark of Visa International Service Association.
6. Demonstration & Certification Environment. The Demonstration & Certification Environment (“**DCE**”) is an optional value-added service that can be utilized for the testing of your acceptance of payments in a nonproduction environment prior to your processing of actual transactions. Testing in the DCE may involve activities including, but not limited to, certain value-added services (e.g. Recurring Billing), integration method connectivity and front-end authorization testing. We are not responsible or liable for any downtime, interruptions, delays, errors, or other technical issues that arise from the performance of



maintenance on services, or from services or software provided to you, in the DCE. We may contact you regarding DCE issues, and you agree to cooperate with our efforts to identify and resolve any such downtime, interruptions, delays, errors, and other technical issues.

Addendum G

This Addendum G governs your use of Value Added Services (VAS) that we provide you.

VALUE ADDED SERVICES

1. Recurring Billing. Recurring Billing accepts subscription payments without storing sensitive payment data. It supports subscription and subscription with end dates from major and regional cards in multiple currencies. Sensitive payment information is stored in secure data centers, which reduces storage risks and PCI DSS Scope. Recurring Billing is an optional value-added service which requires a per transaction fee. The fee will be disclosed to you prior to account opening in the fee schedule. The per transaction fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle.
2. Account Updater Services. The account updater services (“**Account Updater Services**”) consist of processing functionality that will: (a) obtain Card account information (“**Card Information**”) from you for Cardholders with whom you have an existing relationship; (b) submit this Card Information to those Card Networks that maintain account updater programs (“**Updater Programs**”); (c) correlate updated Card Information obtained via the Card Networks’ Updater Programs with existing Card Information that you provided; and (d) provide new Card Information to you for processing ongoing payments. Account Updater Services may be used only in connection with Card Networks that maintain Updater Programs and Issuers that participate in these Updater Programs.
3. Additional Requirements. You must comply with the following requirements when using the Account Updater Services:
 - 3.1 You must have a legitimate business need to obtain updated Card Information (for example, subscription based services, membership based services, or recurring payment services), and you must maintain an ongoing payment relationship with the Cardholders for whom you submit Card Information for processing via the Account Updater Services.
 - 3.2 Your business cannot fall into a high-risk category designated by the applicable Card Network.
 - 3.3 You must enroll as a participant with the applicable Card Network’s Updater Program(s) (which may include executing an agreement with the applicable Card Network), maintain your enrollment, and be certified by us and the Card Network as compliant with the Card Network’s then current participation requirements.
 - 3.4 You must update Card Information that is provided to us when you become aware that a Cardholder has closed their account with an Issuer, and you must not submit Card Information for Account Updater Services if you previously received a closed account response for such Card Information.
 - 3.5 You must submit an inquiry to the Card Network’s Updater Programs for all of your Card Information using the Account Updater Services at least once during the time frame(s) established by the applicable Card Network.
 - 3.6 You must comply with the inquiry file format, interface requirements, response file format, and other operating procedures provided to you from time-to-time.
 - 3.7 You may not submit Card Information on behalf of any third party for processing using the Account Updater Service
 - 3.8 Request an update for every participating Visa account in your Cardholder database at least:
 - (1) Once every one-hundred and eighty (180) calendar days if you bill daily, weekly, monthly, quarterly, or biannually;

- (2) Once every three-hundred and sixty-five (365) calendar days if you bill annually; or
- (3) Submit inquiries only for those accounts with which you have an ongoing Cardholder relationship.

3.9 You must update your Card Information database within five (5) days of receiving updated Card Information using the Account Updater Services (or such shorter time period a Card Network requires). Upon updating Card Information, you must immediately delete any old Card Information data files.

3.10 Ensure that all update information you receive is properly, completely, and accurately incorporated into your data store for use in future transactions, and correct erroneous account information within five (5) business days of receipt of error notification.

3.11 You must keep all information and data accessed through the Account Updater Services strictly confidential. You may not disclose any information or data obtained using the Account Updater Services to any third party, and may not use such information or data for any purpose other than those expressly permitted by the Card Network and permitted under the Agreement.

- 4. Limitations of the Account Updater Services. The Account Updater Services are accurate only to the extent: (a) Issuers participate in the Updater Programs (many Issuers do not participate); (b) Issuers provide accurate Card Information to the Updater Programs; (c) the Card Information we receive from the Updater Programs is accurate; and (d) the Card Information that you provide to us for processing is accurate. We are not liable for any Losses arising from the accuracy of Card Information provided through the Account Updater Services.
- 5. Account Updater Fees. Account Updater Services is an optional value-added service which requires a per match fee. If applicable, the fee will be disclosed to you prior to account opening in the fee schedule. The per match fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle.
- 6. You may not:
 - 6.1 Request updates on accounts that have returned a response of contact card holder ("CCH"). You must review your response file for CCH responses and take appropriate action such as removing the Cardholder record from your billing cycle until you have contacted the cardholder.
 - 6.2 Submit update inquiries on behalf of any other entity unless you have enrolled in Account Updater as a billing aggregator.

Addendum H

MERCHANT POINT OF SALE SOLUTION (“POS SOLUTION”)

This Addendum H set forth additional terms and conditions governing your access to and use of the POS Solution that we provide you. The terms and conditions of this Addendum H are in addition to, and without limitation of, the applicable terms and conditions set forth elsewhere in the Agreement. If you have purchased a subscription to the POS Solution, the POS Solution is part of the Merchant Services and subject to all of the terms and conditions in the Agreement. In the event of a conflict between the terms of this Addendum H and the Agreement, the terms of this Addendum H will apply solely with respect to your use of the POS Solution and solely to the extent of the conflict.

1. Definitions.

As used in this Addendum H or otherwise in connection with the POS Solution or components thereof, the following capitalized terms have the following meanings. Capitalized terms used herein and not defined have the meaning set forth in the Merchant Services Agreement or elsewhere in this Product Guide:

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the POS Solution.

“**Authorized Users**” means your employees, consultants, contractors, and agents who are authorized by Merchant to access and use the POS Solution under the rights granted to Merchant pursuant to this Agreement.

“**Bank Systems**” as used elsewhere in the Agreement includes, with respect to the POS Solution, information reporting, operating and processing systems used by us or Persons on our behalf, to provide the POS Solution, including, hardware, Bank Software, related documentation, technical formats and specifications, technical and business information related to inventions, present and future products and product lines, intellectual property, know-how, and any other information that is identified as our systems, whether owned by us or Persons used by us.

“**Marketing Content**” means the content submitted or generated by you or on your behalf for transmission to message recipients via the Marketing Services.

“**Merchant Data**” for purposes of this Addendum, includes documents, data and records in any medium relating to Merchant and the Merchant Services provided to Merchant, including Transaction Data and Personal Data of Merchant's employees, Authorized Users and Customers processed by us as part of the POS Solution.

2. POS Solution.

2.1. Access and Use. The POS Solution is available for use in the United States by you and the Authorized Users for whom you have enabled access, solely for your internal business purposes, and subject to the Agreement (including this Addendum). The POS Solution is provided in U.S. English and is only available in the United States. We will provide you with Access Credentials for you and your Authorized Users in accordance with the documentation for the POS Solution. Except as otherwise expressly provided in this Agreement, as between the parties, we have and will retain sole control over the operation, provision, maintenance, and management of the POS Solution.

2.2. Changes. We reserve the right, in our sole discretion, to cease offering the POS Solution and to make any changes to the POS Solution at any time that we deem necessary or useful, including without limitation, to: (a) maintain or enhance: (i) the quality or delivery of the POS Solution; (ii) the competitive strength of or market for the POS Solution; or (iii) the POS Solution' cost efficiency or performance; or (b) to comply with Applicable Law.

3. Merchant Obligations. You have and will retain sole responsibility for: (a) all information, instructions, and materials provided by or on your behalf or by any Authorized User in connection with the POS Solution; (b)

approving access for all Authorized Users to the POS Solution and the security and use of the Access Credentials; (c) providing network connectivity between the Merchant Environment and the POS Solution as provided in the documentation for the POS Solution; (d) maintaining bandwidth of sufficient capacity for the operation of the POS Solution; (e) the installation, testing, and operation of your facilities, telecommunications and internet services, equipment, and software necessary for your use of the POS Solution (collectively, the “**Merchant Environment**”); and (f) paying all third-party access fees incurred by Merchant to access and use the POS Solution. You are responsible for all access to and use of the POS Solution, directly or indirectly, by or through the Merchant Environment or the Access Credentials, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

- 3.1. Security.** You must employ appropriate physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the POS Solution; and (b) control the content and use of Merchant Data, including the uploading or other provision of Merchant Data for Processing by the POS Solution. You are responsible for your Authorized Users’ compliance with the Agreement and any breach by its Authorized Users (or anyone gaining access to the POS Solution via Access Credentials) will be deemed a breach by you.
- 3.2. Merchant Data.** You have sole responsibility for ensuring the accuracy, quality, integrity, legality and appropriateness of all Merchant Data and other data regarding Merchant’s business that is provided or made available to us in connection with the POS Solution. The POS Solution does not replace the need for you to maintain regular data backups or redundant data archives. BANK OF AMERICA HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF MERCHANT DATA.
- 3.3. Compliance.** You shall not use the POS Solution in violation of Applicable Laws, Card Network Rules, or the Agreement. Without limitation of the foregoing, you acknowledge and agree that you are solely responsible for (i) compliance with all laws applicable to you and your business, (ii) obtaining all required permits, consents and licenses and monitoring legal developments applicable to the operation of your business, (iii) interpreting Applicable Laws, determining the requirements for compliance with all Applicable Laws and maintaining an on-going compliance program, and (iv) using the POS Solution in accordance with Applicable Law in all jurisdictions where you operate. Without limitation of the foregoing, you are solely responsible for ensuring that your websites, mobile applications and any other aspects of your business that will be used by or offered to members of the public, and the use thereof, will be accessible to users with disabilities and otherwise in compliance with Applicable Law.
- 4. Corrective Action and Notice.** If you become aware of any actual or threatened activity prohibited by the Agreement, or any other unauthorized access or use of the POS Solution, you shall, and shall cause your Authorized Users to, immediately: (a) take all reasonable and lawful measures within your or their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the POS Solution and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify us of any such actual or threatened activity.
- 5. Effect of Termination of POS Solution.** Upon termination of the Agreement or POS Solution, you must immediately cease all use of the POS Solution. Notwithstanding the foregoing, you may access the POS Solution for a period of 12 months after the effective date of termination solely for viewing your reporting and downloading Merchant Data. After such period, we have no obligation to maintain or provide you access to any Merchant Data associated with the POS Solution. Termination for any reason will not relieve you of the obligation to pay any Fees for the POS Solution accrued or due and payable prior to the effective date of termination for the POS Solution.
- 6. Additional Merchant Warranties.** In addition to and without limitation of your representations, warranties and covenants in the Merchant Services Agreement, you represent, warrant, and covenant to us that: (a) you own or otherwise have and will have the necessary rights and consents in and relating to the Merchant

Data and Marketing Content so that such Merchant Data and Marketing Content does not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Applicable Law; (b) you have provided, and will continue to provide, adequate notices, and that you have obtained, and will continue to obtain, the necessary permissions and consents, in each case required to enable us to process all Merchant Data to provide the POS Solution, including transmission of Merchant Data to Third Party Service providers on behalf of Merchant, and as otherwise contemplated under this Agreement.

7. Marketing Services. The POS Solution may include the ability to conduct marketing campaigns via email and/or text messaging (the “**Marketing Services**”). Certain Marketing Services are provided pursuant to Bank’s agreement with Twilio. You agree that the Marketing Content and your use of any Marketing Services must be in accordance with this Agreement and: (i) the Twilio Messaging Policy, Twilio Terms of Service and Acceptable Use Policy, (ii) the guidelines of the Cellular Telecommunications Industry Association (“CTIA”), including without limitation “Best Practices,” which is currently available at <https://api.ctia.org/wp-content/uploads/2023/05/230523-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf> and the Campaign Registry 10DLC campaign rules and guidelines, (iii) the Telephone Consumer Protection Act of 1991 and the implementing regulations, rules, and orders, (iv) the cellular carrier guidelines, and (v) Applicable Laws governing the content, nature and conducting of any advertising or marketing (such as, but not limited to, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), the Endorsement and Testimonial Guidelines published by the United States Federal Trade Commission (FTC) and the FTC’s Telemarketing Sales Rule, 16 C.F.R. § 310 et seq.), as any of them may be updated, amended or replaced from time-to-time (collectively, the “**Marketing Rules**”).

7.1. Additional Terms and Conditions for Marketing Services. You may not use the Marketing Services:

7.1.1. to transmit or store any content or communications (commercial or otherwise) that is illegal, harmful, unwanted, inappropriate, or objectionable, including, but not limited to, content or communications that are (a) is false or inaccurate; (b) hateful or encourages hatred or violence against individuals or groups; or (c) could endanger public safety.

7.1.2. in violation of Marketing Rules, including any of the foregoing that require (a) consent be obtained prior to transmitting, recording, collecting, or monitoring data or communications or (b) compliance with opt-out requests for any data or communications.

7.1.3. to transmit code, files, scripts, agents, or programs intended to do harm, including Malicious Code, or using automated means, such as bots, to gain access to or use the POS Solution or any Third Party Service.

7.2. We may refuse, suspend, terminate the Marketing Services and/or any campaign or other communication that is not in compliance with this Agreement or the Marketing Rules.

8. Privacy and Data Use. The terms of Section 27 of the Merchant Services Agreement apply to your use of the POS Solution, except that we are acting as a service provider (or equivalent term under applicable Data Protection Laws) for Personal Data that you, your Authorized Users or Customers provide to us or that we have access to in the course of providing the POS Solution to you, with the exception of email addresses, phone numbers, and related consents, acknowledgements and/or opt-outs collected by us from your Authorized Users or Customers in the administration of the POS Solution (including the provision of the Marketing Services), for which we are responsible as a data controller and/or equivalent term under applicable Data Protection Laws. In addition to and without limitation of Section 27 of the Merchant Services Agreement:

8.1. You are solely responsible for your compliance with Data Protection Laws, including without limitation, responding to any requests from individuals pertaining to the individual’s data subject rights in accordance with Data Protection Laws, at your sole cost and expense.

- 8.2.** You represent and warrant that: (i) you will maintain a privacy policy containing legally required disclosures to your employees, Customers and Authorized Users about your use of the POS Solution, including any legally required description of the purposes for which we may collect, use, or share the data; (ii) you will build appropriate features into any of your mobile app, website, materials, and/or systems to comply with the requirements of this Addendum; and (iii) you will provide reasonable cooperation and assistance upon our request to enable us to meet our legal and internal compliance obligations with respect to the data.
- 8.3.** You may not use the POS Solution to upload or incorporate, process transactions involving, or otherwise provide Bank with, any information considered “protected health information” under the U.S. Health Insurance Portability and Accountability Act of 1996, as amended.
- 8.4.** Bank may process Merchant Data (including Personal Data) to create aggregated, anonymized, or de-identified information and use that information for its lawful business purposes, including for purposes of creating and sharing with third-parties data insights and analytics and demographic profiling.
- 8.5.** You agree that we may disclose Merchant Data to third parties as reasonably necessary to provide the Marketing Services.
- 9. Authorization to Access POS Software.** Subject to your compliance with this Addendum H, we authorize you to access the POS Software for your internal use on your own behalf and not for the benefit of any third party. This access right is non-exclusive and non-transferable and will end when the Agreement expires, is terminated or cancelled.
- 9.1** Availability of POS Software. We will use commercially reasonable efforts to make the POS Software available to you 24 hours per day via Internet access, other than for interruptions due to service maintenance and Updates, system failure, system backup and recovery, and for causes beyond our control. In order to maintain reasonable production data storage requirements and to ensure proper performance of the POS Software, we may implement, in our sole discretion, limited data archival policies and procedures including periodic data purging of the hardware, Software, or other systems we use to provide the POS Software.
- 9.2** Use of POS Software. You are licensed to use the POS Software only with the Device, and your license will end when your subscription to the POS Software ends. The POS Software is copyrighted and licensed, not sold, and is the POS’s Software provider’s confidential and unpublished information. You will retain any copyright notices and proprietary legends on all copies of the POS Software and the media on which it is delivered. Any attempt to transfer the POS Software is void and will automatically cause your license to end. Limited License. You are licensed to possess and use only the object code form of the POS Software. Except as this Addendum H expressly permits, you may not (a) use, copy, modify, publish, or display the POS Software; or (b) disclose, rent, loan, or transfer it to any other party. You may make one archival copy of the POS Software for backup purposes only. You may not reverse engineer the POS Software or derive a source code equivalent of it other than as authorized by statute. You are not licensed to use the POS Software in conjunction with any Software or any Device other than that authorized by us, and we do not warrant that the POS Software will be compatible with every Device. Use of any Device that has been modified contrary to the manufacturer’s specifications or guidelines, including modifications that disable hardware or Software controls (e.g., “jailbreaking”), is expressly prohibited, and your use of such Device will entitle us to terminate this Agreement and your access to the POS Software immediately, without further obligation to you. Your license will automatically end if you fail to comply with any part of this Addendum H. When your license ends, you will immediately stop using the POS Software and will destroy all copies unless we direct otherwise.
- 9.3** Beta Products. We may invite you to participate in a managed controlled deployment program of new versions, features or functions we are testing in connection with the POS Software or other products prior to their general market availability (“**Beta Products**”). If you participate in a controlled deployment program, we will make the Beta Products available to you for a limited period of time for testing and evaluation purposes. Your participation in a controlled deployment program is voluntary,

and while we may not charge you any fees to participate, you will be required to provide reasonable feedback concerning your use of the Beta Products, including errors, deficiencies, problems or recommendations to modify. All feedback you provide to us will be deemed Suggestions. Beta Products are provided “as is” and without a warranty of any kind; we may suspend, limit, or cancel any controlled deployment program for any reason at any time without notice, and we will not be liable to you for damages of any kind related to your access or use of the Beta Products. You acknowledge that any sales and inventory or other data that resides within the POS Software may not be accessible to you after the limited beta period ends.

9.4 Your Responsibilities. You are responsible for configuring, and using the POS Software, POS Software including account set up and configuration settings (unless we provide remote support for any of the foregoing as part of your subscription to the POS Software), compliance with Applicable Laws and establishing any payment processing or other Additional Services certified by us for use with the POS Software. You will provide us access to your network, system, data, and relevant information as reasonably required to perform the POS Software. You acknowledge that we may require, and you will provide, the ability to access and correct transaction or input data while the POS Software is being provided to you. We are not responsible for any damage caused by errors or omissions in any information, instructions, data or scripts you or a third party provides on your behalf in connection with the POS Software, or any actions we take at your direction.

9.5 Software Value Added Service (VAS)

Online Ordering. Online Ordering is an optional value-added service which requires a per location monthly fee. The fee will be disclosed to you prior to account opening in the fee schedule. The per location fees will be aggregated by us, posted to your merchant services account, and debited from your settlement account according to your selected billing cycle. Purchase of a POS Software solution that integrates with Online Ordering is required to use Online Ordering.

Addendum I

FRAUD MANAGEMENT TOOL

1. Fraud Management Tool. This fraud management tool service (“**Fraud Management Tool**”) provides you with the ability to mitigate financial loss due to high risk and potentially fraudulent payment activity by setting certain thresholds to alert you of potentially suspicious or unusual transaction activity (including certain other services to assist with the detection of fraud, “**Fraud Services**”). You can adjust rules, view reports, review alerted activity and make decisions whether to accept or reject orders. You may utilize certain features of the Fraud Management Tool (including the customization of particular rules and parameters) to assist you in minimizing instances of fraud. The Fraud Management Tool also includes any features described in the documentation for the Fraud Management Tool.
2. Your responsibilities.
 - 2.1 You are solely responsible for determining if the Fraud Services or Your Settings (as defined herein) satisfy your business, legal, or network scheme requirements. “**Your Settings**” means the settings, options, rules, requirements, strategies, or other instructions related to the Fraud Services that you provide, select, change, or act upon (or that are provided, selected, changed, or acted upon at your direction).
 - 2.2 You are responsible for properly transmitting your Transaction Data to our systems using the format and specifications we provide. We will notify you of any proposed changes to our specification requirements, which will become effective after your receipt.
 - 2.3 We disclaim all warranties (express or implied) that the Fraud Services will accurately identify every instance of fraud or that every transaction identified as fraudulent is, in fact, fraudulent. You are solely responsible for all decisions you make or actions you take or do not take (or are made or taken or not taken at your direction) on alerted transaction activity.
3. Data Usage. You agree we may retain, use, and share the data that you provide or make available to us in connection with the Fraud Services, including personally identifiable information that has been anonymized, for product development, analytics, and reporting; and as described in our U.S. Online Privacy Notice, available at <https://www.bankofamerica.com/security-center/overview>. You obtain no rights or license to our models, products, services, or data generated by them.
4. Data Privacy.

In addition to the requirements under Section 27 of your Agreement:

- 4.1 We will not identify individuals whose data you share or make available as your customers to other customers using the Fraud Services or identify you as the source of the data.
- 4.2 You represent and warrant that you: (i) have the legal right and have obtained any necessary consents or permissions to provide and make available data (including Personal Data, any personally identifiable information and any device data) to us for the purposes described in this Addendum I and the Privacy Statement and, upon our request, will provide to us documentation establishing that you have complied with these requirements; (ii) you will maintain a privacy policy containing legally adequate disclosures about your use of the Fraud Services, including any legally required description of the purposes for which we may collect, use, or share the data; (iii) you will build appropriate features into your mobile app, website, materials, and/or systems to comply with the requirements of this Addendum I; and (iv) you will provide reasonable cooperation and assistance upon our request to enable us to meet our legal and internal compliance obligations with respect to the data.

- 4.3 You acknowledge and agree that the Fraud Services may automatically collect a variety of information from or about end-users' computers or mobile devices, such as geolocation data, information from which location may be inferred, unique identifiers, and information about other applications installed on the end-user's device, and associate such information with the end-user's transaction and such other information as you may provide us about the end-user. The information collected automatically may change from time to time at our sole discretion.
- 4.4 Under the California Consumer Privacy Act, businesses and service providers are not required to comply with a consumer's deletion request if the personal information must be retained for the business or service provider to (among other things): (i) complete the transaction for which the personal information was collected; (ii) detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity; (iii) comply with a legal obligation; or (iv) otherwise use the consumer's personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information.
- 4.5 We are not able to delete the information we process for our merchant customers because it is necessary for, among other things: (i) completing payment transactions; (ii) fraud and security prevention, detection and resolution; and (iii) legal compliance. We can assure you that we will delete the consumer's personal information at the end of the applicable retention period or when such personal information is no longer needed to comply with law. This information will also remain subject to our security controls. As a service provider, we only collect and use personal information as authorized by our contracts with you. We do not purchase any personal information from you, and we do not sell your consumer's personal information.

Addendum J

VIRTUAL TERMINAL

1. Virtual Terminal. This Additional Service consists of a web-based interface that lets you accept Card payments (“**Virtual Terminal**”). Unlike a physical terminal where you swipe or insert cards, you are required to log in to a website using your computer and manually enter the relevant Card information. The Virtual Terminal also provides you with the ability to configure certain payment settings based on your business processes, and with the ability to configure how customer receipts appear, including order details and contact information. The Virtual Terminal also includes any features described in the documentation for the Virtual Terminal.
2. Limitation of Liability. In accordance with Section 30.2 of your Agreement, our liability is limited with respect to your Virtual Terminal account and your use of the Merchant Services. In no event shall we be liable for lost profits or any special, incidental or consequential damages (including without limitation damages for loss of data or loss of business) arising out of or in connection with our websites, Software, Bank Systems (including any networks and servers used to provide any of the Merchant Services) operated by us or on our behalf (however arising, including negligence), unless and to the extent prohibited by Applicable Law. In addition, notwithstanding Section 30.2 of your Agreement and to the extent permitted by Applicable Law, Bank is not liable, and you agree not to hold Bank responsible, for any damages or losses (including, but not limited to, loss of business, data, goodwill, money, profits, reputation, or other intangible losses or any special, indirect, or consequential losses or damages) resulting directly or indirectly from: (i) your use of, or your inability to use, our websites, Software, Bank Systems (including any networks and servers used to provide any of the Merchant Services) operated by us or on our behalf, or any of the services we provide (our “**Platform**”); (ii) delays or disruptions in our Platform; (iii) viruses or other malicious software obtained by accessing our Platform or any website or service linked to our Platform; (iv) glitches, bugs, errors, or inaccuracies of any kind in our Platform or in the information and graphics obtained from our Platform; (v) the content, actions, or inactions of third parties; (vi) a suspension or other action taken with respect to the Merchant Service we provide to you; or (vii) your need to modify your practices, content, or behavior, or your loss of or inability to do business, as a result of changes to your Agreement or our policies.
3. Disclaimer of Warranties. In addition to Section 30.1 of your Agreement and for the avoidance of doubt, we disclaim all warranties (express or implied) that the Virtual Terminal services will accurately accept Card transactions. You are solely responsible for all customer information you input, require or retain.

Addendum K

THIRD PARTY SOFTWARE AND SOLUTIONS

In addition to the terms and conditions set forth in Section 6 (Third Party Services) of the Agreement, this Addendum K governs your use of software and solutions that you use to help run your business and are provided to you by a third party, and not us ("**Third Party Software and Solutions**").

1. The terms and conditions by which the third party provides to you Third Party Software and Solutions shall govern all aspects of your utilization of such products.
2. If you have any questions, concerns, or issues with any Third Party Software and Solutions, you are responsible for contacting the applicable provider in order to seek support and resolution for such matters.
3. We will not be able to assist with the support or resolution of any issues arising from your use of Third Party Software and Solutions.
4. We are not responsible for any adverse impact that your use of Third Party Software and Solutions may have on the Merchant Services we provide for you.
5. We, our affiliates, and/or third party partners may receive or provide compensation related to your use of Third Party Software and Solutions.

Addendum L

GIFT CARD SERVICES

This Addendum L governs your use of Gift Card Services that we provide you.

1. Definitions.

As used in this Addendum L or otherwise in connection with the Gift Card Services or components thereof, the following capitalized terms have the following meanings:

“Database” means the database on which Gift Card Data for each Gift Card issued under the Program is maintained.

“Designated Site” means any store or other place of business (including a direct marketing program or Internet site), located in the U.S.A., and at or through which you issue Gift Cards and/or process transactions using Gift Cards issued under the Program. Designated Sites include any help desk or IVR through which transactions are processed under the Program.

“Gift Card” means an encoded physical or electronic access code or device that accesses Gift Card Data maintained in the Database and can be redeemed for goods or services from you. For purposes of the Agreement, in each case except in relation to our Settlement obligations, a Gift Card shall constitute a type of “Card” and a Gift Card Transaction shall constitute a type of “Card Transaction”.

“Gift Card Data” means the current value and record of transactions corresponding to each Gift Card issued under the Program.

“Gift Card Equipment” means any POS Terminal, software or other similar telecommunications equipment that has been programmed and certified to our specifications in order to transmit Gift Card Data and process transactions under the Program.

“Gift Card Holder” means any person in possession of or that uses a Gift Card. A Gift Card Holder shall constitute a type of “Cardholder” for purposes of the Agreement.

“Gift Card Purchaser” means any person that purchases a Gift Card, including a person that purchases a Gift Card for the purpose of delivering such card to a third-party Gift Card Holder.

“Gift Card Number” means the identifying number of a Gift Card.

“Gift Card Production Company” means a Person we require you to retain for the purposes of producing physical Gift Cards and to provide related products or services for the Program.

“Gift Card Services” means the Additional Services we provide in connection with the Program as further described in this Addendum L.

“IVR” means an automated Interactive Voice Response system accessed via a toll-free telephone number.

“PIN” means a Personal Identification Number used by a Gift Card Holder to complete a Gift Card transaction.

“POS Terminal” means an electronic Point-Of-Sale terminal placed in a physical Designated Site which is connected to our system via telephone lines and is designed to swipe Gift Cards.

“Program” means your program pursuant to which you issue Gift Cards to Gift Card Holders and we provide the Gift Card Services to enable such Gift Card Holders to use such Gift Cards to purchase goods and services at Designated Sites.

2. Services. We agree to provide the Additional Services set forth below in connection with the Program.

- a) We will support your issuance of Gift Cards and provide the Gift Card Services and other services related thereto for the Program as described in, and subject to the terms and conditions of, this Addendum L.
- b) We shall establish and maintain Gift Card Data on the Database. Gift Card value is non-refundable (except where required by Applicable Law) and can only be redeemed for goods or services from you or an Affiliated Issuer. We may impose balance and load limits to Gift Cards. Unless we otherwise specify, the balance and load limit for Gift Cards is \$500. For the purpose of maintaining Gift Card Data, we may rely on any balance or transaction information transmitted to us through any Third Party Services, including Apple Pay and Google Pay digital wallets through which electronic Gift Cards may be accessible. Apple Pay is a trademark of Apple Inc., registered in the U.S. and other countries. Google Pay is a trademark of Google LLC. Gift Card Data and the Database do not constitute a complete record of your transactions with Gift Card Purchasers or Gift Card Holders, or their interests in Gift Cards (or Gift Card sales), and shall not be relied on as such a record, which is your sole responsibility to maintain.
- c) We shall provide you with the capability to process selected transactions under the Program through Gift Card Equipment at Designated Sites.
- d) We shall provide a designated Internet site through which Gift Card Holders may determine Gift Card balances.
- e) We will provide a means for you to offer Gift Card sales to prospective Gift Card Purchasers. For physical Gift Cards, we may transmit or receive information (including personal information about prospective Gift Card Purchasers and Gift Card Holders) to or from Gift Card Production Company as necessary to support its production of Gift Cards. For electronic Gift Cards, we will provide certain access instructions to Gift Card Holders that enable them to claim and use such Gift Cards subject to satisfaction of certain identity validation requirements. If electronic Gift Cards are to be made accessible within a Gift Card Holder's Apple Pay or Google Pay digital wallet, we may transmit or receive information (including personal information about such Gift Card Holders) to or from such Third Party Service providers as necessary to facilitate such access (both in connection with initial Gift Card sales transactions as well as subsequent value load and use transactions).
- f) Upon receipt of transaction information from a Designated Site by the Database, we will compare the proposed transaction amount with the account balance maintained on the Database corresponding to the Gift Card or Gift Card Number that was presented at the Designated Site. If the account balance is greater than or equal to the amount of the proposed transaction, we will authorize the transaction; if the account balance is less than the amount of the proposed transaction, we will decline the transaction (in each case constituting an "Authorization" for purposes of the Agreement). If your Gift Card Equipment supports "split tender," and the account balance is less than the amount of the proposed transaction, we will authorize the transaction for the amount of the account balance, and return a message and/or receipt to the Gift Card Equipment showing the remaining amount of the transaction you will need to collect. You understand and agree that an Authorization only indicates the availability of sufficient value on a Gift Card account at the time of Authorization to fully or partially complete a proposed transaction and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number.
- g) We will provide you with Gift Card transaction reports, available to you through an Internet site we designate. We will maintain reports on the Internet site for your use for a period of six (6) months.
- h) We will retain the Gift Card Data for each Gift Card on the Database for a period of twenty-four (24) months following the date that the account balance reaches zero. Thereafter, we may remove the Gift Card Data from the Database and archive such Gift Card Data in any manner we determine in our reasonable business judgment. Notwithstanding the foregoing, within ninety (90) days of your written request, during the first twelve (12) months following the termination of Gift Card Services, we will compile a data report of the Gift Card Data stored in the Database, in our standard format, for a fee we determine. We shall have no obligations with respect to your Gift Card Data following delivery to you.

3. Your Responsibilities. Your responsibilities are set forth below and elsewhere in this Addendum L.

- a) You will accept for processing any transaction initiated by one of your customers using a Gift Card pursuant to the Gift Card Services without discrimination with regard to the customer who initiated the transaction.
- b) You will securely maintain all transaction records and other records required by Applicable Law to be maintained in connection with the operation of the Gift Card Equipment or the Program. You will download and securely store any and all Gift Card transaction reports for future reference and for your use in maintaining Gift Card Holder and Gift Card balance records. You are solely responsible for investigating, resolving, and otherwise managing any complaints by or disputes arising with actual or prospective Gift Card Purchasers or Gift Card Holders.
- c) You will make your personnel and records available to us, our agents, and our contractors, all within such time and in such forms or manner as may be reasonably necessary to enable us to perform the Gift Card Services promptly and in an efficient manner.
- d) You shall be responsible, at your sole cost and expense, for the sale and other distribution of Gift Cards to Gift Card Purchasers and Gift Card Holders and for any marketing or advertising of the Program.
- e) You shall be responsible, at your sole cost and expense, for producing and distributing Gift Card terms and conditions to Gift Card Holders in compliance with this Addendum L and Applicable Law; for providing any and all Gift Card Holder support; and for performing all other Gift Card account communication and servicing functions that we do not expressly assume under this Addendum L.
- f) You shall obtain, operate, and maintain, at your sole cost and expense, all Gift Card Equipment required to enable you to electronically transmit Gift Card Data in accordance with our specifications from all Designated Sites to the Database.
- g) You are solely responsible for obtaining Authorization in advance of each transaction. You are solely responsible for any Losses you may incur in conducting transactions when an Authorization is not obtained, including, without limitation, transactions conducted when the Database or the Gift Card Equipment is not in service. You assume all risk of erroneous or fraudulently obtained Authorizations, unless such erroneous or fraudulently obtained Authorization is caused directly by us. You are responsible for the accuracy of all data transmitted by you (or on your behalf) for processing by us, including any such data transmitted to us through any Third Party Services.
- h) You shall be responsible for accessing and comparing the reports we supply to your own records and promptly notifying us of any necessary adjustments to Gift Card accounts. You acknowledge that we may make adjustments to Gift Card accounts pursuant to your instructions, and we shall have no liability for any errors to Gift Card accounts that are made in accordance with such instructions.
- i) You shall comply with all Applicable Law in relation to the Program. You acknowledge and agree that you are solely responsible for interpreting all laws and regulations applicable to the Program, for monitoring changes in laws and regulations applicable to the Program, and for determining the requirements for compliance with laws and regulations applicable to the Program. We shall be entitled to rely upon and use any and all information and instructions you provide for use in performing the Gift Card Services, and we shall have no liability whatsoever for any noncompliance of such information or instructions with Applicable Law. We disclaim any and all responsibility for or liability in connection with the Program's compliance with Applicable Law, including but not limited to any state unclaimed and abandoned property or escheat laws that may apply to Gift Cards or their balances, such as monitoring for inactivity or dormancy associated with any Gift Card account or balance and related reporting.
- j) As between you and us, you shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number, or PIN upon delivery of such Gift Cards, Gift Card Numbers, or PINs to you or your Designated Site, as applicable.

- k) You agree that: (i) we (and Gift Card Production Company for the purposes hereof) will be the sole and exclusive providers of the Gift Card Services to you; and (ii) you will not directly or indirectly either yourself or through a Person (other than Gift Card Production Company), offer or promote any other proprietary, closed network, Gift Card or similar access device.
 - l) You agree to retain Gift Card Production Company if you elect to procure and sell physical Gift Cards and that its services to you and those of any digital wallet provider or other Person that supports Gift Cards issued under the Program constitute Third Party Services, for which we disclaim any and all responsibility or liability. You agree to comply with the terms and conditions applicable to your use of Gift Card Production Company and such other providers of Third Party Services. You agree that you will be responsible for all fees, performance issues, billing disputes, and other matters relating to such Third Party Services.
 - m) You are responsible for (i) the collection of funding for any initial purchase or other load of value to be associated with any Gift Card Holder or Gift Card, (ii) any settlement of funds among Designated Sites, and (iii) all use and maintenance of records reflecting all Gift Card Purchaser and Gift Card Holder interests in Gift Cards.
4. Fees and Payment. You shall be responsible for paying any fees imposed by Gift Card Production Company under the Program. You shall also be responsible for the payment of any taxes imposed by any applicable governmental authority in connection with any products or services covered by this Addendum L (other than those taxes based solely on our net income).
5. Post-Termination Support. If you request, we may, in our sole and absolute discretion, continue to provide the Gift Card Services for all previously issued and unexpired (if applicable) Gift Cards for up to twelve (12) months following the termination of the Gift Card Services; provided, however, that we shall not activate any new Gift Cards after the effective date of termination. Our obligation to provide continuing Gift Card Services after termination is contingent upon your agreement to pay for such Gift Card Services and to conduct your operations in accordance with the terms of this Addendum L, and we may require advance payment for some portion or all of the estimated cost of such Gift Card Services to be provided after termination.
6. Special Indemnity. In addition to other indemnification obligations applicable to any Merchant Services, you agree to defend, indemnify, and hold harmless us and our Affiliates, employees, directors, and officers from and against any and all Claims brought against such parties, and all related Losses, to the extent that such Claims result from: (i) any failure by you to comply with any Applicable Law in relation to the Program; (ii) any dispute between you and any Gift Card Purchaser or Gift Card Holder including, without limitation, any dispute regarding the goods or services purchased using a Gift Card or the payment of any amounts owed or alleged to be owed to or by you (or to or by one or more such persons), and any dispute between you and Gift Card Production Company over the cost, production, or delivery of any Gift Card; (iii) any instructions or procedures that you may provide to us in connection with the Program and our compliance therewith; (iv) any actual or alleged loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number, or PIN; (v) use or operation of Gift Card Equipment by you; and (vi) any Claim or action against us for actual or alleged infringement of any patent, copyright, trademark, trade secret, or other proprietary right of any person arising in connection with the production of Gift Cards or related products for you using artwork, designs, specifications or concepts provided by you.

Addendum M

PAZE SERVICE

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

“Applicable Law” means with respect to any entity, any and all laws, treaties, rules, regulations, regulatory guidance, or determinations of any governmental authority applicable to such entity, in each case as the same may be amended from time to time.

“Applicable Privacy Requirements” means the Applicable Law governing the handling, use and re-use, disclosure and re-disclosure, protection, or processing of Personal Information in any relevant jurisdiction, including, but not limited to: (a) Gramm-Leach-Bliley Act; (b) the California Financial Information Privacy Act (Cal. Fin. § 4050 et seq.); (c) the California Consumer Privacy Act (Cal. Civ. Code § 1798.100 et seq.); (d) the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth (201 Code Mass. Regs. § 17.00 et seq.); (e) federal and state unfair and deceptive acts, practice statutes; and (f) the Payment Network Rules.

“Customer” means any consumer who: (i) has or had a debit or credit card enrolled in the Paze Directory; and (ii) is or has been eligible to initiate Payment Transactions.

“Distributor” means an entity (including Bank) that has executed a Service Participation Agreement with the Service Operator to participate in Paze. .

“EWS” or **“Service Operator”** means Early Warning Services, LLC, the operator of the Paze Service, a Delaware limited liability company, with a principal office at 5801 N. Pima Road, Scottsdale, Arizona 85250; and if, applicable, any entity that succeeds EWS as the operator of the Paze Service.

“Merchant” means an entity (including Client) that has executed a Paze Wallet Service Agreement with a Distributor and accepts as a method of payment any of the types of Payment Credentials supported by the Paze Service in exchange for products or services.

“Participant” means a Participating Paze Issuer or Distributor that has been approved to participate in the Paze Service and is a party to a Service Participation Agreement that has been executed by the Service Operator.

“Participating Paze Issuer” or **“Issuer”** means an entity that has executed a Service Participation Agreement with the Service Operator to participate in the Paze Service as a Participating Paze Issuer and is providing Payment Credentials and other identifying information to the Service Operator for its Customers.

“Payment Card Industry (PCI) Requirements” means the standards and requirements promulgated by the PCI Security Standards Council or any successor body thereto, including the PCI DSS, in each case, as modified, supplemented, or replaced from time to time.

“Payment Credential” means a name, payment card, account number, identification number, or other credential of a Customer that is supported by a Payment Network and that enables such Customer to initiate Payment Transactions with Merchants. **“Payment Credentials”** shall include PazeSM Tokens.

“Payment Network” means a network, system, service, or infrastructure approved by the Service Operator that facilitates the authorization, clearing, and/or settlement of Payment Transactions.

“Payment Network Rules” means any rules, bylaws, standards, protocols, operating regulations, guidelines, procedures, and other requirements, including Payment Card Industry (PCI) requirements, of any Payment Network, as modified, supplemented, or replaced from time to time.

“Payment Transaction” means a purchase transaction between a Customer and a Merchant, utilizing the Paze Token and Payment Credentials, as applicable, from the Paze Directory.

“Paze Directory” means the multi-Payment Network and multi-bank directory of enrolled and stored Payment Credentials for accounts issued or provided to the Service Operator by any Participating Paze Issuer, along with any identifying information (e.g., billing or mailing address, email address, or phone number identifier) of Customers.

“Paze Liabilities” means any assessments, charges, costs, expenses, fines, losses, non-compliance fees, penalties, or other liabilities imposed on Bank by the Payment Networks, the Service Operator, or any other Paze Participant (including, without limitation, any Issuer and/or Distributor) as a result of any act or omission by Client, Client’s officers, employees, agents, or Third-Party Providers, in connection with its or their access to or use of Paze.

“Paze Token” means a surrogate value of a Customer’s primary account number (PAN) obtained by the Service Operator from a Payment Network. A PazeSM Token is a Payment Credential.

“Participating Paze Issuer Rules” means the Paze Service Participating Paze Issuer Operating Rules, which govern Participating Paze Issuer participants in the Paze Service, published and updated from time to time by the Service Operator.

“Rules” or **“Distributor Rules”** means the Paze Service Distributor Operating Rules, which govern Distributor and Merchant participants in the Paze Service, published and updated from time to time by the Service Operator.

“Service Documents” means collectively, the Paze Service Distributor Operating Rules, the Paze Service Participating Paze Issuer Operating Rules, the Service Technical Specifications, and all other guides, manuals, policies, and bulletins amended by the Service Operator from time to time.

“Service Participation Agreement” means an agreement between a Participant and the Service Operator pursuant to which the Participant is permitted to participate in the Paze Service.

“Service Technical Specifications” means any and all technical specifications, technical requirements, descriptions or instructions describing the installation, setup, function, features, operation, and use of the Paze Service in written or electronic form, that are made available by the Service Operator.

2. **PazeSM.** The PazeSM Service (**“Paze”**) is a service offered by participating financial institutions (including Bank, in its capacity as a Participating Paze Issuer) to their customers as an online payment method at participating Merchants websites.
3. **Fees.** In consideration of Bank’s facilitation of Client’s access to and use of Paze by Client to enable Payment Transactions through Client’s website in accordance with Applicable Law (including, without limitation, any Applicable Privacy Requirements), the Payment Network Rules, the Rules and the Service Documents, Client agrees to pay to Bank the fees that Bank determines, in its sole discretion, are associated with Client, including, but not limited to, custom request fees and waiver request processing fees incurred by Bank as a result of Client needs and/or requests. These fees are in addition to the processing fees, any third party-based fees, other fees or charges set forth elsewhere in, and are part of the fee schedule to, the Merchant Agreement, and all additional costs and expenses thereunder. The fees due under this Paze Addendum constitute amounts due under the Merchant Agreement which will be billed, collected and charged as permitted under the Merchant Agreement.
4. **Client Representations, Warranties, and Covenants.**
 - 4.1 Client represents and warrants to, and covenants with, Bank that Client shall comply with, and access and/or use Paze only in accordance with, and shall also procure that its officers, employees, agents and any Third-Party Providers comply with and access and/or use Paze in accordance with, this Paze Addendum, the Merchant Agreement, Applicable Law, Applicable Privacy Requirements, applicable Payment Network Rules (including, but not limited to, Payment Card Industry (PCI) Requirements and “honor all cards” requirements), the Rules, and the Service Documents. Client represents and warrants that Client is eligible to participate in Paze under the applicable eligibility requirements of the Rules, that Client is based in or operating in the United States, that Client accepts Payment Credentials supported by Paze, that Client is in good standing and able to process Payment Transactions with all applicable Payment Networks, and that Client will offer each Customer the option to use Paze for Payment Transactions. Client agrees to promptly notify Bank in the event that any representation, warranty, covenant or statement set out in this Section 4.1 is, or becomes, inaccurate, incorrect or untrue.
 - 4.2 Client further agrees and covenants that it shall:
 - (a) Access and use Paze solely for its intended use;
 - (b) Offer each Customer the option to use Paze for Payment Transactions;

- (c) Honor Customer elections with respect to Payment Transaction methods where Paze is present and available;
- (d) To the extent applicable to Client, enable Bank and the Service Operator to exercise their respective rights and perform their respective obligations under Applicable Law (including any Applicable Privacy Requirements), the Payment Network Rules, the Rules and the Service Documents;
- (e) To the extent applicable to Client, enable Bank and the Service Operator to make all applicable representations, warranties, covenants, acknowledgements, and agreements under Applicable Law (including any Applicable Privacy Requirements), the Payment Network Rules, the Rules and the Service Documents;
- (f) Provide all disclosures, notices, and options required under Applicable Law (including any Applicable Privacy Requirements) and the Payment Network Rules, and/or obtain all consents, authorizations, permissions, and approvals required under Applicable Law (including any Applicable Privacy Requirements) and the Payment Network Rules, in order to provide or otherwise make available information or data to Bank and the Service Operator for use in connection with Paze;
- (g) Cooperate with EWS in fulfilling its role as Service Operator;
- (h) To the extent permitted by Applicable Law, promptly notify Bank in writing of any threatened or filing of any action, suit, or proceeding against Client regarding or relating to Paze;
- (i) To the extent permissible by Applicable Law, promptly notify Bank in writing of any threatened or initiation of any investigation regarding or relating to Paze by any governmental or regulatory authority.
- (j) Adopt commercially reasonable measures to maintain anti-virus and inspection applications, software and/or tools to: (a) ensure that malicious software and functionalities are not transmitted, coded, or otherwise introduced into the Paze Service, or any systems of: (i) Bank; (ii) any Distributor; (iii) the Service Operator; and/or (iv) any other person; and (b) remove malicious software and functionalities from any transmitted data;
- (k) continue to review, analyze, and implement improvements to, and upgrades of, Client's malicious software and functionalities prevention and correction programs and processes that are commercially reasonable and consistent with the then-current information technology industry's standards; and
- (l) Not permit any employee or agent of Client to have access to the Paze Service, and/or any other data in connection with the Paze Service, if such employee or agent has been convicted of a crime in connection with a financial crime, dishonest act as it relates to fiduciary duty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a).

To the extent that the Rules are amended to require Bank to impose any obligation on Client (including any obligation relating to payment) or allocate liability to Client, such obligation and/or allocation of liability shall be incorporated into the Paze Service Addendum as if set out in full herein. Please refer to the Rules (as may be amended and updated from time to time, and made available to you, by the Service Operator) for further information.

4.3 Client further represents and warrants to, and covenants with, Bank that Client shall not, and shall not permit any third parties to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate Paze or any portion thereof; (ii) copy, modify, enhance, translate, supplement, derive source code or create derivative works from, reverse engineer, decompile, disassemble, or otherwise reduce to human-readable form Paze or any portion thereof; (iii) use altered versions of Paze or any portion thereof; (iv) use, operate or combine Paze with other products, materials or services in a manner inconsistent with this Paze Addendum, the Merchant Agreement, the Rules, or the Service Documents; (v) use Paze, or any portion thereof, as a standalone or non-integrated program or in any other manner other than as contemplated by this Paze Addendum, the Merchant Agreement, the Rules, or the Service Documents; or (vi) perform or attempt to perform any actions that would interfere with the proper functioning of Paze, prevent access to

or use of Paze by other Participants, or, in Bank's reasonable judgment, impose an unreasonably large or disproportional load on any Bank or Service Operator platform or infrastructure.

4.4 Client acknowledges and agrees that, in addition to other rights Bank has under the Merchant Agreement, Bank shall be entitled to pass through to Client any assessments, charges, costs, expenses, fines, losses, non-compliance fees, penalties, or other liabilities imposed on Bank by the Payment Networks, the Service Operator, or any other Paze Participant (including, without limitation, any Issuer and/or Distributor) as a result of any act or omission by Client, Client's officers, employees, agents, or Third-Party Providers, in connection with access to or use of Paze (the "**Paze Liabilities**"). Client further acknowledges and agrees that any and all Paze Liabilities passed through to Client pursuant to this Section 4.4 shall constitute amounts due under the Merchant Agreement, and in order for Bank to obtain payment of any such Paze Liabilities, Bank shall be entitled, at Bank's option and in Bank's sole discretion and without advance notice to Client, to: (i) debit Client's Reserve Account or any other account Client maintains with Bank or to which Client has granted Bank access; or (ii) withhold, set-off, recoup, and/or defer payment of any funds owed by Bank to Client or held by Bank on Client's behalf (including, without limitation, any Settlement Funds). For the avoidance of doubt, notwithstanding any provision in the Merchant Agreement to the contrary, Bank may cease providing Paze to Client in its sole discretion until Bank has received payment for the Paze Liabilities.

5. Special Termination Provisions.

5.1 Bank shall have the right to terminate this Paze Addendum for any of the reasons set forth in the Merchant Agreement for termination of the Merchant Agreement.

5.2 Bank shall also have the right to terminate this Paze Addendum with immediate effect in the event that Paze is terminated or suspended or otherwise no longer in effect, or if Bank, in Bank's sole discretion, is otherwise unable to continue to provide Paze to Client.

5.3 Bank shall further have the right to terminate this Paze Addendum or to alter, immediately suspend, or terminate Client's access to or use of Paze with immediate effect and without notice to Client in the event Client violates the terms of this Paze Addendum, the Merchant Agreement, Applicable Law (including any Applicable Privacy Requirements), the Rules, the Service Documents, or any agreement with third parties that are involved in providing Paze. Bank shall have such right upon receipt of any notice from the Service Operator that Client has or is suspected to have violated the terms of the Rules or the Service Documents.

5.4 Bank and Client shall each have the right to terminate this Paze Addendum and its respective participation in Paze for any other reason, including convenience, upon no less than sixty (60) days' written notice to the other Party.

5.5 Notwithstanding Section 6, this Paze Addendum will automatically terminate upon any termination of the Merchant Agreement.

6. Audit Rights

6.1 To ensure your compliance with this Paze Addendum, Applicable Law, the Distributor Rules and the Payment Network Rules, including your compliance with the Payment Card Industry (PCI) Requirements, upon thirty (30) days' written notice (or upon shorter notice or no notice if such an audit is requested or required by a Regulatory Authority, Payment Network, the Service Operator, or as the result of a Compromised Data Event relevant to this Paze Addendum), you will:

- (a) permit us and/or our duly authorized representatives or Persons to access during business hours such premises, Locations, Merchant Equipment and/or systems (including any computer or server systems) on which your business trades or where your records or stock are located;
- (b) permit us and/or our duly authorized representatives or Persons to take and retain copies of all such records (in any medium) to determine whether you are in compliance with the requirements of this Paze Addendum and performing your obligations hereunder; and
- (c) provide all reasonable cooperation in relation to such audit.

6.2 Where such an audit is requested by a Payment Network, Regulatory Authority or the Service Operator, you shall pay any costs and charges incurred by us in respect of such audit.

6.3 You must promptly take corrective action acceptable to us, the Service Operator, Regulatory Authority and the Payment Networks (as applicable) to rectify:

- (a) any failure to comply with this Paze Addendum, the Distributor Rules or any problem identified in any report, examination or audit that could reasonably be expected to have an adverse impact on Bank, the Service Operator, Participating Paze Issuers, Payment Networks, or Customers ; and
 - (b) any control deficiencies identified in such report.
- 7. Product Disclaimers.** CLIENT ACKNOWLEDGES THAT BANK DOES NOT OPERATE PAZE AND DOES NOT GUARANTEE CLIENT'S ACCESS TO AND/OR USE OF PAZE, AND CLIENT AGREES THAT BANK SHALL NOT BE HELD LIABLE IF CLIENT CANNOT OBTAIN ACCESS TO AND/OR USE OF PAZE. BANK DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT PAZE (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.
- 8. Exclusion of Damages.** Bank shall not be liable to Client for any indirect, incidental, consequential, special or exemplary damage or loss suffered or incurred by Client in connection with Client's use of Paze, regardless of the form of action, or any loss of revenue, profits or business, anticipated savings, loss of goodwill or reputation, costs of delay, lost or damaged data, or the incurring of liability for loss or damage of any nature whatsoever suffered by third parties, all whether in contract, strict liability or tort (including negligence), and regardless of whether Bank or Client knew or had reason to know of the possibility of the loss, injury or damage in question.