

# Merchant Processing Agreement

Please review the information below and sign where required.



## 1. Business Information

Legal Business Name

**City of Tupelo**

Tax Filing Name

**City of Tupelo**

DBA/Outlet Name

**City of Tupelo**

TIN Type

**EIN (Fed Tax ID #)**

Fed Tax ID #

**XXXXX1140**

Foreign Entity/Nonresident Alien

**PENDING**

Business Address

**71 East Troy Street**

City

**Tupelo**

State

**MS**

ZIP

**38804**

Business Phone

**6628416502**

Contact First & Last Name

**Kim Hanna**

Contact Email Address

**kim.hanna@tupeloms.gov**

State Organized

**MS**

Mo/Yr The Business Started

**01-1837**

Organization Type

**Government**

Method of Receiving Notice of Chargebacks and Retrievals

**Dispute Manager Online**

Product/service fulfillment

**Direct**

Third party to store, process or transmit cardholder data

**NO**

Software used for storing, transmitting, or processing card transactions or authorization requests

**N/A**

## 2. Owner Information

### Owner 1/Principal

Owner/Partner/Officer Name

**Kim Hanna**

Home Address

**180 County Rd 484**

D.O.B

**XX-XX-1970**

City

**Shannon**

Social Security Number

**XXXXXX9190**

State

**MS**

Ownership %

**0%**

ZIP

**38868**

Title

**CFO**

Home Phone

**6628416505**

Email

**kim.hanna@tupeloms.gov**

Mobile Phone

**6628416505**

## 3. Locations

### Location 1

id

**989150**

Products/Services you sell

**Tax Payments**

DBA/Outlet Name

**City of Tupelo-Tax**

Business Address

**71 East Troy Street**

City

**Tupelo**

State

**MS**

ZIP

**38804**

## Time frame from transaction to delivery

0 days

**100%**

1-7 days

**0%**

8-14 days

**0%**

15-30 days

**0%**

31+ days

**0%**

## Financial Data

TOTAL ANNUAL VOLUME	
Average Sale Amount	<b>\$60.00</b>
Credit Card Volume	<b>\$50,000.00</b>

TRANSACTION TYPE	
Card Present	<b>95%</b>
Internet	<b>0%</b>
Mail Order / Direct Marketing / Phone Order	<b>5%</b>
SWIPED VS. KEYED	
Swiped	<b>95%</b>
Keyed	<b>5%</b>

## Processing Rates & Fees

A Surcharge is an additional fee that you add to certain Credit Card transactions. By choosing to assess a Surcharge, you agree that you are solely responsible for: (1) complying with all applicable laws (including the Card Organization Rules) and the Your Payments Acceptance Guide (defined below), and (2) properly and clearly disclosing the existence and amount of any Surcharge to Cardholders in accordance with applicable Laws. You also agree that: (1) you are assessing a Surcharge on Cardholders for certain Credit Card transactions in the amount equal to the Discount Rate reflected below; (2) you will pay us the Discount Rate for Signature Debit, PIN Debit, and PINless Debit transactions on gross sales for all of the transactions that you submit (without reduction for refunds, returns, or chargebacks); (3) you will pay us the Transaction Fee (the fixed charge per transaction reflected below for Signature Debit and PINless Debit transactions) for each sale and refund that you submit; (4) you will not assess a Surcharge for the portion of the transaction that is tip on paper, and you will be responsible to pay us the Discount Rate for the gross amount of all tips on paper; (5) you will be responsible to refund Cardholders any Surcharge you assess in the amount billed on such transaction; (6) you will not accept American Express Cards; and (7) you will not assess a Surcharge for card not present transactions on cardholders whose billing ZIP code corresponds to states or US territories where Surcharging is prohibited by applicable law (including but not limited to, Colorado, Connecticut, Massachusetts, Puerto Rico), and you will be responsible to pay us the Discount Rate for such transactions.

	DISCOUNT RATE + TRANSACTION FEE
Visa Credit Cards	3.3816%
MasterCard Credit Cards	3.3816%
Discover Credit Cards	3.3816%
Amex Credit Cards	3.3816%
Debit Cards	1.75% + \$0.25
Consumer Surcharge Billed by Merchant	3.50%

Interchange Rates are variable and are determined by how your transactions clear. Please see your Interchange Rate Schedule, Interchange Qualification Matrix and American Express OptBlue® Guide for Interchange Rates & Dues/Assessments and qualification criteria as of the date of this Application. The Interchange Rates and Dues/Assessments are subject to change. American Express OptBlue® has Program Pricing which is not Interchange and which is subject to change.

### Banking & Funding Information

ABA #

XXXXX1278

Deduct Fees

Daily

DDA #

XXXX4886

Bank Will Fund

Outlet

### Equipment Details

MODEL CODE AND NAME	UNIT PRICE W/O TAX AND S&H	QTY	PURCHASE TYPE	EQUIPMENT TYPE	INDUSTRY TYPE
Clover Flex 2 WIFI (Reprogram)	0.00	1	Owned	IBUNDLE	RETAIL

See Equipment Lease Agreement for the Terms and Conditions governing your Leased equipment.

### Clover Software Plan

<b>CLOVER SOFTWARE PLAN</b>	
Clover software plans are billed separately through the Clover App Market. If you move to a	<b>\$0.00</b>

new software plan in the Clover Dashboard, your monthly billing may change. See the Clover Dashboard for any applicable fees.

Payments  
\$0.0/month , \$0.0 Each Additional

Shipping & Handling

**\$0.00**

Enable EMV

**YES**

### Shipping Address

Address

**71 East Troy Street**

City

**Tupelo**

Province

**MS**

Postal Code

**38804**

Shipping Method

**GROUND SERVICE**

Total Shipping and Handling

**\$0.00**

## 4. Payments Accepted

American Express (OptBlue)

Discover Card (Discover Network Full Processing)

Mastercard/Visa

Signature Debit

Debit (PINless, PIN)

## 5. Fee Schedule

In addition to the fees described in this Fee Schedule, you must pay us all Card Organization Charges, which include but are not limited to all fees, charges, liabilities, or obligations that a Card Organization imposes on us (1) in connection with your acceptance of its payment types, (2) in connection with the transactions processed under your MID, (3) as a result of your acts or omissions, or (4) as a result of the acts or omissions of others that act on your behalf or that provide services to you. Card Organization Charges are not subject to the consequential damages exclusion of your agreement, and include but are not limited to interchange; assessments (including but not limited to dues, issuer reimbursements, fines, penalties, and fraud recovery losses); fees established by the Card Organizations (including but not limited to access fees, switch fees, and file fees); adjustments; and Chargebacks. See the Interchange Qualification Matrix, Card Organization Pass-Through Fee Schedule, and American Express OptBlue Guide, available at [www.businesstrack.com](http://www.businesstrack.com).

MISCELLANEOUS FEES (IF APPLICABLE)	
AVS	<b>\$0.05</b>
Voice Authorization	<b>\$0.95</b>
TransArmor-Token & Encrypt Transaction Fee	<b>\$0.00</b>
Non-receipt of PCI Validation	<b>\$34.95</b>
Annual Maintenance Fee	<b>\$0.00</b>
MONTHLY PRODUCT FEES	
Clover Security Plus Fee	<b>\$0.00</b>
Transarmor Monthly Fee	<b>\$0.00</b>
Platform Access Monthly Fee	<b>\$22.95</b>

START-UP FEES	
Debit Card Setup	<b>\$0.00</b>
Application Fee	<b>\$149.00</b>
Equipment Purchase	<b>\$0.00</b>
Total Amount <small>Without tax.</small>	<b>\$149.00</b>
EARLY TERMINATION FEE	
Early Termination Fee	<b>\$750.00</b>

## 6. Early Termination Fee

6.1 If you cancel or terminate this Agreement, or otherwise stop processing your transactions with us before the end of the Initial Term (any such event, an **Early Termination**), we will be substantially injured. Because our future damages are difficult to establish at the beginning of this Agreement, you agree to pay us the **Early Termination Fee** shown in Section 5, above. The Early Termination Fee is a reasonable estimate of our expected losses. The Initial Term is defined in Section 16.2 of the General Terms and Conditions, below.

6.2 For an Early Termination that occurs during the first 30 months of the Initial Term, you will owe us the full Early Termination Fee.

6.3 For an Early Termination that occurs during the last 6 months (month 31 through 36) of the Initial Term (each such month, a **Step Down Month**), you owe us the Early Termination Fee less \$50 for each Step Down Month you complete under the Agreement.

6.4 We will charge you only one Early Termination Fee, regardless of how many of your locations are affected by the Early Termination.

6.5 You agree that the Early Termination Fee is a reasonable estimate of our damages from an Early Termination, and not a penalty. If the maximum permitted amount of the Early Termination Fee under applicable law is less than the amounts described in 6.2 or 6.3, as applicable, you will owe us an Early Termination Fee equal to such maximum permitted amount.

## 7. Agreement Approval

On behalf of myself as an individual, and the entity on whose behalf I am signing, (A) I authorize **Servicers, the applicable Card / Payments Organizations, and its and their Affiliates, third party subcontractors and/or agents:** (i) to use, disclose, and exchange amongst them, the information in the Agreement and information about me personally, (including by requesting, personal and business consumer reports, bank references, and other information as necessary from time to time), for marketing and administrative purposes, verification purposes, purposes under the Merchant Processing Application and Agreement (MPA), if approved, and any other uses permitted by law; (ii) to inform me directly about the contents of requested consumer reports (including the name and address of the agency furnishing the report), and (ii) to receive any and all personal and business credit financial information from all references, including banks and consumer reporting agencies, which are hereby released to provide that information; and (B) I certify that: (i) The federal taxpayer identification number and corresponding filing name provided herein are correct; (ii) The statements made and agreed to in this MPA, to which I have not made any alterations or stricken out any language, are true, complete and accurate, and may be relied upon as current unless changed or updated per the Notice provisions of Agreement; (iii) I can read and understand the English language; (iv) I have received and read a copy of the (a) Merchant Processing Application, (b) General Terms and Conditions, (c) Confirmation Page, and (d) Interchange Rate Schedule. I understand that the Interchange Qualification Matrix and American Express OptBlue® Guide and Your Payments Acceptance Guide are available at [www.buinessstrack.com](http://www.buinessstrack.com) and the signature below is for the entire contents of the listed documents; v) I have authority to bind the entity on whose behalf I am signing below; I further acknowledge and agree that I will not use my merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time or for processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC). To help the government fight the funding of terrorism and money laundering activities, Servicers obtain, verify, and record certain information including your full name, physical address, and any other information needed for identify verification purposes while this MPA, as described in the USA Patriot Act.

**Merchant Business Principal:**

*Kim Hanna*

Kim Hanna (CFO) 03-03-2022 1:43PM

## 8. General Terms & Conditions

### 1 Your Agreement With Us

1.1 This Merchant Processing Agreement (**Agreement**) is between the business identified in Section 1 and the Processor and Bank each identified in Section 8. This Agreement consists of all information presented or referenced on this webpage (consisting of all of Sections 1 through 8), the Interchange Rate Schedule, the Your Payments Acceptance Guide, and the Card Organization Rules. This Agreement covers payment acceptance and related services (collectively, the **Services**).

1.2 You agree to comply with the Your Payments Acceptance Guide and the Card Organization Rules relevant to you, as they may change over time. The current Your Payments Acceptance Guide is available at [www.businesstrack.com](http://www.businesstrack.com).

1.3 If there are any inconsistencies between the General Terms and the Your Payments Acceptance Guide, or the Card Organization Rules, the General Terms will govern.

1.4 You may not alter this Agreement.

## 2 Services and Non-Bank Services

2.1 Your Application will identify the Services you will receive. Certain Services referred to in this Agreement may not be available to you. Certain Services may require additional terms.

2.2 Subject to Card Organization Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate. References to "we", "our", and "us" shall be deemed to be references to Bank and Processor except for the purposes of Sections 2.1, 2.3, 2.4, 4.7, 6.9, 11.2, 11.5, 11.6, 11.7, 13.1, 21, 25, 33 and 37. Bank shall not be a party to the aforementioned Sections nor shall Bank have any responsibility or liability pursuant to such Sections. Third Party Services, including any apps available in an application marketplace, or voice, or data services you purchase directly from a third party provider, are not governed by this Agreement and we are not responsible for providing, maintaining, servicing or supporting such services. If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services. Any third party content downloaded or otherwise obtained through the use of the Services is downloaded at your own risk. **We will not be responsible for any actions or any failures to act of any third party, and we expressly disclaim any liability related to all Third Party Services. We do not warrant, endorse, guarantee, or assume responsibility for any third party service or product, advertised or offered, through the Services or any hyperlinked website or service, or featured in any banner or other advertising, and we will not be a party to or in any way monitor any transaction between you and providers of Third Party Services or products.**

2.3 If you do not qualify for our full service program but have otherwise been approved for accepting American Express or WEX, your American Express and WEX transactions will be processed through and funded by American Express or WEX (as applicable). American Express and WEX will provide you their own agreements governing those transactions. You agree that (a) we are not responsible and assume no liability for any such transactions; and (b) American Express and WEX may charge additional fees for the services they provide.

2.4 Rather than accepting all categories of Cards, you have the option to elect to accept only certain categories of Cards (**Limited Acceptance**). If you wish to elect Limited Acceptance, you must complete the Limited Acceptance Form and agree to be bound by the additional terms and conditions set out in that document.

## 3 Access and Use of Services

3.1 Except as specified in the Your Payments Acceptance Guide, or otherwise agreed in writing, the Services shall be for your internal business use in the United States only.

3.2 You shall not and shall not permit any third party to: (a) access or attempt to access any Service that is not intended to be available to you; (b) access or use (in any format) the Services (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (c) without our advanced written consent, use, ship or access Services (or any part) outside or from outside of the United States; (d) perform or attempt to perform any actions that would interfere with the proper working of any Service, prevent access to or use of any Service by other users, or in our reasonable judgment, impose a large load on our infrastructure, network capability, or bandwidth; or (e) use the Services (or any part) except as permitted in this Agreement.

3.3 You may use the eligible TransArmor services and portals only to scan IP addresses, URLs, and domain names owned by and registered to you.

3.4 We have the right to rely on user names, password, and other sign on credentials/access controls for the Services or any Software provided or approved by us to authenticate access to, and use of, the Services and any Software.

## 4 Settlement

4.1 As part of the Services, we will process Transaction Data received from you and facilitate the transfer of funds for your Card sales to your Settlement Account.

4.2 We may debit your Settlement Account for any amounts owed to us, including any amounts paid to you in error. We may also offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in your name or which you, any of your principals, guarantors, or authorized signors guarantee.

4.3 You are responsible for providing us with accurate information regarding your Settlement Account. If you change the Settlement Account in which you receive the proceeds of your transactions, you must notify us immediately. If you accept payment types other than Visa, Mastercard, American Express, Discover Network and PayPal, such as TeleCheck Services, you are also responsible for contacting the Card Organizations or companies governing those Cards, or payment types, to notify them of this change. We shall not be liable for



delays in receipt of funds, or errors in debit and credit entries caused by you or any other Person, including any delays or errors resulting from errors in Settlement Account information you provide.

4.4 If a Default occurs, you agree we may without notice change processing or payment terms and/or suspend credits or other payments of any amounts due, or which become due to you.

4.5 Your right to receive any amounts due, or to become due, from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest, and our rights to withhold settlement funds under this Agreement without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement fund rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

4.6 If you undertake Global ePricing (**GeP**) Transactions, you acknowledge that: (a) settlement by us of GeP Transactions shall be made in the Local Currency on the basis of the Transaction Price of the GeP Sales Transaction under the process defined by the Card Organizations; (b) you shall be subject to any and all Foreign currency exchange rate exposure in connection with all GeP Transactions; and (c) you are solely responsible for all aspects of the GeP Transaction (other than the performance of GeP Services), including obtaining the Cardholder's agreement to a GeP Transaction, and complying with all Card Organization Rules applicable to you. Dynamic Currency Conversion as defined by Card Organization Rules is not permitted nor provided as part of the GeP Services.

4.7 If you accept Alipay, you non-exclusively appoint First Data Merchant Services LLC (**FDMS**) as your agent solely for the limited purpose of receiving settlement funds from Alipay on your behalf for the transactions submitted from your participating locations. You acknowledge that payment of settlement funds to FDMS by Alipay constitutes full and final settlement of such amounts payable to you by Alipay. Alipay is provided to you by Processor and not Bank.

## 5 Exclusivity

5.1 You will use us as your exclusive provider of all Services during the Term of this Agreement.

## 6 Fees; Adjustment; Collection of Amounts Due

6.1 You will be charged, and agree to pay us, all fees set out on your Fee Schedule or elsewhere in this Agreement.

6.2 The fees specified on your Fee Schedule are based on the assumption that your transactions will qualify at the Anticipated Interchange and Program Pricing Levels associated with your account. If a transaction fails to qualify at the Anticipated Interchange Program Pricing Levels, you will be charged a Non-Qualified Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction.

6.3 If you accept a Card or transaction other than the type anticipated for your account, we will charge you our then-current transaction fee(s) for the Card or transaction and you will be responsible for the transaction to the same extent as you would be if it were of a Card or transaction type elected and approved.

If your fees are not paid through our automatic debiting process, and we are required to pursue collection efforts, you will reimburse us for our costs in an amount of not less than \$100.

6.4 The fees specified on your Fee Schedule are based on (a) estimated annual volume and average transaction size for all Services provided under this Agreement; and (b) your method of doing business. If the actual volume or average transaction size are not as expected, or if you significantly alter your method of doing business, we may adjust our fees without prior notice to you. It is your responsibility to notify us of any such changes to your business.

6.5 We may adjust our fees to reflect new or increased fees, taxes or assessments imposed by any Card Organization or other Persons related to the Services. It is your responsibility to pay all such adjusted fees effective from the date specified in our notice to you.

6.6 Any Account Minimum Fee set out in your Application will be charged monthly (beginning in the calendar month after your Application is approved) for each location and will be calculated as the Account Minimum Fee set forth in your Application less the "Discount Fees" and "Other Payment Fees" that you incur for that month and location. The Account Minimum Fee shall never be less than zero.

6.7 An Equipment rental fee will be charged each month for each piece of Equipment rented from us, plus tax as applicable. You will also be charged for shipping and supplies.

6.8 An Authorization fee will be charged for each Authorization requested, whether the response is approved or declined. If you are being charged a combined fee for both Authorization and Capture we may charge this fee on the communication of all instructions that you transmit to us from your point of sale (**POS**) Device or other systems to our systems, whether the communications are for Authorization requests or any other capture of information, whether or not related to any individual transaction.

6.9 A fee will be charged for each Address Verification Service (**AVS**) request submitted, whether or not we are able to provide a response to the request.

6.10 Clients opting out of Clover Security Plus will be charged a Compliance Fee. The Compliance Fee covers our costs for systems maintenance and upgrades, mandatory IRS reporting, as well as costs associated with our required tracking and reporting of your PCI compliance. We will provide a monthly vulnerability "scan," if required, of up to 5 IP addresses. Additional required scans are your responsibility. Payment of the Compliance Fee does not discharge your responsibility to maintain PCI DSS compliance at all times.

6.11 You will be charged a monthly Non-Receipt of PCI Validation fee unless, within 60 days from the date this Agreement is submitted with your signature and on an annual basis after that:

- (a) you obtain any quarterly or other periodic PCI-approved vulnerability scans that the Card Organization Rules require you to obtain (for example, if you accept internet transactions);
- (b) you remediate vulnerabilities identified by your scans in ways that enable you to comply with the Card Organization Rules and applicable standards (including the PCI DSS); and
- (c) you confirm that you are following certain data security protocols by (i) completing an online self-assessment questionnaire (**SAQ**), which we will make available to you, regarding your systems and payments acceptance practices, or (ii) using PCI-approved methods, providing us with other written evidence of your PCI DSS compliance.

If you materially change the systems you use to accept payments and you wish to avoid paying the monthly Non-Receipt of PCI Validation fee, you will need to promptly complete a new SAQ or (using PCI-approved methods) promptly provide us with other written evidence of your PCI DSS compliance.

6.12 If you believe any adjustments should be made to your Settlement Account, you must notify us in writing within 60 days after any debit or credit is, or should have been, effected. If you notify us after 60 days, you agree we have no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters do not obligate us to continue such investigation or to conduct any future investigation.

## **7 Electronic Funding Authorization**

7.1 All payments to you shall be made through the Automated Clearing House system (**ACH**) and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of your transactions pursuant to this Agreement. You agree that any Settlement Account designated by you will be an account primarily used for business purposes. We cannot guarantee the timeframe in which payment may be credited by your financial institution.

7.2 You agree to be bound by the operating rules of the ACH and you authorize us to (a) access information from the Settlement Account; (b) initiate credit and/or debit entries by wire or ACH transfer; (c) instruct your financial institution to (i) block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account; and (ii) provide such access and to credit and/or debit, or to block the Settlement Account.

7.3 If we cannot process an ACH payment, we may (a) charge you the applicable fee set out in the Fee Schedule; and (b) suspend all subsequent funding until a new electronic funding agreement is signed by you, or you notify us that ACH payments can be processed.

## **8 Chargebacks, Fines, and Penalties**

8.1 Cardholders and Issuers are authorized by Card Organization Rules and by law to reverse and Chargeback transactions that you submit to us. Further details are set out in the Your Payments Acceptance Guide and in the Card Organization Rules.

8.2 You are obligated to reimburse us (and authorize us to debit your Settlement Account) for (a) all refunds, credits, Chargebacks, and adjustments relating to transactions that you submit for processing; and (b) any fees, fines, assessments, obligations or other charges a Card Organization imposes on us in relation to your acts or omissions, or the acts or omissions of your agents or those acting on your behalf.

8.3 Refunds, credits, returns, and Chargebacks for GeP Transactions shall be treated as independent transactions with a Transaction Rate as determined by the Card Organization.

## **9 Your Representations and Warranties**

9.1 By submitting a transaction to us, you represent and warrant that the transaction:

- (a) is genuine and arises from a genuine sale or service that you directly sold or provided as described on your Application. (The submission of Authorization requests and/or Card transaction by you for Card sales or cash advances transacted by another business is considered laundering or factoring and is prohibited);
- (b) represents the correct amount of the goods or services purchased by the Cardholder from your business as identified on your Application;
- (c) is not subject to any dispute, set-off, or counterclaim;
- (d) to your knowledge, is not the result of fraud and has been authorized by the Cardholder;
- (e) does not violate the law of any applicable jurisdiction, including the jurisdiction where you are located, where the Cardholder is located, or where we are located;
- (f) except for any delayed delivery or advance deposit Card transactions expressly authorized under this Agreement, includes your simultaneous delivery of the goods or services to the Cardholder; and
- (g) complies with this Agreement and Card Organization Rules.

9.2 You further represent and warrant, as of the date of this Agreement and at the time of submission of each transaction, that:

- (a) you are validly existing, in good standing and free to enter into this Agreement;

- (b) you have not changed the nature of your business or practices in a way not previously disclosed to us;
- (c) each statement made on the Application or other information provided to us in support of this Agreement is true, accurate and complete, and you have maintained and updated this information to keep it true, accurate, current and complete;
- (d) you have not filed a bankruptcy petition not previously disclosed to us;
- (e) you will not process any credit transactions that do not correspond to a previous transaction on the original sales draft;
- (f) you will not at any time during the Term of this Agreement, or until all amounts have been paid in full under this Agreement, grant or pledge any security interest or lien of any type in any Reserve Account, Settlement Account or in any of the transaction proceeds to any Person without our consent; and
- (g) where you provide FNS, SNAP or WIC Benefits (as described in the Your Payments Acceptance Guide), you are an FNS authorized merchant and are not disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS.

## **10 Limitations of Liability; Exclusion of Consequential Damages**

**10.1 This Agreement is a service agreement. Use of the Services, Software, or any Equipment (including any Services, Software, or Equipment provided by or through a third party) is at your own risk and to the maximum extent permitted by applicable law, the Services, Equipment, and any Software is 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 Services, Equipment, or any Software will operate uninterrupted or error free or that the Services, Equipment, or Software are secure, free of viruses or other harmful components, or do not infringe the rights of any person.**

**10.2 In no event shall we or our Affiliates or any of our or their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any person has been advised of the possibility of such damages.**

**10.3 Notwithstanding anything in this Agreement to the contrary (including Section 26):**

**(a) Our cumulative liability for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including those arising out of or related to this Agreement and any indemnities), regardless of the form of action or legal theory, shall not exceed, (i) \$50,000; or (ii) the amount of fees received by us under this Agreement for Services performed in the immediately preceding 12 months, whichever is less;**

**(b) Any liability that we may have to you for any delay in funding transactions will be limited to interest computed from the date that you submit the transaction to the date that we fund the transaction at the rate of the federal funds as set by the federal reserve bank of New York, New York, less 1%; and**

**(c) Our liability arising out of or in any way connected with any Equipment or Software shall not exceed the purchase price or prior 12 month's rent or fees, as applicable, paid to us for the particular Equipment or Software involved.**

## **11 Communicating with Customers Through the Services**

**11.1 You shall provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your customers through the Services.**

**11.2 If you are able to discern any information about a particular entity or individual from the information available through Main Street Insights or any other Service, either alone or with other information in your possession, you agree that the information may be subject to certain privacy, marketing, insider trading, or other applicable laws and you shall limit your use and disclosure of that information in accordance with all applicable laws.**

**11.3 With respect to each customer who desires to receive marketing material, transaction receipts, or other communications from you via text message or email, such customer must give the appropriate consent in writing; you are NOT permitted to add or modify a customer's consent indication on behalf of the customer.**

**11.4 You (or your agents acting on your behalf) shall only send marketing materials or other communications to a customer's provided phone number, street address, and/or email address if the customer has specifically consented in writing executed by the customer.**

**11.5 If you offer any loyalty program to customers through the Services or otherwise, you are solely responsible for any and all offerings made available to customers in connection with your loyalty program (each, an Offer). The Offer and all of the related information, including branding (trademarks and logos) and images (collectively, the Content) are provided and determined by you. You are solely responsible for ensuring the accuracy of the Offer and Content.**

**11.6 By providing Content to us as part of our Services, you grant us the right and license to use, modify (e.g. for formatting and display purposes), publicly perform, publicly display, reproduce, and distribute such Content on**

and through the Services, including any Software we make available to you. This license includes the right for us to make Content available to other users who may access and use your Content.

11.7 You are solely responsible for (a) fulfilling the terms of your Offers and determining the criteria for your customers to earn and redeem perks, rewards, stamps, credits or incentives (**Rewards**); and (b) honoring Rewards for eligible customers who earn those Rewards and you agree not to withdraw or terminate any Offer after it has been made publicly available to your customers without offering a reasonable alternative method for customers to redeem any Rewards related to the Offer.

11.8 You are solely liable for, and we shall have no liability in relation to, any costs or expenses (including refunds) associated with your Offers or Rewards or your failure to issue, accept, fulfill or redeem any Rewards.

## **12 Confidentiality**

12.1 You shall safeguard all confidential information we supply or otherwise make accessible to you (including the terms of this Agreement) using a reasonable degree of care. You shall only use our confidential information for the purposes of this Agreement and shall not disclose our confidential information to any person, except as we may agree in advance and in writing. At our request, you shall return to us or destroy all of our confidential information in your possession or control.

12.2 You agree that breach of the restrictions on use or disclosure of our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

12.3 You may submit comments or ideas about our Services, including about how to improve our Services. By submitting any idea, you agree that: (a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any idea; (b) your submission will be non-confidential; and (c) we are free to use and disclose any idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any portion of any idea.

## **13 Use of Data**

13.1 You agree we may use Transaction Data for the purpose of providing additional products and services to you, other merchants, or third parties. This includes using Cardholder Information, dates, transaction details, and other Transaction Data to provide you with analytics products and services as well as collecting and using Transaction Data aggregated with other merchants' Transaction Data to provide you, other merchants, and third parties with analytic products and services.

13.2 In the course of providing Services, we may collect information relating to activities on your network, including network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use this information or aggregations of this information, in addition to the Transaction Data described above, for any reasonable purpose.

13.3 You agree that we may obtain relevant information from any applicable telecommunications provider you utilize, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by you in connection with the Services.

## **14 Intellectual Property Rights**

14.1 All right, title, and interest in and to all confidential information and intellectual property related to the Services (including the 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 prior to, during the Term of, or after this Agreement, or employed by us in connection with the Services, shall be and remain, as among the parties, our or our Affiliates', our vendors', or our licensors' (as applicable) sole and exclusive property and all right, title, and interest associated with the Services, Equipment, and Software not expressly granted by us in this Agreement are deemed withheld. You may not use our Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.

14.2 You may not, nor may you permit any third party to do any of the following: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Service (or any part), Software, or Equipment, except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Service (or any part), Software, Equipment, or the Marks; (c) create derivative works of or based on the Service (or any part), Software, or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Service (or any part) or any Software; (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Service (or any part) or Software except as permitted in this Agreement; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the Service (or any part), Software, or documentation or the Marks.

14.3 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 applicable Service and solely

for you to access and use the Software and documentation to receive the relevant Services for its intended purpose on systems owned or licensed by you. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software.

14.4 You shall not take any action inconsistent with the stated title and ownership in this Section 14. You will not file any action, in any forum that challenges the ownership of any part of the Service or any Software, materials, or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Service in the event of a challenge by you.

14.5 If you are acquiring any Services on behalf of any part of the United States Government (**Government**): (a) any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement; and (b) we are the contractor/manufacturer, with the address set forth in this Agreement.

## 15 Assignment

15.1 Any attempt to transfer or assign this Agreement in whole or part, or rent, lease, sell, sublicense, or otherwise transfer any licensed rights, without our prior written consent, including by operation of law, transfer of voting control of you or your parent or otherwise, is prohibited and voidable by us and, in such event we may: (a) suspend Services at any time and without notice, (b) hold you and your guarantors liable for all obligations incurred by such purchaser or transferee, and (c) offset funding and obligations incurred on your accounts without regard to whether such funding or obligations relate to activities of you or of such purchaser or transferee.

15.2 If you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may, at our option, elect to: (a) refuse to acknowledge such assignment unless accompanied by an authorization to both initiate debits or credits to the bank account of the assignee; (b) terminate this Agreement immediately; or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

15.3 Subject to Card Organization Rules, and without providing notice to you or obtaining your consent, we may assign or transfer this Agreement and our rights, duties, and obligations under this Agreement, and may delegate or subcontract our rights, duties, and obligations, in whole or in part, to any Person. In addition, another Visa and Mastercard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and Mastercard transactions. Upon such substitution, such other Visa and Mastercard member shall be responsible for all obligations required of Bank, including full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules.

15.4 If this Agreement is assigned with our permission or by operation of law, the restriction against assignment shall continue to apply to the assignee, who will not be authorized to further assign this Agreement except as described in this Section.

## 16 Term; Events of Default

16.1 This Agreement becomes effective only when approved by our Credit Department. We reserve the right to immediately suspend or terminate your account and this Agreement if you fail to meet our credit policies even if your account has been activated to submit transactions prior to your approval by our Credit Department.

16.2 The initial term of this Agreement is 3 years from the date of your approval by our Credit Department (the **Initial Term**). After the Initial Term, subject to Section 16.3, this Agreement shall automatically extend for additional period of 1 year each (each an **Extended Term**). The Initial Term and all Extended Terms are the **Term** of this Agreement.

16.3 A party may give written notice to the other party, not later than 30 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be. Should you fail to notify us in writing that you wish to terminate this Agreement under this Section 16.3, you agree that you will continue to be charged certain fees pursuant to this Agreement even if you are not using your account. If you have an Equipment lease, termination of this Agreement does not terminate that Equipment lease.

16.4 We may terminate this Agreement or suspend any or all of the Services immediately and without notice in the following circumstances (each, a **Default**):

- (a) a material adverse change in your business, financial condition, or business prospects;
- (b) any assignment or transfer of voting control of you or your parent or sale of all or a substantial portion of your assets;
- (c) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by us, or any Card Organization, or any other Person, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us;
- (d) you breach any of your representations, warranties or covenants in this Agreement or you default in any material respect in the performance or observance of this Agreement, or in any agreement with any of our

respective Affiliates, including the establishment or maintenance of funds in a Reserve Account, or any failure to notify us of any change to the information in your business profile;

(e) your actions come under investigation by any Card Organization resulting in the Card Organization directing us to terminate or suspend our Services or this Agreement with you; or

(f) you violate any applicable law or Card Organization Rule or we reasonably believe that termination of this Agreement or suspension of Services is necessary to comply with any law, including the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

16.5 We may suspend or terminate this Agreement or our provision of one or more Services to you without penalty if: (a) the Service is generally discontinued; (b) our arrangement with the Card Organization or third party vendor in relation to the Service expires or terminates; (c) we are directed to end the Service to you by any Card Organization; (d) we are prevented from providing the Service by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority; or (e) we are for any other reason no longer able to provide the Service.

16.6 We may also suspend Services to: (a) prevent damages to, or degradation of, our or a third party vendor's or network's system or network integrity (even if caused by a third party); (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a third party vendor from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending any Services in these circumstances. If not commercially reasonable to give prior notice, we shall give notice to you as soon as commercially practicable thereafter. Availability of Services may vary due to events beyond the control of us or our third party vendors. In the event of a suspension of a Service under this Section, we or the applicable third party vendor shall promptly restore the Services after the event giving rise to the suspension has been resolved.

16.7 Subject to Section 16.8, you can terminate this Agreement without the imposition of an Early Termination Fee, if we notify you of an increase to your fees or add new fees, and you notify us that you are terminating this Agreement within 30 days of our notice. If you do not notify us in the required period, you are deemed to have accepted the fee changes.

16.8 Your right to terminate without the imposition of an Early Termination Fee, under Section 16.7 does not apply to increases in rates or any other charges or new fees imposed on us by third parties (including the Card Organizations) which we pass on to you in accordance with Section 6.5, or where we adjust your fees in accordance with Section 6.4. Any termination in these circumstances shall be considered a breach of this Agreement.

16.9 The expiration or termination of this Agreement shall not affect the obligations and rights of the parties pursuant to provisions of this Agreement, which by their nature are intended to survive, including Sections 8, 10, 12, 14, 17, 19, 26, and 27. After expiration or termination of this Agreement, or your subscription to a particular Service for any reason: (a) your right and license to access and use the Software and documentation associated with the Service shall immediately cease and, within 5 days after such event, you shall either return to us or destroy all Software and documentation provided to you by us and shall so certify to us in writing; and (b) you shall continue to bear total responsibility for all transactions you have submitted to us and all Chargebacks, fees, Card Organization fines imposed on us as a result of your acts or omissions, credits and adjustments resulting from Card transactions processed pursuant to this Agreement, and all other amounts then due or which may become due under this Agreement. On termination due to a Default, all amounts owing to us shall be immediately due and payable.

16.10 If you file for protection under the U.S. Bankruptcy Code, or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting record supporting any adjustments that you may claim.

16.11 The Card Organizations maintain merchant lists such as the Member Alert To Control High-risk merchants (**MATCH**) who have had their merchant agreements or card acceptance rights terminated for cause. If this Agreement is terminated for cause, you (a) agree that we may report your business name, and the names and other information regarding your principals, to the Card Organizations for inclusion on such list(s); and (b) waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

## **17 Reserve; Security Interest**

17.1 You agree that in addition to any other rights we have under this Agreement, we may establish a Reserve consisting of cash or other assets that we will hold to satisfy your obligations, or potential obligations, under this Agreement or any other agreement with us or our Affiliates.

17.2 The amount of the Reserve shall be set by us in our sole discretion based upon your processing history and the potential risk of loss to us, as we may determine.

17.3 The Reserve shall be fully funded upon 3 days' notice to you, or immediately in instances of suspected fraud or a Default.

17.4 The Reserve may be funded by all or any combination of: (a) one or more debits to your Settlement Account, or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in your name or in the name of any of your principals, or any of your guarantors, or if any of same are authorized signers on such account; (b) any payments otherwise due to you from us or our Affiliates; or (c) any other collateral that you agree to provide and we agree to accept in our mutual discretion.

17.5 If this Agreement is terminated by any party, an immediate Reserve may be established without notice in the manner provided above. In these circumstances, the Reserve will be held by us for 10 months after termination of this Agreement, or for such longer period as is consistent with resolution of all liability from your Card acceptance including Chargebacks, fines, fees, or obligations of any other kind.

17.6 Any funds we hold in Reserve represent general payment obligations to you which do not become due until all potential contingent liabilities arising from your Card transactions have expired or lapsed. We may set-off any obligations that you owe to us before returning the balance of the Reserve. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in the Reserve, and we shall be entitled to accrued interest in such funds.

17.7 Notwithstanding Section 17.6, you agree that we have a security interest in all funds or other assets that we hold in Reserve, and to provide us with any documentation we may request to perfect our security interest in the Reserve.

17.8 If any funds we hold in Reserve are not sufficient to cover the Chargebacks, adjustments, fees, and other charges and amounts due from you, or if the funds in Reserve have been released, you agree to immediately pay us such sums upon request.

## **18 Account Information**

18.1 You are solely responsible for: (a) ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Services, including any menus loaded onto a Device; (b) verifying that all information and data loaded onto a Device by us, or our service providers at your request, are accurate prior to your business use of such Device; and (c) immediately notifying us should any information you have provided to us become inaccurate or misleading. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

18.2 Upon request, you will provide us and our Affiliates quarterly financial statements within 45 days of the end of each fiscal quarter and annual audited financial statements within 90 days of the end of each fiscal year. Any financial statements provided must be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

18.3 You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to us for any other reason.

18.4 Upon request, you shall provide to us and our Affiliates or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your facilities and records for the purpose of performing any inspection (including of Equipment) and copying of books and records deemed appropriate. You shall pay the costs incurred by us or our Affiliates for such inspection, including costs incurred for airfare and hotel accommodation.

18.5 You authorize us to share information provided by you in your Application or otherwise with other relevant organizations, including those involved in the provision of the Services.

## **19 Audit Rights**

19.1 Upon notice to you, we may audit your usage, records and security, your customer's payment processing information, and the Services to ensure that (a) you are using the Services in full compliance with this Agreement; (b) all applicable fees have been paid; and (c) you are in full compliance with all applicable laws, regulations and rules (including Card Organization Rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

19.2 You shall cooperate fully with any investigation or audit we or any Card Organization may undertake in relation to data security and you authorize us to share the details of any questionnaire or compliance report with the Card Organizations.

## **20 Software Updates and Maintenance**

20.1 We may perform maintenance on Software or Services which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Software or Services and obtain information needed to identify and fix any errors.

20.2 We may, at our discretion, release enhancements, improvements, or other updates to any Software. If we notify you of any such update, you shall integrate and install such update into your systems within 30 days of

your receipt of such notice. You acknowledge that failure to install any updates in a timely fashion may impair the functionality of the Software or Services. 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.

20.3 You acknowledge and understand that 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.

20.4 We and our Wireless Vendor(s) reserve the right to make changes in the configuration of Wireless Services, Wireless Networks, wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of Equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms, and designation of the control center serving you at the particular address.

20.5 The default version and functionality of Clover Software applications that are accessible at the time you acquire a Clover Device may vary.

## **21 Accessing Services via Wireless Service, the Internet or Third Parties**

21.1 You may access certain of our Services through a Device using a wired (Ethernet) or wireless (Wi-Fi or cellular) connection to the internet. You are solely responsible for the payment of any fees that may be imposed by your internet/data provider. Your use of any Services accessed wirelessly or through the internet is subject to: (a) the terms of any agreements you have with your internet/data provider; and (b) availability, transmission range, and uptime of the Services and any wireless Equipment.

21.2 You agree that we shall not be liable to you for any claims, damages, losses, obligations, costs or expenses or other liability arising directly or indirectly from or otherwise concerning (a) any termination, suspension, delay or disruption of Service (including billing for a Service) by the internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of any of the Services, the internet, or any communications network, facility, or Equipment beyond our or a third party's reasonable control, whether or not attributable to one or more common carriers; (c) your failed attempts to access any Services or to complete transactions via any of the Services; or (d) any failure to transmit, obtain or collect data or for human, machine, or software errors or faulty or erroneous input by you.

21.3 We may alter which Devices and browsers are approved as compatible with particular Services in our discretion.

21.4 If a Service relies on online connectivity to provide up-to-date data, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Service is offline.

## **22 Service Integration**

22.1 Unless otherwise agreed in writing, you have the sole responsibility to select and employ any competent programming agent(s) to accomplish any programming required to make your systems function correctly with our platforms (**Integration**). You shall be responsible for all technical support for your systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete any Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration.

22.2 You acknowledge that unless and until you complete any Integration, no Services which require such Integration shall need be provided by us to you pursuant to this Agreement.

22.3 Upon your request to us, and upon payment of any applicable fees, we may provide you with set-up services to assist with any Integration.

## **23 Security**

23.1 You are solely responsible for establishing and maintaining Card Organization Rule compliant security policies and procedures to prevent unauthorized access to and use of Cardholder Information or any other data, including by implementing: (a) all steps required to comply with the PCI DSS, including ensuring all third parties and software use by you in connection with your payment processing are compliant with PCI DSS; (b) appropriate controls to limit access to, and render unreadable prior to discarding, all Cardholder Information and other data; (c) firewalls, passwords and other appropriate security features to protect against unauthorized access to your terminals, systems, the Services and any Software by your employees, contractors, customers, or by any other Person (including instituting appropriate controls to prevent employees or others from submitting credits that do not reflect bona fide returns or reimbursements of earlier transactions); and (d) any other reasonable protective techniques suggested by us. You are required to provide information to us regarding your PCI-DSS compliance when requested, including but not limited to an annual questionnaire that we will make available to you



23.2 If you become aware of any loss, theft or unauthorized use of any data and/or any suspected breach of your systems or any suspicious transactions or fraudulent activity or if any other Data Incident occurs, you shall (a) immediately notify us (and, as required under the Card Organization Rules, each Card Organization); (b) cooperate fully with any investigation into such matter by us or any Card Organization; (c) investigate the matter and perform all remedial actions reasonably specified by us; (d) not, without our prior written consent, take any action, or fail to take any action, which prejudices our rights under this Agreement; (e) not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any Data Incident without our prior written consent. If you do so, it will be at your own expense; and (f) grant us and our vendors the right to access and perform a scan of the IP addresses identified within your profile (and you agree and authorize payment for the additional scan). We reserve the right to deny you access to the Services, in whole or in part, if we believe that any loss, theft or unauthorized use of any data or access information has occurred.

23.3 You are responsible for all electronic communications sent to us or to any third party. When we receive communications from you we will assume you sent it to us.

23.4 You will not obtain ownership rights in any Cardholder Information. You must not use, disclose, store, sell or disseminate any Cardholder Information except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests, or similar issues involving Card transaction.

## 24 Supply of Equipment

24.1 We will sell to you, and you will buy from us equipment identified in Equipment Documents as being sold to you (individually and collectively, the **Purchased Equipment**). We will rent to you and you agree to accept and rent from us Equipment identified in Equipment Documents as being rented to you (individually and collectively, the **Rental Equipment**).

24.2 Any Equipment sold or rented to you is being sold or rented to you solely for business use and not for household or personal use.

24.3 Warranties, if any, for the Equipment or any related Software will be contained within the packaging and originate from the applicable third party provider or manufacturer (**Vendor**) not us.

**24.4 You acknowledge that any Equipment and/or Software you purchase or rent from us may not be compatible with another processor's systems. We do not have any obligation to make such Software and/or Equipment compatible with any other processing systems. If you elect to use another processing service provider on termination of this Agreement, you acknowledge that you may not be able to use the Equipment and/or Software rented or purchased under this Agreement.**

24.5 We will provide you supplies as requested by you. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to this Agreement.

24.6 We will deliver the Equipment to the site you designate. You are deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation; (b) delivery to you if your site is not prepared and ready for installation; or (c) for Equipment that we have not agreed to install for you, 7 days after shipment of each such piece of Equipment. The rental period for each piece of Rental Equipment starts on the date the Equipment is deemed accepted and terminates at the scheduled termination date in the Equipment Documents.

24.7 You will prepare the installation site(s) for the Equipment, including the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. Any alterations required for installation of Equipment will be done at your expense.

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

24.9 You may not relocate, remove, disconnect, modify or in any way alter any Equipment without our prior consent.

24.10 You are responsible for safeguarding Equipment from (and shall immediately notify us of any) loss, damage, unauthorized use, misuse or theft.

24.11 You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (**Comprehensive Coverage**). The loss, destruction, theft of or damage to the Rental Equipment does not relieve you of your obligation to pay the full purchase price or rent payable under this Agreement.

24.12 If Equipment is defective, you must immediately call the POS Help Desk. If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.

24.13 Rented Equipment may not be subleased at any time and you must keep all Equipment free of any claims, liens and legal processes initiated by creditors.

24.14 Promptly upon termination of all applicable rental periods, or promptly following any action by us following a Default, you shall deliver possession of all Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of

its delivery to you, except for reasonable wear and tear. For each item of Rental Equipment not so returned 14 calendar days after (a) termination of the applicable rental period, or (b) any action by us following a Default, you agree to pay us the greater of \$250, or the fair market value of such item of Equipment if it were in the condition described above, as determined by us.

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

24.16 You shall return Equipment in accordance with the procedure set out in the Your Payments Acceptance Guide. Rental fees may be continued until Equipment is returned.

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

24.18 You agree that in order to access any Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by us in our sole discretion 24.1 We will sell to you, and you will buy from us equipment identified in Equipment Documents as being sold to you (individually and collectively, the Purchased Equipment). We will rent to you and you agree to accept and rent from us Equipment identified in Equipment Documents as being rented to you (individually and collectively, the Rental Equipment).

24.2 Any Equipment sold or rented to you is being sold or rented to you solely for business use and not for household or personal use.

24.3 Warranties, if any, for the Equipment or any related Software will be contained within the packaging and originate from the applicable third party provider or manufacturer (Vendor) not us.

24.4 You acknowledge that any Equipment and/or Software you purchase or rent from us may not be compatible with another processor's systems. We do not have any obligation to make such Software and/or Equipment compatible with any other processing systems. If you elect to use another processing service provider on termination of this Agreement, you acknowledge that you may not be able to use the Equipment and/or Software rented or purchased under this Agreement.

24.5 We will provide you supplies as requested by you. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to this Agreement.

24.6 We will deliver the Equipment to the site you designate. You are deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation; (b) delivery to you if your site is not prepared and ready for installation; or (c) for Equipment that we have not agreed to install for you, 7 days after shipment of each such piece of Equipment. The rental period for each piece of Rental Equipment starts on the date the Equipment is deemed accepted and terminates at the scheduled termination date in the Equipment Documents.

24.7 You will prepare the installation site(s) for the Equipment, including the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. Any alterations required for installation of Equipment will be done at your expense.

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

24.9 You may not relocate, remove, disconnect, modify or in any way alter any Equipment without our prior consent.

24.10 You are responsible for safeguarding Equipment from (and shall immediately notify us of any) loss, damage, unauthorized use, misuse or theft.

24.11 You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (Comprehensive Coverage). The loss, destruction, theft of or damage to the Rental Equipment does not relieve you of your obligation to pay the full purchase price or rent payable under this Agreement.

24.12 If Equipment is defective, you must immediately call the POS Help Desk. If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.

24.13 Rented Equipment may not be subleased at any time and you must keep all Equipment free of any claims, liens and legal processes initiated by creditors.

24.14 Promptly upon termination of all applicable rental periods, or promptly following any action by us following a Default, you shall deliver possession of all Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, except for reasonable wear and tear. For each item of Rental Equipment not so returned 14 calendar days after (a) termination of the applicable rental period, or (b) any action by us following a Default, you agree to pay us the greater of \$250, or the fair market value of such item of Equipment if it were in the condition described above, as determined by us.

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

24.16 You shall return Equipment in accordance with the procedure set out in the Your Payments Acceptance Guide. Rental fees may be continued until Equipment is returned.

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

24.18 You agree that in order to access any Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by us in our sole discretion (**Wireless Equipment**).

24.19 You agree to obtain any and all licenses, permits, or other authorizations required by the Federal Communications Commission (FCC) or any other regulatory authority, if any, for the lawful operation of any Wireless Equipment used by you. You shall promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.

## 25 Clover Care

25.1 If you purchase Clover Care, **Included Equipment** means equipment listed in the Equipment Details section of this Agreement. Clover Care replaces, at no additional charge to you, Included Equipment that has failed during the Clover Care Term due to manufacturer defects in materials or workmanship, normal wear and tear from use in your business, and accidental damage from handling. Merchants with Included Equipment located in New York: see below for material limitations on Clover Care protection.

25.2 Clover Care protection begins when we ship you the Included Equipment and continues for three years from that date, (the Clover Care Term). Clover Care protection extends to replacement devices for the remainder of the original unit's Clover Care Term.

(a) During the Clover Care Term, Clover Care protection is limited to 3 replacements per device listed in this Agreement.

(b) We reserve the right to replace Included Equipment with refurbished units. You acknowledge that Clover Care protection extends only to the functionality of devices, and not to cosmetic appearance or other non-functional matters.

(c) If the model of unit to be replaced is no longer in inventory, we reserve the right to replace that unit with a model of the same or better functionality. Under no circumstances will we pay or credit you with cash in lieu of a replaced unit.

25.3 For assistance with a failed unit, contact Customer Service. If we confirm that the unit is eligible for replacement, we will ship you a replacement unit at no additional cost. We reserve the right to replace each failed unit of your Included Equipment with refurbished equipment. You may elect to purchase a new unit at our then-current rates if you do not want a refurbished unit, but we will not apply any credit to the purchase price of a new unit.

25.4 You must return each failed unit and its related accessories to us within 45 days after receiving the replacement unit. The package containing the replacement unit will include a prepaid shipping label for returning the failed unit. You must ship the failed unit (including any related unit accessories) in the same container we used to ship you the replacement unit. If you do not return a failed unit (or any related accessories) to us within 45 days, we will charge you our then-current rate for that unit or accessory.

### 25.5 Exclusions

Clover Care does not:

(a) Replace or otherwise protect Included Equipment in cases of loss, theft, intentional damage, or damage to units incurred incidentally to fire or flood damage to your business premises. Clover Care is void if you breach this Agreement or your merchant processing agreement. Clover Care is not insurance nor a substitute for insurance; or

(b) Apply to defects or damage resulting from software, interfaces, or supplies we do not provide; loss or damage in transit between your locations; your or your vendors' or users' improper site preparation; or failure to follow written instructions on proper use of the Included Equipment.

(c) Merchants with Included Equipment located in New York: see below for material additional exclusions.

25.6 We may charge you our then-current rate for any returned unit that (1) the Agreement excludes from Clover Care, (2) has an expired Clover Care Term, (3) does not match the serial number of a unit for which you purchased Clover Care, or (4) results in a no-problem found claim (an **NPF Claim**). An NPF Claim will result if a factory technician could not reproduce your reported defect in the returned unit or the returned unit performs to specifications within the factory's automated quality assurance testing program.

### 25.7 New York Merchants

For Included Equipment located in New York, Clover Care protection does not include damage arising from normal wear and tear (except as arising from product defect) or accidental damage from handling.

(a) Subject to the conditions and exclusions set forth in this Agreement, Clover Care replaces, at no additional charge to you, Included Equipment that has failed due to manufacturer defects in materials or workmanship.

(b) In addition to the exclusions above, Clover Care does not replace or otherwise protect Included Equipment arising from causes other than manufacturer defects in material or workmanship, including without limitation: damage resulting from smashed or cracked units or screens; extraneous materials in the interior of the unit; contact with liquids; missing unit covers; melted or burnt units; cosmetic damage; your or your vendors' or users' improper or inadequate maintenance; or other visible damage. Clover Care is void if you breach this Agreement. Clover Care is not insurance nor a substitute for insurance.

(c) You acknowledge that the Fees charged by us are not reduced for Included Equipment located in New York, even though there are lesser protections provided and broader exclusions.

## 26 Compliance with Laws

26.1 You shall comply fully with the requirements of all applicable federal, state, and local laws and regulations related to your use of Software, Equipment, and each Service, and provision and use of any Cardholder Information, customer information and other POS data in connection with the Services. You shall not use the Services for illegal purposes.

26.2 You are solely responsible for obtaining all required permits and monitoring legal developments applicable to the Services and the operation of your business, interpreting applicable laws and regulations, determining the requirements for compliance with all applicable laws and regulations, and maintaining an on-going compliance program.

**26.3 Notwithstanding the capability of certain Services to collect and store customer information and to allow your customers to elect to receive marketing materials from you, some states may limit your use of such information once collected, even if the customer has provided his consent, and/or your disclosure of such information to third parties. You acknowledge and agree that (a) your use of any customer information obtained in connection with the Services may be subject to local, state, and/or federal laws, rules, and regulations, (b) you are solely responsible for knowing such laws, rules, and regulations, and (c) you will at all times strictly comply with all such laws, rules, and regulations.**

## 27 Indemnification

27.1 You agree to indemnify and hold us, our Affiliates, agents, and third party service providers harmless from and against all losses, liabilities, damages and expenses arising from: (a) any breach or misrepresentation by you under this Agreement; (b) your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) your use of the Services, including any Software or Equipment provided under this Agreement; (d) any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer); (e) your use of any Cardholder Information or other customer information obtained in connection with your use of the Services; (f) the content or delivery of any marketing messages that you send or cause to be sent to any customer; or (g) any other persons authorized or unauthorized access and/or use of any Service, Software, or Equipment, whether or not using your unique username, password, or other security features.

27.2 Subject to the limitations set forth in Section 10.3, we agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses directly resulting from any breach or misrepresentation by us under this Agreement or directly arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall only apply to Bank in relation to the Services provided by it hereunder.

## 28 Arbitration

28.1 This arbitration provision shall be broadly interpreted. If you have a Dispute with us that cannot be resolved informally, you or we may elect to arbitrate that Dispute in accordance with the terms of this arbitration provision rather than litigate the Dispute in court. In arbitration, there is no judge or jury, and there is less discovery and appellate review than in court.

28.2 Notwithstanding Section 28.1, you and we agree that the following will not be subject to arbitration: (a) disputes relating to the scope, validity, or enforceability of this arbitration provision; (b) any claim filed by you or us in which the amount in controversy is properly within the jurisdiction of a small claims court; and (c) any dispute related to the validity of any party's intellectual property rights.

28.3 If you or we elect to resolve your Dispute through arbitration pursuant to this arbitration provision, the party initiating the arbitration proceeding shall open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-495-4185, [www.adr.org](http://www.adr.org).

28.4 Because the Services provided to you under this Agreement concern interstate commerce, the Federal Arbitration Act (**FAA**) will govern this arbitration provision, including the issue of whether the Dispute is subject to arbitration. Any arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association (**AAA**). If there is a conflict between this arbitration provision and the AAA Rules, this arbitration provision shall govern. If the AAA will not administer a proceeding under this arbitration provision as written, it cannot serve as the arbitration organization to resolve your Dispute. If this situation arises, the parties shall agree

on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this arbitration provision as written. If there is a conflict between this arbitration provision and the rest of this Agreement, this arbitration provision shall govern.

28.5 A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect your information and other confidential or proprietary information. If the claim alleged in the Dispute is for \$10,000 or less, and the Dispute is not excluded based on Section 28.2 above, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.

28.6 If an award granted by the arbitrator exceeds \$50,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within 30 days from the date of entry of the written arbitration award. The arbitration organization will then notify the other party that the award has been appealed. The members of the three-arbitrator panel will be selected according to the AAA's Commercial Arbitration Rules. The three-arbitrator panel will issue its decision within 120 days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.

**28.7 All parties to an arbitration must be individually named. There shall be no right or authority for any claims to be arbitrated or litigated on a class action, joint, or consolidated basis or on a basis involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other clients, or other persons.**

28.8 The arbitrator may award injunctive or similar relief only in favor of the individually named party and only to the extent necessary to provide relief warranted by that individual party's claim. The arbitrator may not award injunctive relief applicable to any class or similarly situated individual or groups.

28.9 The arbitration will take place in Suffolk County, NY.

28.10 We will pay arbitration filing fees and arbitrator's costs and expenses you notify us of prior to the commencement of the arbitration. You are responsible for all additional costs that you incur in the arbitration, including, but not limited to, fees for attorneys or expert witnesses. If the arbitration is resolved in our favor, you shall reimburse us for the filing fees and costs paid up to the extent awardable in a judicial proceeding. If the arbitration is resolved in your favor, you will not be required to reimburse us for any of the fees and costs paid by us. Notwithstanding anything to the contrary in this arbitration provision, we will pay all fees and costs that we are required by law to pay.

**28.11 If you do not wish to arbitrate disputes, you must notify us in writing within 30 days of the date that you first receive this Agreement by writing your name, address and account number as well as a clear statement that you do not wish to resolve disputes through arbitration and sending that notice either (a) by e-mail to [arbitrationoptout@firstdata.com](mailto:arbitrationoptout@firstdata.com); (b) by fax at 402-916-2200; or (c) by mailing to Arbitration Opt Out Notice, 3975 N.W. 120th Avenue, Coral Springs, FL 33065 (these fax numbers and addresses are only for submitting the notice described in this section). Your decision to opt out of arbitration will have no adverse effect on your relationship with us or the Services provided by us.**

28.12 If any part of Section 28.7 is found to be illegal or unenforceable, the entire arbitration provision will be unenforceable, and the Dispute will be decided by a court. If any other clause in this arbitration provision is found to be illegal or unenforceable, that clause will be severed from this arbitration provision, and the remainder of this arbitration provision will be given full force and effect.

28.13 Our Agreement will be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).

28.14 We have substantial facilities in the State of New York, and many of the Services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement will be in the appropriate state or federal court located in New York, New York.

**28.15 You and we have agreed to waive the right to trial by jury.**

## **29 Notices**

29.1 All notices and other communications required or permitted under this Agreement (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing and sent:

(a) if to you, to your email address or postal address appearing on the Application, or will otherwise be made in accordance with Section 29.3;

(b) if to Processor, to its address appearing in the confirmation section, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065; and

(c) if to Bank, to the address appearing on the confirmation section.

29.2 Notices shall be effective when actually received or, if sent by courier, when delivered. Notices sent to your last known e-mail address or postal address, as indicated in our records, shall constitute effective notice to you under this Agreement.

29.3 In addition, you agree that: (a) where required or requested, your electronic signature (via click-through or other method) on agreements and documents has the same effect as if you signed them in ink; (b) we can send you all communications, billing statements, amendments, notices, and other disclosures or information in connection with this Agreement (**Disclosures**), including but not limited to any Card Organization notices to you electronically: (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose; (d) if you want a paper copy, you can print a copy of the Disclosures or download the information for your records; and (e) this consent applies to all future Disclosures sent to you in connection with this Agreement. You agree that electronic Disclosures have the same meaning and effect as if we provided paper Disclosures to you.

29.4 Notices of Disputes, Credit Card and Debit Card requests for information, and notices relating to Chargebacks will be made available to you exclusively on a web portal that we will make available to you for your use.

29.5 You must give us 30 days prior notice of any change to your address. Failure to provide us with a valid address may result in the termination of this Agreement.

29.6 Notwithstanding the above, all bankruptcy, credit reporting or collection related notices must be sent to the following address: Merchant Services Department, P.O. Box 675799 Marietta, GA 30006 Attn: Bankruptcy and Collection Notifications.

29.7 All notices must include your name(s) and merchant number(s).

### **30 Communications**

30.1 You agree that we, our Affiliates, and our third party service providers and/or agents, may use, in addition to any live agent calls, an automatic telephone dialing system, an artificial or pre-recorded voice, or both, to contact you at the telephone number(s) you have provided, and/or may leave a detailed voice message if you are unable to be reached, even if the number provided is a cellular or wireless number, or if you have previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes.

30.2 You consent to receiving commercial Disclosures via electronic messages, including email messages, SMS and text messages, and telephone calls, from us, our Affiliates, and our third party service providers and/or agents.

### **31 Whole Agreement; Waiver; Severability**

31.1 This Agreement constitutes the entire Agreement between the parties with respect to its subject matter, and supersedes any previous agreements and understandings.

31.2 A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

31.3 Except with respect to Section 28, the parties intend every provision of this Agreement to be severable, and, if any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

### **32 Amendment**

32.1 We may modify this Agreement (including changing the fees or adding new fees) by 20 days written notice to you. Subject to Section 32.2, you may choose not to accept the change by terminating this Agreement by written notice within 30 days of our notice.

32.2 Notwithstanding Section 32.1, we may at any time modify this Agreement in accordance with Section 6.5 or to reflect changes in applicable law, the Card Organization Rules or security procedures, and your right of termination shall not arise in such circumstances.

### **33 Third Party Beneficiaries**

33.1 Our Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as if they are a party to it. The rights of the parties to rescind or agree to any variations, waiver or settlement under this Agreement are not subject to the consent of any Person.

33.2 Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights or remedies under this Agreement.

### **34 6050W of the Internal Revenue Code**

34.1 Under Section 6050W of the Internal Revenue Code, you will receive a Form 1099- K reporting the gross dollar amount of card transactions processed through your Merchant Account with us in each year.

34.2 Amounts reportable under Section 6050W are subject to backup withholding requirements. We will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) you fail to provide your taxpayer identification number (TIN) to us, or (b) if the IRS notifies us that the TIN

(when matched with the name) provided by you is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

### **35 Export Compliance**

35.1 You agree not to export or re-export any Software, Equipment, or any underlying information except in full compliance with all applicable laws and regulations.

35.2 None of the Software, Equipment, or any underlying information may be downloaded or otherwise exported or re-exported (a) to any country to which the United States has embargoed goods (or any national or resident thereof); (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (c) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. You warrant that you are not located in, under the control of, or a national or resident of, any such country or on any such list.

35.3 If you have rightfully obtained Software, Equipment, or any underlying information outside of the United States, you agree not to re-export the same except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained it.

### **36 No Investment Advice**

36.1 We do not provide any business, investment or financial advice, and are not advocating any business decision or the sale or purchase of any real property, stocks, bonds, or securities.

36.2 We expressly state, and you hereby acknowledge, that any information services are provided solely for informational purposes and are not to be used as a substitute for independent financial investment advice nor are they intended to be relied upon by any person or entity, including you or your customers for the purposes of investment or other financial decisions.

### **37 Clover Security Plus**

37.1 Clover Security Plus consists of a POS security monitor, the TransArmor Data Protection Service, and tools that you can use to help you meet your PCI DSS compliance obligations. Each of those services is described in more detail below. Clover Security Plus is provided to you by Processor and not by Bank.

37.2 The POS security monitor offers you monitoring, scanning, and anti-virus software for your POS computer systems.

37.3 The TransArmor Data Protection Service encrypts Cardholder Information at the point of transaction and replaces it with a unique identifier (a **token**) that is returned with the Authorization response. You must use the token you receive with the authorization response instead of the card number for all other activities associated with the transaction, including settlement, retrieval, Chargeback, or adjustment processing as well as transaction reviews. If you fully deploy and use the TransArmor Data Protection Service, the token returned to you with the Authorization response cannot be used to initiate a financial sale transaction by an unauthorized person outside your POS systems or the systems where you store your Transaction Data. The TransArmor Data Protection Service can only be used with a POS Device, gateway, or service that we have certified as being eligible for the TransArmor Data Protection Service. The TransArmor Data Protection Service is provided to you by Processor and not by Bank.

37.4 We also give you access to tools that you can use to help you meet your PCI DSS compliance obligations. Although you must also comply with all laws and Card Organization Rules relating to data security, including the PCI DSS, you are not required to use our tools to do so. Our tools consist of an on-line PCI DSS SAQ and on-line scans for up to 5 POS devices. By completing the SAQ, you are confirming that you follow certain data security protocols. If the Card Organization Rules require you to submit to quarterly or other periodic PCI-approved vulnerability scans (for example, if you accept internet transactions), the on-line scans we make available to you will enable you to meet that requirement. If, within 60 days from the date this Agreement is submitted to us with your signature and on an annual basis after that, you choose to (a) complete the SAQ or (using PCI-approved methods) provide us with other written evidence of your PCI DSS compliance, (b) obtain any PCI-approved scans required by the Card Organization Rules, and (c) remediate vulnerabilities identified by the scans in ways that enable you to comply with the Card Organization Rules and applicable standards (including the PCI DSS), then you will avoid paying the monthly Non-Receipt of PCI Validation fee. If you materially change the systems you use to accept payments, you will need to promptly complete a new SAQ, or (using PCI-approved methods) promptly provide us with other written evidence of your PCI DSS compliance, in order to avoid paying the monthly Non-Receipt of PCI Validation fee.

37.5 We will provide you with the Liability Waiver described in this Section 37.5 if none of the exclusions below apply. If you have a Data Incident, for each MID you have with us, we will waive (a) up to \$25,000 of liability for PCI Upgrade Costs, and (b) up to \$100,000 of liability for other Data Incident Expenses. These limits are subject to a \$500,000 cap for all Data Incident Expenses. These limitations apply during each 12-month period from January 1 through December 31, regardless of the number of Data Incidents you may experience. The Liability

Waiver applies only while you are using and paying for Clover Security Plus. The Liability Waiver will not apply to any of the following: (a) any Data Incident that began before you started using Clover Security Plus or that is reported to us after you stopped using Clover Security Plus; (b) any fines or assessments against you that are not the direct result of a Data Incident; (c) any repeated Data Incidents, unless between the repeated events a qualified security assessor certified you as PCI-compliant; (d) any routine or recurring expenses for security assessments, regulatory examinations, or compliance activities; (e) any Data Incident that occurs during any period of time that (1) a Card Organization has categorized you as a Level 1 or Level 2 merchant, or (2) you have processed more than 6 million transactions during the 12-month period before the Data Incident; (f) any expenses (other than Data Incident Expenses) incurred to bring you into compliance with the PCI DSS or a similar security standard; or (g) any Data Incident Expenses that arise out of an uncontrollable event or any intentional, reckless, or grossly negligent misconduct on your part.

37.6 Use of Clover Security Plus does not (a) guarantee compliance with any laws, Card Organization Rules, or applicable standards (including the PCI DSS), (b) affect your obligation to comply with laws, Card Organization Rules, and applicable standards (including the PCI DSS), or (c) guarantee protection against a Data Incident. We make no promise that use of Clover Security Plus will detect every vulnerability on your system, or that our vulnerability assessments, suggested solutions, or advice are error-free or complete. You agree that we are not responsible or liable for the accuracy or completeness of any information provided by us. Your use of Clover Security Plus involves inherent risks, including system performance, availability, and data corruption. You have sole responsibility to backup and/or otherwise protect your data, systems, and service.

37.7 You must comply with all rules or procedures relating to Clover Security Plus (or any component of Clover Security Plus) that we give you from time to time. You must also implement all updates to Clover Security Plus within a reasonable period after you receive them. You are solely responsible for backing up and/or otherwise protecting your data, systems, and service.

### 38 Interpretation; Definitions

38.1 The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement. References in this Agreement to include, including, or in particular shall not be given a restrictive meaning and shall be interpreted without limitation. Reference to any legislation is to such legislation as amended or supplemented in the future.

38.2 Certain terms used in this Agreement are defined below:

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

**Anticipated Interchange and Program Pricing Level:** your initial anticipated Card Organization interchange and program pricing rates.

**Application:** Sections 1 through 5 of this Agreement.

**Authorization:** approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only that the Issuer has confirmed there is sufficient availability of funds on the Cardholder's account at the time the Authorization is requested.

**Authorization and Capture:** the communication of instructions from your POS or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information.

**Card:** See either Credit Card or Debit Card.

**Cardholder:** the Person whose name is embossed on a Card and any authorized user of such Card, also referred to as a Card Member by American Express.

**Cardholder Information:** the data contained on a Card, or otherwise provided to you, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction, including the names, addresses and Card account numbers of Cardholders.

**Card Organization:** any entity formed to administer and promote Cards, including Mastercard Worldwide (Mastercard), Visa U.S.A., Inc. (Visa), DFS Services LLC (Discover Network), PayPal, Inc. (PayPal), American Express Travel Related Services Company, Inc. (American Express) and any applicable debit networks.

**Card Organization Rules:** the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

**Card Replacement Costs:** the costs you are obligated to pay to comply with the written demand of a Card Organization to reproduce and distribute cards arising from a Data Incident.

**Chargeback:** a Card transaction (or disputed portion) that is returned to us by the Issuer. You are responsible for payment to us for all Chargebacks.

**Clover:** Clover Network, Inc.

**Clover Service:** the website associated with Clover, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time we provide you with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) that are designed to assist with the



management of your business and enable payment processing at the point of sale, and any materials, documentation, and derivative works released by us.

**Credit Card:** a card bearing a valid Mark of Visa, Mastercard, Discover Network, PayPal or American Express (or any other Card Organization specified by us in writing) and authorizing the Cardholder to buy goods or services on credit.

**Data Compromise:** the exposure of card information that compromises the security, confidentiality, or integrity of personally identifiable information.

**Data Incident:** actions, omissions, unauthorized access, intrusions, or security breaches resulting in a Security Failure and ensuing Data Compromise, as identified in a Card Organization's formal notice. Regardless of the number of unauthorized accesses, security breaches, or Data Compromise events, all activities resulting from (1) common intruders or a conspiracy of intruders, (2) unauthorized software installations, or (3) continuous or repeated actions, or exposure to the same general harmful condition, will be considered a single Data Incident. A Data Compromise stemming from either: (i) multiple intrusions into your computer system enabled by a worm, key logger, or the like, or (ii) the repeated use of a stolen or compromised password or access code, will also be deemed to arise out of a single Data Incident.

**Data Incident Expenses:** (a) any of your obligations to us for liability imposed by Card Organizations arising from a Data Incident, including, PCI Upgrade Costs and Card Replacement Costs; and (b) the costs of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI to determine the cause and extent of a Data Incident. Data Incident Expenses do not include (1) any cost for Mitigation Services or to notify consumers about a Data Incident; (2) interchange fees, Chargeback expenses or the amount of any transaction returned to you, the Bank or us; or (3) any other damage, legal expenses, punitive or exemplary damages, legal or regulatory fines or penalties.

**Debit Card:** a card bearing a valid Mark of Visa, Mastercard, Discover Network or American Express or any debit network that is used to access funds in a Cardholder's bank account or a prepaid account.

**Device:** a tablet, smartphone, or other mobile or fixed form factor identified by us as compatible with and capable of accessing and/or supporting a particular Service.

**Discount Rate:** a percentage rate or amount charged to a merchant for processing its qualifying daily Credit Card and Non-PIN Debit transactions, as set forth in the Application.

**Dispute:** any dispute, claim, or controversy related to or arising under any aspect of your relationship with us, whether directly with Processor and/or Bank, or indirectly with any other Person or entity related to the relationship, and arising at any time during, before, or after that relationship.

**Equipment:** equipment rented to or purchased by you under this Agreement and any Equipment Documents.

**Equipment Documents:** documents setting out additional terms on which Equipment is rented to or purchased by you under this Agreement.

**General Terms:** these general terms and conditions on which the Services are provided, including any amendments or modifications.

**Foreign Currency:** a currency other than the Local Currency and supported by us for a particular service.

**GeP Transaction:** a card not present transaction between you and a Cardholder using a Card type approved by us, in which you present the price for the product or service in a Foreign Currency in a card not present environment and the Cardholder authorizes (a) the price in a Foreign Currency to be submitted to a Card Organization for settlement, and (b) that the Cardholder's account will be charged for the price in the Foreign Currency.

**GeP Service:** the merchant pricing of goods and services in a Foreign Currency and the activity undertaken by us and/or a GeP Service Provider to authorize, process, and settle GeP Transactions.

**Issuer:** the financial institution or Card Organization that has issued a Card to a Person.

**Local Currency:** the currency associated with your place of domicile and approved by us.

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

**Merchant Account:** an account set up for you that requires a card processor, bank, merchant ID, terminal ID, merchant account number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one Merchant Account..

**MID:** merchant identification number.

**Mitigation Service:** a service provided to a Cardholder whose information is the subject of a Data Incident, where the primary purpose of the service is to mitigate the effects of the Data Incident, including identity theft education and assistance and credit monitoring.

**Non-PIN Debit:** a transaction using a Debit Card that is processed without the use of a PIN.

**Non-Qualified Fee:** the difference between the interchange or program pricing associated with the Anticipated Interchange and Program Pricing Level and the interchange or program pricing associated with the more costly interchange or program pricing level at which the transaction actually processed.

**Non-Qualified Surcharge:** a surcharge applied to any transaction that fails to qualify for the Anticipated Interchange and Program Pricing Level and is therefore downgraded to a more costly interchange or program pricing level. The Non-Qualified Surcharge (the amount of which is set out on the Fee Schedule) is in addition to the Non-Qualified Fee, which is also your responsibility.

**PCI:** Payment Card Industry.

**PCI DSS:** Payment Card Industry Data Security Standard, as amended from time to time.

**PCI Upgrade Costs:** the costs you agree to incur to upgrade payment acceptance and processing hardware and software to enable you to accept and process cards in a manner compliant with the PCI DSS.

**Person:** an individual, corporation, partnership, sole proprietorship, trust, association or any other legally recognized entity or organization, other than you or us.

**PIN:** a Personal Identification Number entered by the Cardholder to submit a PIN Debit transaction.

**PIN Debit:** a transaction using a Debit Card where a Cardholder enters a PIN via a PIN Pad.

**Reserve:** funds that are otherwise payable to you which we hold to secure your obligations under this Agreement, pursuant to Section 17 of this Agreement. The Reserve may also refer to other collateral that you may provide to us to secure such obligations.

**Reserve Account:** our records and accounting of such funds or other collateral.

**Security Failure:** (a) a failure of your computer systems' security to prevent computer data infiltration, (b) theft of your hardware or firmware on which data is stored or processed, (c) theft of your passwords or access codes, or (d) physical loss of your information.

**Services:** the activities undertaken by us to authorize, process, and settle Card transactions undertaken by Cardholders at your location(s), and all other services provided by us under this Agreement.

**Settlement Account:** an account or account(s) at a financial institution designated by you as the account to be debited and credited by us for Card transactions, fees, Chargebacks and other amounts due under this Agreement or in connection with this Agreement.

**Software:** all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment (i.e. firmware) or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any third party software available as part of a Third Party Service or which may be obtained by you separately from the Services (e.g. any applications downloaded by you through an application marketplace).

**Third Party Services:** services, products, promotions or applications provided by someone other than us.

**Transaction Data:** data collected as part of performing Services for you.

**Transaction Rate:** the then-current Foreign Currency exchange rate used by the Card Organizations or their designee to convert the net funding amount into the Local Currency.

**Wireless Networks:** certain cellular telephone and data networks to which we have access through Wireless Vendors.

**Wireless Services:** wireless data communication services that use radio base stations and switching offered by Wireless Networks in order to allow you to capture and transmit to us certain wireless Card Authorization transactions or to transmit other communications to our system.

**Wireless Software:** wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from our systems onto the wireless equipment.

**Wireless Vendors:** one or more third party vendors selected by us in our sole discretion through whom we have acquired the right to resell Wireless Services.

**You, Your:** the merchant signing this Agreement.

**Your Payments Acceptance Guide:** the information prepared by us, containing operational procedures, instructions and other rules and requirements relating to Card transactions.

## 9. Confirmation

### Processor Information

Name

**First Data Merchant Services**

Address

**4000 Coral Ridge Dr., Coral Springs, FL  
33065**

URL

**www.firstdata.com**

Customer Service #

**1-877-273-8191**

**Please read this entire Agreement. It describes the terms on which we will provide merchant processing Services to you. This summary provides answers to commonly asked questions about your Agreement.**

- 1. Your Discount Rates and other fees** are calculated based on transactions qualifying for certain program pricing and interchange rates levied by the applicable Card Organization. Transactions that fail to qualify for these rates will be charged an additional fee. Interchange and program pricing levied by the Card Organization is subject to change, (see Section 6 of the General Terms & Conditions).
- 2. We may debit your bank account** (also referred to as your Settlement Account) for amounts owed to us.
- 3. You are liable for Chargebacks and there are many reasons why a Chargeback may occur.** When they occur we will debit your Settlement Account. See Section 8 of the General Terms & Conditions.
- 4. If you wish to dispute any charge or funding,** you must notify us within 60 days of the date of the statement on which the charge or funding appears.
- 5. This Agreement limits our liability to you.** See Section 10 of the General Terms & Conditions for further details.
- 6. We have assumed certain risks** by agreeing to provide you with the Services. Accordingly, we may take certain actions to mitigate our risk, including termination of this Agreement, and holding monies otherwise payable to you (see Sections 16 and 17 of the General Terms & Conditions).
- 7. By executing this Agreement with us** you authorize us and our Affiliates to obtain and share financial and credit information regarding your business and the signers and guarantors of this Agreement until all your obligations to us and our Affiliates are satisfied.
- 8. Arbitration:** This Agreement contains a binding arbitration provision in Section 28 that affects your rights under this Agreement with respect to all Services.

**Information about Bank:**

- a) Your Bank, who is a Visa and MasterCard Member Bank, is Wells Fargo Bank, N.A. (Bank), PO Box 6079, Concord, CA 94524, (844) 284-6834.
- b) Bank is the entity approved to extend acceptance of Visa and MasterCard products directly to you and will be a party to the sections of this Agreement listed in Section 2.2.
- c) Bank works with Processor to provide the Services to you with respect to Visa Cards and to MasterCard Cards.
- d) Bank shall, either directly or through Processor, advise you of pertinent Card Organization Rules with which you must comply.
- e) Bank is responsible for and must provide settlement funds to you and will be responsible for all funds held in a reserve.

**Your Responsibilities:**

- a) You must comply in full at all times with this Agreement (including the Your Payments Acceptance Guide), all Card Organization Rules and all Cardholder and customer data security and storage requirements.
- b) You may view and download the Your Payments Acceptance Guide at: Your Payments Acceptance Guide
- c) You may view and download the Interchange Qualification Matrix and American Express OptBlue® Guide at: <https://www.buinesstrack.com>
- d) You may download the Visa and MasterCard rules at:  
<https://usa.visa.com/support/merchant.html>  
<http://www.mastercard.com/us/merchant/support/rules.html>
- e) For your account to stay operational, you must keep fraud and Chargeback levels below Card Organization thresholds.
- f) Please retain a signed copy of your Agreement.

**By signing below, you:**

- (i) confirm that you have received and read this Merchant Processing Agreement which includes the Confirmation Page, [F21.2 Interchange Qualification Matrix; 21.2 Pass Through Fee Schedule; Interchange Rate Schedule: ]; and
- (ii) agree to all terms in this Agreement in your capacity as a person authorized to sign on behalf of the Merchant, and;
- (iii) acknowledge that you have executed the Agreement using an electronic signature process and that signature reflects your agreement to be bound to the Agreement.

**Business Principal Signature:**

*Kim Hanna*

Kim Hanna (CFO)

03-03-2022 1:43PM