

PROMISSORY NOTE

San Francisco, California

\$3,000.00

_____, 2018

FOR VALUE RECEIVED, the undersigned, _____ (“**Borrower**”), hereby promises to pay to the order of The University of San Francisco, a non-profit public benefit corporation organized under the laws of the State of California (“**University**”), at the Office of Accounting and Business Services, 2130 Fulton Street, San Francisco, California 94117, or at such place or to such other party or parties as the holder of this Promissory Note (the “**Note**”) may designate from time to time, the principal sum of Three Thousand Dollars (\$3,000.00) (“**Original Principal**”) on or before the Due Date hereof. Said principal is payable at the times set forth in Section 3 of this Note.

1. Definitions. The following terms shall have the following meanings:

1.1 “**Due Date**” means the date on which the earliest of the Maturity Events set forth in Section 1.2 takes place.

1.2 “**Maturity Event**” means, to the extent permitted by law, any of the following events:

1.2.1 The date on which the Borrower ceases to be an employee of the University for any reason, including but not limited to voluntary or involuntary termination, whether or not contested, retirement or death.

1.2.2 The date on which this Note is paid in full.

1.2.3 The date on which the University determines that a representation or warranty of Borrower contained herein or in any certificate or agreement entered into by Borrower and the University is false or misleading in any material respect.

1.2.4 The date as of which the Borrower shall fail to pay any amount of the principal or interest on this Note when due and shall fail to cure such non-payment within ten (10) days following written notice of such delinquency.

1.2.5 The date as of which the Borrower shall breach or default in the performance or observance of any other obligation or covenant of Borrower contained in this Note or any other agreement or instrument now or hereafter executed by Borrower and the University in connection with this Note.

1.2.6 The date on which Borrower (a) admits in writing Borrower's inability to pay Borrower's debts, (b) makes an assignment for the benefit of creditors, (c) files a voluntary petition in bankruptcy, effects a plan or other arrangement with creditors, liquidates assets under arrangement with creditors, or liquidates assets under court supervision, (d) has an involuntary petition in bankruptcy filed against Borrower that is not discharged within sixty (60) days after such petition is filed, or (e) applies for or permits the appointment of a receiver or trustee or custodian for any of Borrower's property or assets which shall not have been discharged within sixty (60) days after the date of appointment.

1.3 **"Outstanding Principal"** means an amount equal to the Original Principal, less the amount, if any, of payments credited against Original Principal pursuant to the provisions of sections 3 and 5.

2. Interest. Interest on the Outstanding Principal shall accrue at a rate of Zero Percent (0.00%).

3. Payment. Outstanding Principal shall be payable in semi-monthly installments of One Hundred and Twenty Five Dollars (\$125.00) beginning on January 22, 2019 and continuing until the Due Date, at which time Borrower will pay any additional then-Outstanding Principal. Borrower shall pay all such amounts to the University when due, through pre-authorized payroll deduction, without further demand or notice to Borrower. Should a Maturity Event other than the type set forth in subsection 1.2.2 take place, Borrower will pay any Outstanding Principal first from any accrued and unpaid salary; then from Borrower's accrued and unused vacation leave, if any; and then from additional funds paid by Borrower. Should Borrower not have accrued and unused salary, vacation leave, or ready funds sufficient to pay the full amount of Outstanding Principal, the University may engage a collection agency or seek to garnish Borrower's wages or place a lien on Borrower's property until such time as this Note is repaid in full.

4. Application of Payments. All payments made and received hereunder shall be applied first to any late charges as described in Section 6, and then to the Outstanding Principal.

5. Prepayment. The Borrower may at any time prior to the Due Date and without penalty prepay, in whole or in part, the Outstanding Principal owed.

6. Late Charge. Because of the impracticality of determining actual damages suffered by the University by reason of Borrower failing to make payments hereunder when due, Borrower agrees to pay to the University as liquidated damages a late charge of five percent (5%) of any installment or other payment due hereunder not paid on or before the tenth (10th) day after it is due. The University shall be entitled to recover this late charge in addition to exercising all its other rights and pursuing all its other remedies set forth in this Note.

7. Use of Proceeds and Non-Transferability of Obligations. This Note is a term loan, the benefits of which are not transferable by Borrower and are conditioned on the future

performance of substantial services by Borrower. Borrower's obligations under the terms of this Note shall not be assignable or otherwise transferable by Borrower.

8. Confidentiality. The terms and substance of this Note, all other documents related to this transaction, and all correspondence and discussions between the parties concerning this transaction are confidential, and both the University and Borrower agree not to disclose the terms or substance of such Note or other items to any person or entity other than counsel or other professionals hired to give expert advice, or to persons or entities specified by a court of competent jurisdiction.

9. Miscellaneous Provisions.

9.1 Principal and any late charge penalties shall be payable in lawful money of the United States of America.

9.2 All payments made hereunder shall be made by Borrower free and clear of, and without deduction for, any and all present and future taxes, levies, charges, deductions and withholdings. Borrower shall pay upon demand any taxes, levies or charges of any jurisdiction with respect to the execution, delivery, performance and enforcement of this Note.

9.3 No delay or omission by the University in exercising any right upon Borrower's default under any term, covenant or condition contained in this Note or any other agreement between Borrower and the University shall operate as a waiver of such right or of any other right granted to the University under such Note or other agreements for the same default or any other default. The waiver by the University of any breach of or default under any term, covenant or condition contained in this Note or any other agreement between Borrower and the University shall not be deemed a waiver of any subsequent breach of or default under the same or any other such term, covenant or condition.

9.4 Nothing herein contained, nor any transaction or instrument related hereto, shall be construed or so operate as to require the Borrower, or any person liable for repayment of the Note, to pay interest at a greater rate than is lawful in such case to contract for, or to make any payment or to do any act contrary to law. Anything in this Note to the contrary notwithstanding, it is expressly stipulated and agreed that the intent of Borrower and the University is to comply at all times with all usury and other laws relating to this Note. If the laws of the State of California would now or hereafter render usurious, or are revised, repealed or judicially interpreted so as to render usurious, any amount called for under this Note, or contracted for, charged or received with respect to the loan evidenced by this Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by law, then it is Borrower's and the University's express intent that all excess amounts theretofore collected by the University be credited to the Outstanding Principal (or, if this Note has been paid in full, refunded to Borrower), and the provisions of this Note immediately be deemed reformed and the amounts therefor collectible hereunder reduced, without the necessity of execution of any new document, so as to comply with the then

applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

9.5 The University shall have the right to sell, assign, or otherwise transfer this Note, either in part or in its entirety, without Borrower's consent thereto.

9.6 This Note shall be governed by and construed in accordance with the laws of the State of California. The maker(s) of this Note hereby waive presentment for payment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent that the University may extend the time for payment or otherwise modify the terms of payment or any part of the whole of the debt evidenced by this Note, at the request of any person liable hereon, and such consent shall not alter nor diminish the liability of any person. Borrower hereby waives, to the extent permitted by law, the defense of the statute of limitations in any action on this Note. Time is of the essence of this Note and any other document executed by Borrower in connection therewith. Liability hereunder shall be joint and several among all persons and entities now or hereafter liable for all or any part of the obligations set forth in this Note.

9.7 Subject to Section 7 hereof, this Note and all of the covenants, promises and agreements contained in it shall be binding on and inure to the benefit of Borrower and the University and their respective heirs, successors and permitted assigns.

9.8 This Note may be modified only by a written agreement executed by both the University and Borrower.

9.9 Should any provision of this Note be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Note shall remain in effect, unimpaired by the holding.

9.10 In the event of Borrower's default hereunder, Borrower shall pay all costs of collection, including reasonable attorney fees incurred by the University on account of such collection, regardless of whether a lawsuit is filed hereon.

9.11 In the event of litigation concerning this Note, including an action, contested matter or a proceeding in a bankruptcy, to interpret or enforce this Note, or any of its terms, or to defend against an avoidance action in a bankruptcy, the prevailing party, shall be entitled, in addition to any judgment or award, to an award for all fees (including reasonable attorneys' fees), costs and expenses, including court or arbitration costs and expenses, regardless of whether such action is prosecuted to judgment. The prevailing party shall further be entitled to an award for reasonable attorneys' fees and related costs in connection with enforcement of any such judgment or award it obtains, including enforcement during or following any ensuing appeal with respect thereto. "Prevailing party" shall mean, without limitation, a party who agrees to dismiss an action upon payment by the other party of sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by that party.

9.12 In any action on this Note, the University or its assignee need not produce or file the original of this Note, but need only file a photocopy of this Note certified by the University or such assignee to be a true and correct copy of this Note in all material respects.

9.13 Upon receipt by the Borrower of evidence reasonably satisfactory to him of the loss, theft, destruction or mutilation of this Note, the Borrower will execute and deliver to the University a new promissory note of like tenor and denomination as this Note, and this Note shall be deemed cancelled and all obligations hereunder extinguished.

10. Borrower's Acknowledgement. THIS NOTE AND ALL RELATED DOCUMENTATION ARE EXECUTED VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE ON THE PART OF OR ON BEHALF OF THE PARTIES HERETO, WITH THE FULL INTENT OF CREATING THE OBLIGATIONS DESCRIBED HEREIN AND THEREIN. THE BORROWER ACKNOWLEDGES THAT: (a) BORROWER HAS READ THIS NOTE AND ALL RELATED DOCUMENTATION; (b) BORROWER HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY LEGAL COUNSEL OF THE BORROWER'S OWN CHOICE IN THE PREPARATION, NEGOTIATION AND EXECUTION OF THIS NOTE AND ALL RELATED DOCUMENTATION; (c) BORROWER UNDERSTANDS THE TERMS AND CONSEQUENCES OF AND THE OBLIGATIONS CREATED BY THIS NOTE AND ALL RELATED DOCUMENTATION; AND (d) BORROWER IS FULLY AWARE OF THE LEGAL AND BINDING EFFECT OF THIS NOTE AND ALL OTHER DOCUMENTS CONTEMPLATED BY OR ENTERED INTO IN CONNECTION WITH THIS NOTE.

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first above written.

Borrower signature:

Borrower name:

Borrower CWID:
