

eCOMMERCE PAYMENT PLATFORM ADDENDUM

This eCommerce Payment Platform Addendum to Participation Agreement ("ePP Addendum") is being entered into by and between Bank of America, N.A., for itself and as assignee of Banc of America Merchant Services, LLC ("Contractor") and the undersigned Participant ("Participant"). This ePP Addendum supplements the Participation Agreement by and among Participant and Contractor (the "Participation Agreement") dated September 3, 2013 to which it is attached, and sets forth the additional terms applicable to the ePP Services (as defined below). The Participation Agreement and the Master Contract for ePayment Solutions and Services to which it is attached dated June 12, 2013 ("Master Contract"), together with all supplements, addenda, and schedules thereto, as amended from time to time, may be referred to herein collectively as the "Contract." In the event of any conflict between this ePP Addendum and any other document which comprises the Contract, the order of precedence set forth in the Master Contract shall govern and control. Any references in the Agreement (or any amendments, addenda or supplements thereto) to "you," "your" or "Merchant", when used herein, refer to Participant; and any references in the Agreement (or any amendments, addenda or supplements thereto) to "us," "our" or "we", when used herein, refer to Contractor. Unless stated otherwise, any reference to this ePP Addendum herein includes the Agreement.

The eCommerce Payment Platform (as defined in Section 1) is incorporated within the term "Services" in the Agreement. For the avoidance of doubt, any monetary caps on Contractor's limitation of liability set forth in the Agreement shall apply to Services provided by Contractor.

PARTICIPANT AND CONTRACTOR AGREE AS FOLLOWS:

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

"API" means any specifications and protocols, developed by or on behalf of Contractor for use with the eCommerce Payment Platform that (i) format, encrypt, or decrypt messages transferred between the Contractor Systems and the Merchant Systems, or (ii) otherwise enable, either directly or indirectly, access to or use of the eCommerce Payment Platform.

"Documentation" means, collectively, the operational documents, technical integration requirements and documentation, user manuals, help files, and other documentation, including implementation overviews, integration guidelines and sandbox guidelines, in written or electronic form, as provided or otherwise made available by, and as modified by, Contractor from time to time, that are intended for use in connection with, and provide more information regarding, the eCommerce Payment Platform.

"eCommerce Payment Platform" means the e-commerce payment processing gateway services, including (i) Card transaction data submission, authorization and data settlement related to the services Participant receives from Contractor under the Agreement; (ii) fraud management, Cardholder authentication and customer information management tools for Card transactions and Participant's customer registrations and updates; (iii) Card account number tokenization; (iv) electronic invoicing and data import tools; (v) other features described in the Documentation; (vi) any Optional Services Participant selects and (vii) additional services that may become available in the future.

"Intellectual Property Rights" mean all intellectual property rights throughout the world, including copyrights, patent rights, mask works, Marks, trade secrets, inventions (whether or not patentable), authors' rights, moral rights, rights of attribution, goodwill, and other proprietary rights and all applications and rights to apply for registration or protection of such right.

"Optional Services" means the Account Updater and PayPal Acceptance services offered herein.

"Third Party Services" means other products and services of third parties that may be available through the eCommerce Payment Platform including, but not limited to, eCheck.

2. **eCommerce Payment Platform.**

- 2.1 Contractor shall provide the eCommerce Payment Platform to Participant (i) subject to the terms of this ePP Addendum and the Agreement, and (ii) only in the United States of America.
- 2.2 Participant must select an ID and password to enable it to access the eCommerce Payment Platform (and related account). Participant shall (i) restrict access to such ID, password, and account to Participant's employees and agents as may be reasonably necessary for purposes of accessing and using the eCommerce Payment Platform consistent with this ePP Addendum and (ii) ensure that each such employee and agent accessing and using the eCommerce Payment Platform is aware of and otherwise complies with all applicable provisions of this ePP Addendum regarding such use and access. Participant is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes for purposes of giving Participant access to the eCommerce Payment Platform. Contractor shall be entitled to rely on information Contractor receives from Participant and may assume that all such information was transmitted by Participant

or on Participant's behalf. Participant shall comply with all Contractor's requirements and notices regarding the security of Participant's ID, password and related eCommerce Payment Platform account(s).

2.3 Participant acknowledges and agrees to the following:

2.3.1 the eCommerce Payment Platform services may be performed by one or more of Contractor's subcontractors, including, but not limited to, CyberSource Corporation ("CyberSource") or any of CyberSource's affiliates or successors in interest (together with CyberSource, the "CyberSource Parties"), whether such subcontractors are located within or outside the United States of America, (such subcontractors, including, but not limited to, the CyberSource Parties, are referred to individually as a "eCommerce Payment Platform Subcontractor" and collectively as the "eCommerce Payment Platform Subcontractors");

2.3.2 except as otherwise provided by Applicable Law, the eCommerce Payment Platform Subcontractors have no liability to Participant in connection with the eCommerce Payment Platform;

2.3.3 each eCommerce Payment Platform Subcontractor shall be a third party beneficiary of the provisions of this Section 2.3 and Sections 4 and 8 of this ePP Addendum, with the right to enforce the terms and conditions of such provisions as if such eCommerce Payment Platform Subcontractor were a party hereto with the same rights as Contractor under those provisions, and

2.3.4 with respect to any information, including, but not limited to, data identifiable or relating to Participant or Participant's customers or representatives (whether or not such customers or representatives are natural persons or entities) received or processed in connection with providing the eCommerce Payment Platform to Participant ("Participant eCommerce Payment Platform Information"), Contractor and each eCommerce Payment Platform Subcontractor may, (i) in order to provide the eCommerce Payment Platform to Participant, disclose to third parties, access, process and store, Participant eCommerce Payment Platform Information within and/or outside the United States of America and (ii) use and analyze Participant eCommerce Payment Platform Information to make enhancements, improvements and other modifications to their respective services (and the features and functionality of such services), including (but not limited to) enhancements, improvements and modifications that may benefit other customers and Participants of such services.

2.4 Participant acknowledges and agrees that it is solely responsible for maintaining complete back-up records of all information relating to orders, inquiries, and purchases and any information submitted by Participant to Contractor (or to any of the CyberSource Parties) for purposes of receiving the eCommerce Payment Platform.

2.5 Participant may select one or more of the Optional Services to be provided in connection with the eCommerce Payment Platform.

3. **Fees.** Participant agrees to pay Contractor the fees for the eCommerce Payment Platform as set forth on Schedule A, which are in addition to the processing fees, any third party-based fees, and other fees or charges set forth elsewhere in, and are part of the fee schedule to, the Agreement. Participant shall also be responsible for all additional costs and expenses as set forth in the Agreement. The fees due under this ePP Addendum constitute amounts due under the Agreement which will be billed, collected and charged or paid as permitted under the Agreement.

4. **Participant Representations, Warranties and Covenants.** Participant represents and warrants to, and covenants with, Contractor that Participant shall use the eCommerce Payment Platform only (i) in accordance with this ePP Addendum, the Agreement, Applicable Law and applicable Card Organization Rules; and (ii) in a manner consistent with the Documentation.

5. Sublicense; Intellectual Property.

5.1 Contractor grants to Participant a non-transferable, non-assignable, non-exclusive, limited, royalty-free, revocable sub-license during the term of this ePP Addendum to the API and Documentation to access and use the eCommerce Payment Platform and Documentation, all subject to the terms of this ePP Addendum and the Agreement. Participant may only use any API and Documentation in connection with Participant's access to and use of the eCommerce Payment Platform. Participant has no intellectual property rights or other right, title or interest in or to the eCommerce Payment Platform, the API, the Documentation, or derivative works thereof (collectively, the "eCommerce Payment Platform IP"); and nothing in this ePP Addendum or the Agreement assigns, transfers or creates any such right, title or interest for Participant (whether express or implied, or by estoppel or otherwise). Any and all right, license, title or interests associated with the eCommerce Payment Platform IP that are not expressly granted by Contractor within this ePP Addendum are expressly withheld. Participant shall not take any action inconsistent with the ownership, title or license rights associated with the eCommerce Payment Platform IP. Participant shall not file any action, in any forum, challenging ownership of the eCommerce Payment Platform IP. Participant shall not use the eCommerce Payment Platform or eCommerce Payment Platform IP outside of the United States (and "United States" as used in the foregoing sentence excludes U.S. territories and possessions). Participant

shall use the eCommerce Payment Platform only for its business purposes and not for any household use. Participant obtains no rights (license or otherwise) to trademarks, service marks, brand names or logos associated with the eCommerce Payment Platform, Contractor, or any of its service providers hereunder. Breach of any part of this Section constitutes a material breach of this ePP Addendum, and Contractor may immediately suspend or terminate Participant's use of the eCommerce Payment Platform or this ePP Addendum in the event of such breach.

- 5.2 **Restrictions.** Participant shall not, and shall not permit any third parties to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate the eCommerce Payment Platform IP or any portion thereof; (ii) copy, modify, enhance, translate, supplement, derive source code or create derivative works from, reverse engineer, decompile, disassemble, or otherwise reduce to human-readable form the eCommerce Payment Platform IP or any portion thereof; (iii) use altered versions of the eCommerce Payment Platform IP or portion thereof; (iv) use, operate or combine the eCommerce Payment Platform IP with other products, materials or services in a manner inconsistent with this ePP Addendum or the Agreement; (v) use the eCommerce Payment Platform or eCommerce Payment Platform IP, or any portion thereof, as a standalone or non-integrated program or in any other manner other than as contemplated by this ePP Addendum; or (vi) perform or attempt to perform any actions that would interfere with the proper working of the eCommerce Payment Platform, prevent access to or use of the eCommerce Payment Platform by other users, or, in Contractor's reasonable judgment, impose an unreasonably large or disproportional load on any Contractor platform or infrastructure. Participant shall not permit any third parties to access the eCommerce Payment Platform IP. Participant shall not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting our or other third parties' proprietary interests in the eCommerce Payment Platform IP.

- 5.3 Participant shall promptly notify Contractor in writing of any threat, or the filing of any action, suit or proceeding against Participant regarding the eCommerce Payment Platform or eCommerce Payment Platform IP in which an adverse decision would reasonably be expected to have a material impact on Contractor or any of the eCommerce Payment Platform subcontractors.

6. Special Termination Provisions.

- 6.1 In addition to the termination rights set forth in the Agreement, this ePP Addendum will automatically terminate upon any termination of the Agreement. Upon termination or expiration of this ePP Addendum, all licenses granted hereunder will immediately terminate and Participant will either return or destroy the Software, certifying such destruction in writing to Contractor.

- 6.2 Contractor shall have the right to terminate this ePP Addendum for any of the reasons set forth for termination of the Agreement. In addition, Contractor reserves the right to alter, immediately suspend or upon notice terminate the eCommerce Payment Platform in the event Participant violate the terms of this ePP Addendum, the Agreement or any agreement with third parties that are involved in providing the eCommerce Payment Platform is terminated or otherwise no longer in effect, or Contractor is otherwise unable to continue to provide the eCommerce Payment Platform.

7. Product Disclaimers.

- 7.1 CONTRACTOR HAS NO OBLIGATION TO ATTEMPT TO MONITOR OR REGULATE THE CONTENT OR PROVISION OF PARTICIPANT'S PRODUCTS OR SERVICES. CONTRACTOR AND eCOMMERCE PAYMENT PLATFORM SUBCONTRACTORS SHALL HAVE NO LIABILITY IN CONNECTION WITH PARTICIPANT'S OFFERING OR SALE OF PARTICIPANT'S PRODUCTS AND SERVICES.

- 7.2 CONTRACTOR DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR (I) THIRD PARTY SERVICES OR SOFTWARE INCLUDING, BUT NOT LIMITED TO, THIRD PARTY SERVICES SUCH AS PAYPAL OR ECHECK, THAT PARTICIPANT USES IN CONNECTION WITH THE eCOMMERCE PAYMENT PLATFORM, WHICH THIRD PARTY SERVICES PARTICIPANT USES AT PARTICIPANT'S OWN RISK, AND (II) ANY LOSS (HOWEVER OCCURRING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (A) PARTICIPANT'S FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE PARTICIPANT'S eCOMMERCE PAYMENT PLATFORM ACCOUNT(S); (B) FRAUDULENT TRANSACTIONS PROCESSED THROUGH PARTICIPANT'S USE OF THE eCOMMERCE PAYMENT PLATFORM; (C) DISRUPTION OF THE eCOMMERCE PAYMENT PLATFORM, OR THE PARTICIPANT'S SYSTEMS, SERVER OR WEBSITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (D) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MERCHANT SERVICE PROVIDER OR FINANCIAL INSTITUTION; OR (E) THE LIMITATION OF THE FUNCTIONING OF ANY eCOMMERCE PAYMENT PLATFORM SERVICE OR SOFTWARE, HARDWARE, OR EQUIPMENT ASSOCIATED THEREWITH.

- 7.3 EXCEPT AS EXPRESSLY PROVIDED IN THIS ePP ADDENDUM, CONTRACTOR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT THE eCOMMERCE PAYMENT PLATFORM SERVICES (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

8. **EXCLUSION OF DAMAGES; LIMIT OF LIABILITY.**

8.1 CONTRACTOR SHALL NOT BE LIABLE TO PARTICIPANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGE OR LOSS SUFFERED OR INCURRED BY PARTICIPANT, 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 CONTRACTOR OR PARTICIPANT KNEW OR HAD REASON TO KNOW OF THE POSSIBILITY OF THE LOSS, INJURY OR DAMAGE IN QUESTION.

8.2 NOTWITHSTANDING THE LIMIT OF LIABILITY SET FORTH IN THE MERCHANT AGREEMENT, CONTRACTOR'S TOTAL AGGREGATE LIABILITY TO PARTICIPANT UNDER THIS ePP ADDENDUM WILL BE LIMITED TO THE LESSER OF ONE HUNDRED THOUSAND DOLLARS (\$100,000), OR THE FEES PAID TO CONTRACTOR UNDER THIS ePP ADDENDUM DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

9. **Export Control.** Participant understands and acknowledges that the eCommerce Payment Platform services are subject to regulation by agencies of the U.S. government which prohibits export or diversion of certain products and technology to certain countries, persons, or other entities. Any and all of Contractor's obligations to provide the eCommerce Payment Platform is subject to all applicable export laws and restrictions and regulations. Participant agrees to comply with all applicable export laws and restrictions and regulations and not to export or re-export any eCommerce Payment Platform IP (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods including, without limitation, Iran, Cuba, Syria, Sudan, the Crimea Region of the Ukraine, and North Korea; or (ii) to any person on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Person's List.

10. **General.**

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

10.2 Counterparts/Electronic Originals. This ePP Addendum may be executed in any number of counterparts, each of which is deemed an original and all of which constitute one and the same instrument. Facsimile, electronic or other images of this executed ePP Addendum are effective as executed originals.

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

EXECUTED AND AGREED:

Participant's Name: City of Delray Beach

Select One: ☐ Agency Participant ☒ Local Government Participant

By: _____

Attest: Shelly Petrolia, Mayor

Approved as to form and Legal Sufficiency: Katerri Johnson, City Clerk

Lynn Gelin, City Attorney

Contractor's Name: Bank of America, National Association

By: Andrea R. Morris

Printed Name: Andrea R. Morris

Title:

SVP

Date:

8/10/22

Schedule A
eCommerce Payment Platform Fees

FEE DESCRIPTIONS FOR eCOMMERCE PAYMENT PLATFORM

Fee Name	Fee Type	Fee Amount
Internet Set-up Fee (30R) This fee is charged per Terminal ID ("TID") for implementation of the eCommerce Payment Platform on Contractor's and Contractor's agents' systems.	One Time, per TID	\$49
Gateway/Software Fee (44M) This fee is charged per TID for continued access to eCommerce Payment Platform on Contractor's and Contractor's agents' systems.	Monthly, per TID	\$16
Internet Auth Fee (03R, 04R, 06I and 07I) This fee is charged for each Internet transaction Authorization request for the applicable Card Organizations, whether approved or declined, and will appear on the Merchant Account statement in the form "[Card Organization name] Internet Auth Fee."	Per Authorization request	\$0.10

OPTIONAL SERVICES

Check here to select	Service	Fee Type	Fee Amount
☐	Account Updater: Account Updater automatically checks for changes to card information stored with customer's recurring subscriptions and customer profiles, and updates the card information if available from the card issuer.	Update on new account number (NAN: New Account Number Update) Update on new expiry date (NED: New Expiry Date update) Charged if we detect a closed account (ACL: Account Closed Update) Charged if detect anomaly with the account (CCH: Contact Card Holder)	\$0.25 per update
☐	PayPal Acceptance: Accept PayPal as an online payment method. Also requires a separate agreement with PayPal for acceptance of the PayPal transactions.	Internet Auth Fee (see above) (For purposes of this Addendum, PayPal and/or other payment methods are Card Organizations as defined in the Agreement.)	(see above)