CLOVER® SERVICE ADDENDUM

This Clover Service Addendum ("**Clover Service Addendum**") is made by and between the undersigned client ("**Client**") and Bank of America, N.A. ("**Bank**"), as of the date signed by Client ("**Effective Date**") and supplements the Client's existing agreement for merchant services by and among Bank or any of its predecessors or assignors, as applicable (as amended and supplemented from time to time, the "**Agreement**"). Any references in the Agreement (or any amendments, addenda or supplements thereto) to "you," "your" or "Merchant", when used herein, refer to Client; and any references in the Agreement (or any amendments, addenda or supplements thereto) to "us," "our" or "we", when used herein, refer to Bank. Unless stated otherwise, any reference to this Clover Service Addendum herein includes the Agreement.

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

CLIENT AND BANK AGREE AS FOLLOWS:

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

   "**Clover**" means Clover Network, Inc.

   "**Clover API**" means an application programming interface linking the Clover Service and the Third Party Services, including any Third Party POS System App. Each provider of a Third Party Service is responsible for ensuring that such Third Party Service will function properly with the Clover API.

   "**Clover App Market**" means the Clover-supported application marketplace, and that portion of the Clover Service website, through which Third Party Services applications and/or Service Plans may be subscribed to or purchased.

   "**Clover Integrated Service**" means the combination of: (i) the Clover Service for Card transaction processing services only, which Bank will provide for Client; and (ii) a Third Party Service, including a Third Party POS System App, which Third Party Service may be accessible from the Clover App Market or through the Clover API.

   "**Clover Marks**" means the trademarks or service marks used in connection with the Clover Service.

   "**Clover Service**" means: (i) the website associated with the Clover Service, if any, but not any website associated with an application marketplace accessible via the Clover Service; (ii) the object code version of the software applications resident on a Device at the time Bank provides Client with the Device or "pushed" to Client's Device by Bank, but excluding any such software applications developed by Bank; (iii) the object code version of the software that enables such applications listed in (ii) above; (iv) Tokenization Services; (v) Bank-provided internet-based services; and (vi) any related updates (including software maintenance or bug fixes), materials, documentation and derivative works released by Bank from time to time, all of which are designed to assist with the management of Client's business and to facilitate the provision of certain Services (e.g., payment processing) under the Agreement. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by Client separately from the Clover Service (e.g., any applications downloaded by Client through an application marketplace or any Third Party POS System App software).

   "**Tokenization Services**" is a service that encrypts cardholder information at the point of transaction and replaces it with a unique identifier that is returned with the authorization response to be used instead of the card number for that transaction. The Tokenization Services can only be used with a point-of-sale device, gateway, or service certified as being eligible for Tokenization Services.

   "**Device**" means a tablet, smartphone, the Clover Station, Clover Mobile, Clover Mini, Clover Flex or any other form factor identified by Bank from time to time as capable of supporting the Clover Service. Devices are subject to the Bank Equipment terms in the Agreement.

   "**Encryption**" means the encryption of: (i) Track 1 or Track 2 data from the magnetic stripe or otherwise from the physical Card; or (ii) PAN.

   "**Gateway Services**" means the payment processing services offered through the Clover Service (including authorizing transactions, routing transactions to the appropriate Payment Network or third party service provider, providing transaction/inquiry responses, and providing transaction reporting).

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

   "**Purchaser**" means a Person who makes a purchase of goods or services from Client, the transaction for which the Clover Service is utilized.

"**Purchaser Information**" means information about Purchasers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with Client's use of the Clover Service.

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

"**Third Party Service**" means the services, products, promotions or applications provided by a Person other than Bank (e.g., an application available through the Clover App Market).

"**Third Party POS System App"** means a Third Party Service application for a point of sale system which does not include Card transaction processing services.

"**Third-Party Provider**" means any Person engaged by Client to provide services to Client involving or relating to: (i) access to Cardholder data, transaction data, or information related to either Cardholder data or transaction data; (ii) the storage, processing or transmission of Cardholder data on behalf of Client; or (iii) personal identification number (PIN) encryption including Encryption Service Organizations. "Third-Party Provider" also includes any corporate entity, franchisor, or other Person that provides or controls a centralized or hosted network environment irrespective of whether Cardholder data is being stored, transmitted, or processed through it.

"Token" means a random numeric or other code that is assigned to replace a PAN as described herein.

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

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

2.1 Client may access the Clover Service through Client's Device(s) using a wired (Ethernet) or wireless (Wi-Fi or cellular) connection to the Internet. Client is solely responsible for the payment of any fees that may be imposed by Client's Internet/data provider. Client's use of the Clover Service may be subject to: (a) the terms of Client's agreements with Client's Internet/data provider; and (b) the availability or uptime of the services provided by Client's Internet/data provider.

2.2 Client may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for Authorization when Internet connectivity to the Clover System is restored. However, Client assumes all risk, responsibility and liability associated with any transaction that Client chooses to conduct while the Clover Service is used offline.

2.3 The Clover Service does not function with all equipment or form factors. Bank may alter which Devices are approved as compatible with the Clover Service in Bank's discretion from time-to-time.

2.4 Bank or Bank's service providers may perform maintenance on the Clover Service from time to time which may result in service interruptions. Client may be offered new services or software that may be in beta testing phase and not final. As such, the Clover Service may contain errors and "bugs" that may result in failure. Bank will not be liable for any such interruptions, delays, or bugs, including where such interruptions, delays or bugs result in failure. Client agrees that Bank or Bank's service providers may contact Client in order to assist Client with the Clover Service and obtain information needed to identify and fix any issues or errors.

2.5 Client shall at all times comply with any operating procedures, requirements, or guidelines regarding Client's use of the Clover Service that are available on the Clover website or otherwise provided or made available to Client.

2.6 Client is solely responsible for compliance with all laws, rules, and regulations that are applicable to Client's business and notwithstanding Client's use of the Clover Service to facilitate the management of Client's business, Bank disclaims any and all liability for Client's failure to comply with such laws, rules, and regulations.

2.7 Client is solely responsible for ensuring the accuracy of all information and data regarding Client's business that Client provides to Bank or Bank's service providers in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, Client is solely responsible for verifying that all information and data loaded onto a Device by Bank or Bank's service providers at Client's request are accurate prior to Client's business use of such Device. Bank and Bank's service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

2.8 Client shall comply with the following requirements in connection with Client's use of the Clover Service:

2.8.1 With respect to each Purchaser who requests the delivery of transaction receipts via text message or e-mail, such Purchaser must enter his or her telephone number or e-mail address in the appropriate entry displayed on the Device himself or herself; Client is NOT permitted to add or modify any Purchaser Information (including, but not limited to, telephone number and e-mail address) on behalf of a Purchaser.

2.8.2 With respect to each Purchaser who desires to receive marketing material or other communications from Client via physical mail, text message or e-mail, such Purchaser must check the appropriate consent check box displayed on the Device himself or herself; Client is NOT permitted to add or modify a Purchaser's consent indication on his or

her behalf.

2.8.3   Client (or Client's agents acting on Client's behalf) may only send marketing materials or other communications to the Purchaser's provided telephone number, street address, and/or e-mail address if the Purchaser has specifically consented by checking the applicable box displayed on the Device in accordance with Section 2.8.2 above.

2.8.4   NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE PURCHASER INFORMATION AND TO ALLOW PURCHASERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM CLIENT, CERTAIN STATES MAY LIMIT CLIENT'S USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE PURCHASER HAS PROVIDED HIS OR HER CONSENT, AND/OR CLIENT'S DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. CLIENT ACKNOWLEDGES AND AGREES THAT: (I) CLIENT'S USE OF PURCHASER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS; (II) CLIENT IS SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS; AND (III) CLIENT WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

2.9   Service Plans.

2.9.1   Service Plan Requirement. **A Service Plan is required to activate and to use each Account (including Account Devices sold or rented to Client by Bank). The same Service Plan is required for each Device associated with your Client account.** Certain Devices may not be compatible with all Service Plans. Each Service Plan is available from the Clover App Market and includes the applications listed for that Service Plan on the Clover App Market. Fees for Service Plans will be disclosed on the Clover App Market and will be charged by Clover on Bank's behalf, as described further in Section 2.9.2 below.

2.9.2   Service Plan Terms. Bank is an Authorized Sublicensor of all Service Plans as referenced in the Clover End User License Agreement ("**Clover EULA**"). The Service Plans, including their names, may change from time to time, and the then-available Service Plans will be reflected in the Clover App Market or in other documentation provided to Client. For each Service Plan, notwithstanding the terms of the Clover EULA or information on the Clover App Market that may be to the contrary: (i) Bank, and not Clover, will be deemed to have sold and/or licensed to Client, and Client will be deemed to have purchased or obtained that Service Plan from Bank, and not from Clover; (ii) Bank, and not Clover, is responsible to Client for providing that Service Plan, and that Service Plan will not be a Third Party Service under this Clover Service Addendum; and (iii) this Clover Service Addendum, and not the Clover EULA, will govern the use of all Service Plans. Notwithstanding any terms of the Clover EULA to the contrary, if a monthly fee for that Service Plan ("**Service Plan Fee**") is indicated on the Clover App Market, then Client will be obligated to pay Bank such Service Plan Fee as set out on the Clover App Market; provided, however, that Clover will, on Bank's behalf, collect the Service Plan Fee from Client, and Client's authorization for Bank to debit the Settlement Account for amounts due to Bank under the Agreement will apply for any amounts debited from the Settlement Account by Clover for Service Plan Fees.

3.   **Tokenization Services.** This section describes the Tokenization Services that are part of the Clover Service and apply only to Card transactions processed using Clover Equipment, as further described in Section 3.1 hereof.

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

3.1   Encryption and Tokenization**.** Tokenization Services encrypts cardholder information at the point of transaction and replaces it with a unique identifier that is returned with the authorization response to be used instead of the card number for that transaction. Tokenization Services can only be used with a point-of-sale device, gateway, or service that is eligible for the Tokenization Services.

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

Client has no right, title or interest in or to the Tokenization Services, any related software, materials, documentation, or derivative works thereof; and nothing in this Section 3 or this Clover Service Addendum assigns, transfers or creates any such right, title or interest for Client (whether express or implied, or by implication, estoppel or otherwise); any rights associated with the Tokenization Services that are not expressly granted by Bank within this Section 3 are withheld. Client shall not take any action inconsistent with the ownership, title or license rights associated with Tokenization Services. Client shall not file any action, in any forum, challenging ownership of the Tokenization Services, any related software, materials,

documentation or derivative works thereof. Breach of this Section 3.2 constitutes a material breach of this Section 3 and this Clover Service Addendum, and Bank may immediately suspend or terminate Client's use of the Tokenization Services, or terminate this Clover Service Addendum, in the event of such breach.

Client shall not, and shall not permit others to: (i) sell, distribute, lease, license, sublicense or otherwise disseminate Tokenization Services or any portion thereof; (ii) copy, modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the Tokenization Services or any portion thereof; (iii) use altered versions of the Tokenization Services or any portion thereof; (iv) use, operate or combine the Tokenization Services or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with this Section 3 or this Clover Service Addendum; or (v) use the Tokenization Services or any portion thereof as a standalone or non-integrated program. Client shall not remove, alter, modify, relocate or erase any copyright notice or other legend(s) denoting Bank's or Persons' (if any) proprietary interest in the Tokenization Services.

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

3.3 <u>Responsibilities of Client</u>. Client shall implement the Tokenization Services according to the operating instructions, which includes, without limitation: (i) implementing the Tokenization Services throughout the Merchant Systems involved in any applicable Services; (ii) replacing existing PANs within Merchant Systems involved in the Services with Tokens; and (iii) complying with applicable Card Organization Rules and applicable data security standards and reviews set forth in the Agreement and in the Card Organization Rules. Client shall implement any upgrades to the Tokenization Services within a commercially reasonable period of time after receiving the relevant updates. Client shall not retain PANs following implementation of the Tokenization Services and shall use Tokens or account truncation (as applicable) in lieu of PANs for all activities related to the Services provided by Bank subsequent to receipt of a Token associated with a Card transaction, including, without limitation, settlement, retrieval, chargeback and adjustment processing and transaction reviews. Client shall only use Merchant Systems, gateways or VARs that are certified for use with the Tokenization Services and are responsible for ensuring that Client's Merchant Systems, gateways and/or VARS are so certified.

3.4 <u>General; Termination</u>. Bank's obligations to provide Tokenization Services are subject to Bank's ability to obtain and maintain any and all required governmental licenses, permits or other authorizations, and Bank's ability to comply with any and all laws, regulations, orders and other governmental directives which may be imposed related to Tokenization Services. Bank may cease providing the Tokenization Services provided in accordance with this Section 3 at any time for any reason.

3.5 <u>Tokenization Services Disclaimer</u>. BANK MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO THE TOKENZATION SERVICES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT OF THE TOKENIZATION SERVICES OR THAT THE TOKENIZATION SERVICES WILL FUNCTION UNINTERRUPTED OR ERROR-FREE; ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) ARE DISCLAIMED.

4. **Clover Equipment**. The terms of the Clover Equipment Purchase Agreement set forth in Schedule A to this Clover Service Addendum will apply to Devices and other equipment and/or peripherals related to the Clover Service (collectively, the "**Clover Equipment**") purchased by Client from Bank, from time to time over the term of the Agreement, as described in the ordering documentation for the Clover Equipment, including, without limitation, e-mail orders, additional location forms and purchase orders ("**Clover Equipment Documents**"). Schedule A is part of this Clover Service Addendum and the Agreement, and will supersede any other language in the Agreement or elsewhere with respect to Client's purchase(s) of Clover Equipment.

5. **Fees**.

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

Fee Type	Product/Fee Code	Merchant Price ($)
Load Fee (per load fee) A fee will be charged to Client for each time we load Client's menu or list of services or products to a Device for which Client has been enabled to access the Clover Service, where applicable.		$15.00
Reprogramming Fee (per occurrence) A fee will be charged to Client for the reprogramming of each unit of Client's equipment that: (i) Bank has approved for use with the Clover Service; and (ii) was originally programmed, or last	N/A	$75.00

reprogrammed, by Bank for Client or for a prior Client from whom Client obtained such equipment.		

Gateway Services: (Optional)

Gateway Services:
The fees that may be charged to Client for the relevant Gateway Services are as set out below.

Fee Type	Product/Fee Code	Merchant Price ($)		
Gateway Setup Fee	31X	N/A		
Gateway Monthly Fee (per MID/per month)	417, 31Z	$16.00		

Your Gateway Transaction Fee or Internet Authorization Fee, in effect prior to the date of this Clover Service Addendum (if applicable), will remain unchanged.

Processing Fees. Processing fees for transactions processed using the Device are equivalent to the processing fees that apply to Client for non-Clover Service transactions, which are set forth in the Fee Schedule.

6.1 Bank grants to Client a non-transferable, non-assignable, non-exclusive, limited, royalty-free, revocable sub-license during the term of this Clover Service Addendum to access and use the Clover Service and any documentation provided by Bank in connection therewith ("**Documentation**"), all subject to the terms of this Clover Service Addendum and the Agreement. Client may only use any Documentation in connection with Client's access to and use of the Clover Service. Client has no intellectual property rights or other right, title or interest in or to the Clover Service, the Documentation, or derivative works thereof (collectively, the "**Clover Service IP**"); and nothing in this Clover Service Addendum or the Agreement assigns, transfers or creates any such right, title or interest for Client (whether express or implied, or by estoppel or otherwise). Any and all right, license, title or interests associated with the Clover Service IP that are not expressly granted by Bank within this Clover Service Addendum are expressly withheld. Client shall not take any action inconsistent with the ownership, title or license rights associated with the Clover Service IP. Client shall not file any action, in any forum, challenging ownership of the Clover Service IP. Client shall not use any Clover Service or Clover Service IP outside of the United States (and "United States" as used in the foregoing sentence excludes U.S. territories and possessions). Client shall use the Clover Service only for its business purposes and not for any household use. Client obtains no rights (license or otherwise) to trademarks, service marks, brand names or logos associated with the Clover Service, Bank, or any of its service providers hereunder. Breach of any part of this Section 6 constitutes a material breach of this Clover Service Addendum, and Bank may immediately suspend or terminate Client's use of the Clover Service or this Clover Service Addendum in the event of such breach.

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

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

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

8. Term and Termination.

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

8.2   Notwithstanding the provisions of Section 8.1, Bank may suspend the Clover Service or terminate this Clover Service Addendum if: (i) Bank, in its sole and absolute discretion, determines that Client is using the Clover Service for any fraudulent, illegal, or unauthorized purpose; (ii) Client violates the terms of this Clover Service Addendum, an Event of Default occurs under the Agreement, or a Default (as defined in the Clover Equipment Purchase Agreement appended hereto as Schedule A) occurs; (iii) Bank terminates Bank's agreement with any third parties that are involved in providing the Clover Service; or (iv) Bank otherwise decides to discontinue providing the Clover Service. Client acknowledges and agrees that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Agreement, thereby affording Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement (and this Clover Service Addendum) without notice. Bank may provide as much advance notice to Client as is commercially practicable on the occurrence of (iii) and (iv) above. Further, this Clover Service Addendum will terminate automatically upon the termination of the Agreement. Upon termination of this Clover Service Addendum for any reason, Client may remain responsible for the full amount of the Clover Services Fee through the end of the calendar month in which such termination is effective.

9.   **Account Registration.** Bank may require Client to register and create a "Member" or "Client" account to use the Clover Service. If and when prompted by Bank's registration process, Client agrees to: (i) provide true, accurate, current and complete information about Client and/or Client's business; and (ii) maintain and update this information to keep it true, accurate, current and complete. If any information provided by Client is untrue, inaccurate, not current or incomplete, Bank has the right to terminate Client's Clover Service account ("**Account**") and refuse any and all current or future use of the Clover Service.

10.   **Privacy and Data Use**. All data that Client provides or are collected from Client in connection with Client's use of the Clover Service (collectively, "**Account Data**") are collected by Clover and not Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Network, Inc. Privacy Policy (available at https://www.clover.com/privacy_policy). Client acknowledges and agrees that Bank may access such Account Data upon Bank's request to Clover, and Bank's use of Client's Account Data is governed by the terms set forth in the Agreement. Client grants Bank permission to anonymously combine Client's Account Data with that of other merchants in order to improve Bank's services to Client. Subject to compliance with applicable legal requirements and Card Organization Rules, and notwithstanding any language to the contrary in the Agreement, certain data collected by Bank or Bank's service providers in connection with the Clover Service may be shared with third parties, and used by Bank, Bank's service providers, or third parties for the purpose of providing additional products and services to Client, other merchants, or other third parties. If Client elects to use the Clover Integrated Service, then, in addition to the above and other rights of Bank under the Agreement with respect to sharing information, Client authorizes Bank and Clover to share any information regarding Client's use of the Clover Service, including transaction information and Account Data, with the Third Party POS System App provider and any other Persons to the extent necessary for Client to receive the Clover Integrated Service.

11.   **Third Party Services**. The Clover Service may contain links to Third Party Services (e.g., a hyperlink in the Clover App Market or a hyperlink through the Clover API to a Third Party POS System App). If Client decides to use Third Party Services, Client will be responsible for reviewing and understanding the terms and conditions associated with such Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). If Client elects to use Third Party Services, information Client submits in Client's application to use such Third Party Services will be provided to the provider(s) of such Third Party Services and not to Bank. Client's access of any Third Party Services is at Client's own risk. Third Party Services are not governed by the terms and conditions of this Clover Service Addendum or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPLICATIONS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT CLIENT'S OWN RISK. BANK WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND BANK EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. BANK DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROVIDER OF A THIRD PARTY SERVICE, OR ANY THIRD PARTY SERVICE OR THIRD PARTY PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND BANK WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN CLIENT AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

12.   **Protecting Client's Information**. Client is solely responsible for ensuring that Client's account numbers, passwords, security questions and answers, login details and any other security or access information used by Client to use or access the Clover Service are kept safe and confidential. Client must prevent unauthorized access to, and use of, any Account Data. Client is responsible for all electronic communications sent to Bank or to any third party, including Clover, containing Account Data. When Bank receives communications containing Account Data, Bank is entitled to assume that Client sent it to Bank. Client must immediately notify Bank if Client becomes aware of any loss, theft or unauthorized use of any Account Data (please refer to the Clover Service support center contact information in Section 18 below). Bank reserves the right to deny Client access to the Clover Service, in whole or in part, if Bank believes that any loss, theft or unauthorized use of any Account Data or access to

information has occurred.

13. **Product Disclaimers.** 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 THE CLOVER SERVICE: (I) WILL OPERATE UNINTERRUPTED OR ERROR FREE; OR (II) ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

14. **Indemnity**. Without limiting Client's indemnity obligations in the Agreement, Client agrees to indemnify and hold Bank harmless from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees) arising out of or relating to:

14.1 Client's failure to comply with all terms and conditions in this Clover Service Addendum;

14.2 Client's use, sharing or disclosure of any Purchaser Information obtained in connection with Client's use of the Clover Service;

14.3 the content or delivery of any marketing messages that Client sends or causes to be sent to any Purchaser physical address, telephone number or e-mail address collected through the use of the Clover Service; or

14.4 any other party's access and/or use of the Clover Service with Client's unique username, password, or other appropriate security code.

15. **Notices**. Bank may provide notices and other information regarding the Clover Service to Client via the method(s) described in the Agreement or in Section 19 below. Client's notices to Bank shall be delivered via the method(s) described in the Agreement.

16. **Ideas**. Client may choose, or Bank may invite Client, to submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service ("**Ideas**"). By submitting any Idea, Client agrees that: (a) Bank expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any Idea; (b) Client's submission will be non-confidential; and (c) Bank is free to use and disclose any Idea on an unrestricted basis without notifying or compensating Client. Client releases Bank from all liability and obligations that may arise from Bank's receipt, review, use or disclosure of any Ideas or portion of any Idea.

17. **Third Party Beneficiaries**. Bank's Affiliates and any Persons Bank uses in providing the Clover Service are intended third- party beneficiaries of this Clover Service Addendum, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Clover Service Addendum, nothing in this Clover Service Addendum is intended to confer upon any other Persons any rights or remedies, and the parties do not intend for any other Persons to be third-party beneficiaries of this Clover Service Addendum.

18. **Support**. For all Clover Service support (including questions related to the Device), please contact the dedicated Clover support center at 1-855-457-0423 or at cloversupport@firstdata.com.

19. **Electronic Consent.** Client consents and agrees that:

19.1 Bank may provide all current or future Disclosures (as defined below) related to the Clover Service required by Applicable Law, as well as other information about Client's legal rights and duties to Client electronically.

19.2 Bank may send all current or future communications, billing statements, amendments to this Clover Service Addendum, notices, user documentation and other disclosures or information regarding the Clover Service or Client's use of the Clover Service (collectively, "Disclosures") to Client electronically: (a) via e-mail; (b) by access to a website that Bank designates in an e-mail or written notice Bank sends to Client from time-to-time; (c) to the extent permissible by Applicable Law, by access to a website that Bank will generally designate in advance for such purpose; or (d) as otherwise allowed by Applicable Law.

19.3 If Client would like a paper copy of Disclosure following its electronic delivery, Client may print a copy or download the information for Client's records or Client may request from the Bank representative responsible for Client's account ("**Bank Representative**") a printed copy which Bank shall provide to Client at no additional charge. However, Bank shall continue to electronically deliver Disclosures unless and until Client withdraws its consent.

19.4 If Client elects to receive Disclosures electronically, Client shall be responsible for providing Bank with an accurate e-mail address. Client shall contact the Bank Representative to update Client's e-mail address.

19.5 Where required or requested, Client's electronic signature (via "click-through" or other method) on confirmations related to this Clover Service Addendum, other agreements, documents or Disclosures related to the Clover Service has the same effect as if Client had signed them in ink.

19.6 At a minimum, Client has access to the following hardware and software in order to view, receive or print Disclosures

electronically: (i) a valid e-mail address; (ii) a personal computer, tablet, smartphone (or similar device); (iii) the Internet; (iv) an Internet browser; (v) Adobe Acrobat Reader®; and (vi) if Client wishes to print, a PDF capable printer. In the event that Bank changes its hardware and software requirements, Bank shall notify Client of such changes. Client shall be deemed to have access to such required hardware and software if Client continues to use any Bank Equipment after the date such change becomes effective. If Client does not have access to such required hardware or software, Client shall notify Bank before the effective date of such changes, and at such time, Client shall be deemed to have withdrawn Client's consent, and Bank shall react to such withdrawn consent, as set forth in Section 19.8 below.

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

19.8 <u>LEGAL EFFECT</u>**.** BY CONSENTING TO THE ABOVE AND UNLESS AND UNTIL CLIENT WITHDRAWS CLIENT'S CONSENT AS DESCRIBED IN THIS SECTION 19.8, CLIENT AGREES THAT ELECTRONIC DISCLOSURES HAVE THE SAME MEANING AND EFFECT AS IF BANK PROVIDED THE DISCLOSURES TO CLIENT PHYSICALLY IN WRITING. WHEN BANK SENDS CLIENT AN E-MAIL OR OTHER ELECTRONIC NOTIFICATION ALERTING CLIENT THAT A DISCLOSURE IS AVAILABLE ELECTRONICALLY (AND THEREBY MAKES IT AVAILABLE), SUCH ACTION WILL HAVE THE SAME MEANING AND EFFECT AS IF BANK PROVIDED THE DISCLOSURE TO CLIENT PHYSICALLY IN WRITING, WHETHER OR NOT CLIENT CHOOSES TO VIEW, PRINT OR DOWNLOAD SUCH DISCLOSURE.

20. General.

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

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

Schedule A

Clover Equipment Purchase Agreement

1. **Definitions**. All capitalized terms used in this Clover Equipment Purchase Agreement and not defined herein shall have the meaning given to them in the Clover Service Addendum.

2. **General**. This Clover Equipment Purchase Agreement is incorporated by reference into the Clover Service Addendum and governs all Clover Equipment that is in the Clover Equipment Documents and is, or has been, sold to Client by Bank, from time to time, to use in connection with the Clover Service under the Clover Service Addendum. THE CLOVER EQUIPMENT IS BEING SOLD TO CLIENT FOR CLIENT'S BUSINESS USE ONLY AND SHALL NOT BE USED FOR HOUSEHOLD OR PERSONAL USE. Sales of Clover Equipment are made by Bank.

3. **One Year Limited Warranty**. The Clover Equipment is warranted against material defects for a one year period after the original date of purchase. This warranty does not include damage to the Clover Equipment resulting from accident or misuse or any other breach of this Clover Equipment Purchase Agreement. If any Clover Equipment should otherwise become defective within the warranty period, Bank will replace it free of charge (except that appropriate shipping charges may apply). This warranty does not apply to any Clover Equipment that has become obsolete. Notwithstanding this limited warranty, it may be necessary for Client to upgrade Client's Clover Equipment or to purchase new Clover Equipment from time to time, for which Client will be charged. This warranty is non-transferable. For more information on making a claim under the limited warranty, please contact the dedicated Clover support center as set forth in the Clover Service Addendum.

   USE OF THE CLOVER EQUIPMENT IS AT CLIENT'S OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS PROVIDED IN THIS SECTION 3, BANK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER EQUIPMENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER EQUIPMENT WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER EQUIPMENT IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

4. **Incompatibility**. CLIENT ACKNOWLEDGES THAT THE CLOVER EQUIPMENT AND ANY SOFTWARE RESIDENT ON THE CLOVER EQUIPMENT CLIENT PURCHASES FROM BANK MAY NOT BE COMPATIBLE WITH ANOTHER PROVIDER'S SYSTEMS. BANK DOES NOT HAVE ANY OBLIGATION TO MAKE THE CLOVER EQUIPMENT AND/OR SOFTWARE COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT CLIENT ELECTS TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THE CLOVER SERVICE ADDENDUM, CLIENT ACKNOWLEDGES THAT CLIENT MAY NOT BE ABLE TO USE THE CLOVER EQUIPMENT AND/OR SOFTWARE PURCHASED UNDER THIS CLOVER SERVICE ADDENDUM.

5. **Purchase; Taxes; Payment.** Bank agrees to sell to Client, and Client agrees to buy from Bank, the Clover Equipment, as described in Section 2 of this Clover Equipment Purchase Agreement, free and clear of all liens and encumbrances (subject to Section 8 of this Clover Equipment Purchase Agreement) except that any software resident on a Device at the time of purchase or "pushed" to Client's Device(s) by Bank will not be sold to Client outright but instead will be provided to Client pursuant to, and subject to the conditions of, Section 2 of the Clover Service Addendum. Client agrees to pay the purchase price specified for the Clover Equipment as set forth on the Clover Equipment Documents (prices subject to change without notice). Client may also purchase from Bank, at prices determined by Bank, supplies related to the Clover Equipment that Bank makes available. In addition to the purchase price for any Clover Equipment or supplies due hereunder, Client will be responsible for any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges or on the Clover Equipment or use thereof, including, without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on Bank's net income. Client hereby authorizes Bank to collect all amounts due from Client under this Clover Equipment Purchase Agreement by initiating debit entries for such amounts to the Settlement Account or by deducting such amounts from amounts due to Client under the Agreement.

6. **Delivery and Acceptance**. Bank will deliver the Clover Equipment to the site designated by Client. Client will be deemed to have accepted each piece of Clover Equipment when it has been delivered to Client.

7. **Support and Maintenance**. Help desk support for Clover Equipment may be obtained by contacting the dedicated Clover support center as set forth in the Clover Service Addendum. Bank or Persons designated by Bank will only provide help desk support for Clover Equipment purchased from Bank hereunder. Bank will not provide any such support or related services for any other products or equipment. Maintenance and repair of Clover Equipment purchased from Bank is Client's responsibility. Client acknowledges and agrees that from time to time Bank may "push" software updates to Client's Clover Equipment remotely and automatically in connection with Client's use of the Clover Service.

8. **Security Interest; Financing Statements.** Client hereby grants to Bank a security interest in all Clover Equipment to secure all obligations of the Client to the Bank under or pursuant to this Clover Equipment Purchase Agreement. Client authorizes

Bank to file financing statements with respect to the Clover Equipment in accordance with the [*Personal Property Security Act (Ontario)* or other comparable provincial or territorial personal property security legislation] / [Uniform Commercial Code], signed only by Bank or signed by Bank as Client's attorney-in-fact. Bank's security interest in Clover Equipment will terminate automatically when Bank receives full payment for the Clover Equipment.

9. **Limitation on Liability.** NOTWITHSTANDING ANYTHING IN THIS CLOVER EQUIPMENT PURCHASE AGREEMENT TO THE CONTRARY, BANK'S CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY INDEMNIFICATION OBLIGATION, WHETHER SUCH CLAIMS ARE RELATED OR UNRELATED TO ONE ANOTHER) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS CLOVER EQUIPMENT PURCHASE AGREEMENT, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, WILL NOT EXCEED THE PURCHASE PRICE OF THE PARTICULAR PURCHASED CLOVER EQUIPMENT INVOLVED. IN NO EVENT SHALL BANK BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, OR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH LOSSES OR DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. THE REMEDIES AVAILABLE TO CLIENT UNDER THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO THE CLOVER EQUIPMENT.

10. **Indemnification.** In addition to the indemnification, defense, and hold harmless obligations of the parties set forth in the Agreement (which apply to this Clover Equipment Purchase Agreement), Client agrees to indemnify, defend, and hold Bank and its Affiliates, employees, directors, and officers harmless from and against all third party Claims, and all related Losses, to the extent such Claims result from: (a) Client's installation, ownership, possession, use, or operation of the Clover Equipment; or (b) any breach by Client of any of its obligations hereunder; provided that the foregoing obligations do not apply to the extent Claims or Losses result from Bank's gross negligence or willful misconduct or to the extent Bank enforcing such obligations is prohibited under the law governing this Clover Equipment Purchase Agreement. Client acknowledges and agrees that the "use" and "operation" of the Clover Equipment against which Client agrees to indemnify, defend, and hold Bank harmless include, without limitation, Client's loading onto Clover Equipment software that was not provided with the Clover Equipment; Client using such software, or using Clover Equipment or Software, to access the Internet; and Client using Clover Equipment in any manner that does not comply with this Clover Equipment Purchase Agreement, the Agreement, or the Clover Service Addendum. As used herein: (i) "**Claim**" means any third party claim, demand, suit, action, cause of action or proceeding of any form, kind or nature (including contract claims and negligence and other tort claims); and (ii) "**Losses**" means any liability, obligation, loss, damage, judgment, settlement, cost, or expense (including attorneys' fees, expert witness fees and collection costs), regardless of whether suit is brought, and any assessment, fee, or fine imposed by any Card Organization.

11. **Default; Remedies.** The occurrence of any the following shall be considered a "**Default**" under the Clover Service Addendum: (a) any debit of Client's Settlement Account for any amount due under this Clover Equipment Purchase Agreement, the Clover Service Addendum or the Agreement is rejected; (b) Client fails to pay any amount due under this Clover Equipment Purchase Agreement, the Clover Service Addendum or the Agreement when due; or (c) Client materially breaches any provision in this Clover Equipment Purchase Agreement, the Clover Service Addendum or the Agreement. Upon, and any time after, the occurrence of any Default, Bank may, with or without notice, terminate this Clover Equipment Purchase Agreement and/or the Clover Service Addendum, proceed in any lawful manner against Client to collect amounts due, and exercise all other rights available to Bank under this Clover Equipment Purchase Agreement, the Clover Service Addendum, the Agreement, at law, or in equity.