

# Clover™, Data Protection and TransArmor® Solution Services Participation Addendum

This Clover, Data Protection and TransArmor Solution Services Participation Addendum (this "Addendum") executed on \_\_\_\_\_, 20\_\_\_\_, supplements, and is hereby made a part of, the merchant services agreement (the "Agreement") you ("Client") have entered into with Processor (the entity named and defined in the signature block below) and Bank or their respective predecessors. First Data Merchant Services Corporation ("FDMS"), Processor and Client hereby agree as follows:

This Addendum governs the provision of the Clover Service and one or both of the Data Protection Service and/or the TransArmor Solution Services (each as defined below) (collectively, as applicable, the "Service" or "Services") to you by Processor. By signing below you are electing to receive the Service and you agree to the applicable terms and conditions set forth in this Addendum. Electing to receive the Clover Service means that you shall also elect at least one of either the Data Protection Service or the TransArmor Solution Services for each merchant identification number ("MID"). The Clover Service is provided to you by FDMS and the Data Protection Service and the TransArmor Solution Services are provided to you by Processor, and not Bank. Bank is not a party to this Addendum, and you acknowledge that Bank is not liable to you in any way with respect to the Service.

The Service, transactions processed, and other matters contemplated under this Addendum are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Addendum directly conflict with another provision of the Agreement, in which case the terms of this Addendum will control.

**Merchant Address:** \_\_\_\_\_

**Fax No.:** \_\_\_\_\_ **Phone No.:** \_\_\_\_\_

**Merchant Email (required to receive Clover equipment activation code):** \_\_\_\_\_

**Merchant DBA:** \_\_\_\_\_ **Existing MID# (if applicable):** \_\_\_\_\_

**Business URL:** \_\_\_\_\_ **Menu URL (if applicable):** \_\_\_\_\_

**Clover Service Fees:**

Clover Service Fee \$ \_\_\_\_\_ (monthly per Clover Station) x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (total per month)

**TransArmor Data Protection Service Fees:**

TransArmor Tokenization and Encryption Fee \$ \_\_\_\_\_ (flat rate per month) Yes \_\_\_\_ No \_\_\_\_

**TransArmor Solution Services Fees:**

TransArmor Solution Services Full Bundle Fee \$ \_\_\_\_\_ (flat rate per month) Yes \_\_\_\_ No \_\_\_\_

TransArmor Solution Services PCI Only Fee \$ \_\_\_\_\_ (flat rate per month) Yes \_\_\_\_ No \_\_\_\_

**Clover Equipment Details:** The following is for information purposes only. Please refer to your equipment purchase agreement with TASQ Technology, Inc. or your equipment lease agreement with First Data Global Leasing for information and pricing and fees for your equipment or hardware. You are not purchasing or leasing equipment from FDMS and you acknowledge and agree that FDMS will have no obligation or liability relating to such purchase or lease or equipment. Your purchase or lease of equipment is subject to separate terms and conditions between you and the equipment seller or lessor.

Network: <input type="checkbox"/> Omaha <input type="checkbox"/> Nashville		Purchased/Lease (circle one)			Retail* Restaurant* Quick Service Restaurant*	
QTY	\$/Unit	\$ Total	Equipment Type			
P L	\$ _____	\$ _____	Clover Station (with Cash Drawer)	R	RE	QSR
P L	\$ _____	\$ _____	Clover Station (without Cash Drawer)	R	RE	QSR
P L	\$ _____	\$ _____	Clover Mobile Bundle (Wi-Fi +3G, Mobile Printer and Docking)	R	RE	QSR
P L	\$ _____	\$ _____	Clover Mobile Wi-Fi + 3G	R	RE	QSR
P L	\$ _____	\$ _____	Clover Mini Wi-Fi	R	RE	QSR
P L	\$ _____	\$ _____	Clover Mini Wi-Fi + 3G	R	RE	QSR
P L	\$ _____	\$ _____	Clover Cash Drawer	R	RE	QSR
P L	\$ _____	\$ _____	Clover Weight Scale	R	RE	QSR
P L	\$ _____	\$ _____	Clover Kitchen Printer	R	RE	QSR
P L	\$ _____	\$ _____	Clover Kitchen Printer- Asian Chr	R	RE	QSR
P L	\$ _____	\$ _____	Clover Mobile Printer	R	RE	QSR
P L	\$ _____	\$ _____	Clover Mobile Dock	R	RE	QSR
P L	\$ _____	\$ _____	Clover Bar Code Scanner	R	RE	QSR
P L	\$ _____	\$ _____	Clover Merchant Keypad	R	RE	QSR
P L	\$ _____	\$ _____	FD40 PIN Pad	R	RE	QSR
P L	\$ _____	\$ _____	Restocking Fee (Station/Mobile/Mini)	R	RE	QSR
P L	\$ _____	\$ _____	Restocking Fee (Peripherals)	R	RE	QSR
P L	\$ _____	\$ _____	Deployment Fee	R	RE	QSR
P L	\$ _____	\$ _____	Injection Fee	R	RE	QSR

LEASE COMPANY: (04) First Data Global Leasing Lease Term: \_\_\_\_\_ Months Annual Tax Handling Fee: \$ 10.20  
 Monthly Lease Charge for This Location: \$ \_\_\_\_\_ w/o taxes, late fees, or other charges that may apply.  
 See Lease Agreement for details. This is a NON-CANCELABLE lease for the full term indicated.

## CLOVER TERMS AND CONDITIONS

### 1. CLOVER SERVICE TERMS AND CONDITIONS.

These Clover Service Terms and Conditions (the “Clover Terms and Conditions”) are entered into by and between FDMS and you. For the purposes of the Clover Terms and Conditions, the words “we” “our” and “us” refer only to FDMS and its successors or assigns.

**1.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Addendum or as defined elsewhere in the Agreement.

“**Affiliate**” means a Person that, directly or indirectly, (i) owns or controls such Person, or (ii) is under common ownership or control with such Person.

“**Clover Marks**” means the names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations of Clover Network, Inc., an Affiliate of FDMS (“Clover”).

“**Clover Service**” means the website associated with the Clover Service, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time you are provided 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) and any materials, documentation and derivative works released by FDMS from time to time. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by you separately from the Clover Service (e.g., any applications or software downloaded by you through an application marketplace). The Clover Service is deemed part of the “Services,” as defined in and provided under the Agreement.

“**Customer**” means a person or entity that makes a purchase of goods or services from you, the transaction for which utilizes the Clover Service.

“**Customer Information**” means information about your Customers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with your use of the Clover Service.

“**Device**” means a tablet, smartphone, or other mobile or fixed form factor identified by FDMS from time to time as compatible with and capable of supporting the Clover Service.

“**Person**” means a person or entity other than Client or FDMS.

“**Third Party Services**” are the services, products, promotions or applications provided by someone other than FDMS.

**1.2. Term and Termination.** The Clover Terms and Conditions shall become effective on the day we begin providing the Clover Service to you and shall end one (1) year unless otherwise

terminated as set forth herein. The Clover Terms and Conditions shall automatically renew until terminated by either party upon at least thirty (30) days’ notice. The Clover Service may be terminated for convenience at any time by either party upon at least thirty (30) days’ written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, we may suspend the Clover Service or terminate these Clover Terms and Conditions if (i) we determine that you are using the Clover Service for any fraudulent, illegal, or unauthorized purpose, (ii) we terminate our agreement with any third parties that are involved in providing the Clover Service, or (iii) FDMS otherwise decides to discontinue providing the Clover Service.

**1.3. Fees.** You shall pay the fees for the Clover Service as set forth:

- 1.3.1. on the first page above, or
- 1.3.2. in the lease agreement or the equipment purchase agreement, as applicable.

Please refer to your equipment purchase agreement with TASQ Technology, Inc. or your equipment lease agreement with First Data Global Leasing for information and pricing and fees for your equipment or hardware.

**1.4. License Grant.** During the term of these Clover Terms and Conditions, FDMS grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to electronically access and use the Clover Service for your internal business use solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with these Clover Terms and Conditions.

For purposes of these Clover Terms and Conditions “United States” does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. These Clover Terms and Conditions do not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain our, our Affiliates’, our vendors’, or our licensors’ (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by FDMS in these Clover Terms and Conditions are deemed withheld.

### 1.5. Restrictions.

- 1.5.1. All right, title and interest in and to all confidential information and intellectual property related to the Clover Service (including Clover Marks, all software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us at any time or employed by us in connection with the Clover Service, shall be and will remain, as between us and you, our or our affiliates’, vendors’ or licensors’ (as applicable) sole and exclusive property and all right, title and interest associated with the Clover Service not expressly granted by us in this Addendum are deemed withheld. You shall not use Clover Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.
- 1.5.2. 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 Clover Service and solely for you to access and use the software and documentation to receive the Clover Service for its intended purpose on systems owned or licensed by you.
- 1.5.3. You shall not and shall not permit any third party to do any of the following: (a) access or attempt to access the Clover Service (or any part) that is not intended to be made available to you or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover

Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on our infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in Section 1.2. You shall not take any action inconsistent with the stated title and ownership in Section 1.2. You will not file any action, in any forum that challenges the ownership of any part of the Clover Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of these Clover Terms and Conditions. We have the right to immediately terminate these Clover Terms and Conditions and your access to and use of the Clover Service in the event of a challenge by you.

#### **1.6. Clover Service Limitations and Requirements.**

- 1.6.1. You may access the Clover Service through your Device using a wired (ethernet) or wireless (wifi 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 the Clover Service may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.
- 1.6.2. You may use the Clover Service to conduct point of sale activities offline. Transactions initiated offline will be queued and submitted for authorization when Internet connectivity to the Clover System is restored. However, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Clover Service is used offline.
- 1.6.3. The Clover Service does not function with every mobile device. FDMS may alter which Devices are approved as compatible with the Clover Service in our discretion from time-to-time.
- 1.6.4. The default version and functionality of Clover software applications that are accessible at the time you acquire a Device may vary from time to time as determined by FDMS or an affiliate of FDMS. Notwithstanding anything to the contrary herein, software for certain Clover Devices may only be offered by FDMS or an affiliate of FDMS as applications via an application marketplace.
- 1.6.5. We may perform maintenance on the Clover Service from time to time 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 Clover Service and obtain information needed to identify and fix any errors.
- 1.6.6. You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you (collectively, "Clover Ops Guide").
- 1.6.7. You shall comply with the following requirements in connection with your use of the Clover Service:

- a) With respect to each of your Customers who requests the delivery of marketing materials, transaction receipts or other communications from you via text message or email, such Customer must give his consent in writing or enter his phone number or email address in the appropriate space on the device and provide such consent via a check box himself on the Device; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) or any Customer's consent indication on behalf of a Customer.
- b) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer's provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
- c) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE 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 AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.
- d) 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 Clover Service.

**1.7. Third Party Services.** The Clover Service may contain links to additional services provided by FDMS or its affiliates as well as Third Party Services (e.g., an application marketplace). 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 (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). Any access of or content downloaded or otherwise obtained through the use of Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Addendum or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND NY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. PROCESSOR WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND PROCESSOR EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. PROCESSOR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROVIDER OF A THIRD PARTY SERVICE OR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPER-LINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PROCESSOR WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

**1.8. Account Registration.** We may require you to register and create a "Member" or "Merchant" account to use the Clover Service. If

and when prompted by our registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, we have the right to terminate your Clover Service account (“Account”) and refuse any and all current or future use of the Clover Service.

**1.9. Privacy and Data Use.** All data collected from you at [www.clover.com](http://www.clover.com) or in connection with your use of the Clover Service, including Customer Information, transaction information and information about your business and employees used with or stored in or by the Clover Services (collectively, “Account Data”), is collected by Clover Network, Inc. and not FDMS or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Network, Inc. Privacy Policy (available at [https://www.clover.com/privacy\\_policy](https://www.clover.com/privacy_policy)). You acknowledge and agree that we may access your Account Data upon our request to Clover, and our use of your Account Data is governed by the terms set forth in the Agreement.

### **1.10. Protecting Your Information.**

1.10.1. You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Clover Service are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of Account Data; (2) protect against any anticipated threats or hazards to the security or integrity of Account Data; (3) protect against unauthorized access to or use of Account Data that could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of Account Data; and (b) take appropriate actions to address incidents of loss, theft or unauthorized access to or use of Account Data. You will comply with all applicable card organization rules (including, without limitation, applicable data security rules). You are responsible for all electronic communications sent to us or to any third party (including Clover Network, Inc.) containing Account Data and for all uses of the Clover Service or any software provided or approved by FDMS to authenticate access to, and use of, the Clover Service and any software. When we receive communications containing Account Data, we assume you sent it to us. FDMS has the right to rely on user names, passwords and other signor credentials, access controls for the Clover Service or any software provided or approved by FDMS to authenticate access to, and use of, the Clover Service and any software. You must immediately notify us if you become aware of any loss, theft or unauthorized use of any Account Data (see Clover Service support center contact information below). We reserve the right to deny you access to the Clover Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access information has occurred. We may in our sole discretion, suspend or terminate services under these Clover Terms and Conditions for any data security compromise. You also understand and acknowledge that you are solely responsible for the compliance of any and all third parties (including but not limited to Internet Service Providers) that are granted access by you, to Account Data. You also acknowledge that it is your duty to notify us of any data security compromise and to cooperate and assist us in any subsequent investigation.

1.10.2. You may submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service. 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.

### **1.11. Confidentiality.**

- 1.11.1. You must not use, disclose, store, sell or disseminate any Account Data except as may be allowed under these Clover Terms and Conditions. You acknowledge that you will not obtain ownership rights in any information relating to and derived from Account Data. No Account Data, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of Client’s business.
- 1.11.2. You will treat these Clover Terms and Conditions, and any information supplied or otherwise made accessible by us, our agents or Affiliates as confidential, including without limitation, (i) Account Data, information about our and our Affiliates’ products, services, operations, procedures and pricing; and (ii) all documentation, computer software, source code, object code, databases. You receive our confidential information in confidence and shall not disclose the confidential information to any third party, except as may be agreed upon in writing by us. Client shall safeguard all of our confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by us or upon termination of these Clover Terms and Conditions, Client shall return to us or destroy all of our confidential information in its possession or control.
- 1.11.3. The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Agreement or subsequently came into the public domain through no fault of yours; (ii) was received from a third party free of any obligation of confidence of you to the third party and which third party, to your knowledge, was not under an obligation to keep the information confidential; (iii) was already in your possession prior to receipt from us; or (iv) is subsequently and independently developed by your employees, consultants or agents without use of or reference to our confidential information.
- 1.11.4. Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under our confidential information to you. Except as specifically provided for herein, no license is hereby granted to you under any patent, trademark, copyright, trade secret or other proprietary rights of ours.
- 1.11.5. You acknowledge that breach of the restrictions on use or disclosure of any 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.
- 1.11.6. We may use data collected as part of performing payment processing or other transaction-related services for you for the purpose of providing additional products and services to you, other merchants, or third parties. As permitted by law this includes, but is not limited to, collecting, using, and anonymizing cardholder information, dates, amounts, and other data from your transactions (“Transaction Data”) to provide you with analytic products and services as well as collecting and using Transaction Data anonymized and aggregated with other

merchants' transaction data to provide you, other merchants, and third parties with analytic products and services.

**1.12. Accuracy of Information.** You are solely responsible for ensuring the accuracy, quality, integrity, legality and appropriateness of all information and data regarding your business that you provide to us or our service providers in connection with the Clover Service. In addition, you are solely responsible for 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. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data you provide.

**1.13. Clover Service Disclaimer.** USE OF THE CLOVER SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED "AS IS" AND FDMS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) TO YOU OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, WARRANTIES REGARDING QUALITY, SUITABILITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR DOES NOT INFRINGE ON THE RIGHTS OF ANY PERSON.

**1.14. Indemnity.** You agree to indemnify and hold us harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

- a) Your failure to comply with or your breach of, any term or condition, representation or warranty in these Clover Terms and Conditions, including, but not limited to the Clover Ops Guide;
- b) Your use of the Clover Service;
- c) Your use of any Customer Information obtained in connection with your use of the Clover Service;
- d) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service; or
- e) Any other party's access and/or use of the Clover Service with your user names, password, other appropriate security code, or any other sign on credentials/access controls for the Clover Service or any software provided by or approved by us to authenticate access to, and use of, the Clover Service and any software.

**1.15. Exclusion of Consequential Damages; Limitation on Liability.**

1.15.1. **Exclusion of Consequential Damages.** NOTWITHSTANDING ANYTHING IN THESE CLOVER TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL FDMS OR ITS AFFILIATES 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 HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

1.15.2. **Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THESE CLOVER TERMS AND CONDITIONS TO THE CONTRARY, FDMS AND ITS AFFILIATES' CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY CLIENT AGAINST FDMS AND/OR ITS AFFILIATES, WHETHER RELATED OR UNRELATED) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES,

BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF, (I) \$10,000; OR (II) THE AMOUNT OF FEES RECEIVED BY FDMS PURSUANT TO THESE CLOVER TERMS AND CONDITIONS FOR CLOVER SERVICE PERFORMED IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS.

**1.16. Default.** If either party defaults in the performance of any of its obligations hereunder, and if any such default is not corrected within thirty (30) days after notice in writing, the non-defaulting party may terminate these Clover Terms and Conditions and the Clover Service upon written notice. These Clover Terms and Conditions and the Clover Service may be terminated by either party, upon written notice: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, which are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter; (ii) upon the other party's making a general assignment for the benefit of creditors; or (iii) upon the other party's dissolution or ceasing to conduct business in the ordinary course.

**1.17. Compliance with Laws.** In performing its obligations under these Clover Terms and Conditions, the parties agree to comply with all federal and state laws, rules and regulations applicable to it for the Clover Service provided hereunder.

**1.18. Assignment.** Neither party may assign its rights or delegate its obligations under these Clover Terms and Conditions without the other party's prior written consent, which will not be unreasonably withheld. FDMS may, however, assign any or all of its rights or delegate any or all of its obligations to an Affiliate or an entity acquiring all or substantially all of the assets of FDMS.

**1.19. Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder shall be in writing, if to you at your address appearing on the first page or by any electronic means, including but not limited to the e-mail address you have provided. If to us at First Data Merchant Services Corporation, 1307 Walt Whitman Road, Melville, New York 11747, Facsimile (631) 683-7516, Attention: Executive Vice President Operations, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to your last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Client under these Clover Terms and Conditions. If you change your address (including your e-mail address), you must notify us at least 30 days prior of the effective date of any such change. All notices must include your merchant name(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

**1.20. Amendment.** We have the right to change or add to the terms of these Clover Terms and Conditions at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Clover Service with notice provided to you as set forth in the Notices section of these Clover Terms and Conditions. Any use of the Clover Service after our publication of any such changes shall constitute your acceptance of these Clover Terms and Conditions as modified.

**1.21. Third Party Beneficiaries.** FDMS's Affiliates and any Persons FDMS uses in providing the Clover Service are intended third party beneficiaries of these Clover Terms and Conditions, and each of them may enforce its provisions as if it was a party hereto. Except as expressly in this provided in these Clover Terms and Conditions, nothing in these Clover Terms and Conditions is intended to confer upon any Persons any

rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of these Clover Terms and Conditions.

### 1.22. Miscellaneous.

- 1.22.1. **Headings.** The headings contained in these Clover Terms and Conditions are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of these Clover Terms and Conditions.
- 1.22.2. **Entire Agreement; Waiver.** These Clover Terms and Conditions constitute the entire agreement between you and FDMS with respect to the subject matter thereof, and supersede any previous agreements and understandings. Except as provided herein these Clover Terms and Conditions can be changed only by a written agreement signed by you and FDMS. A party's waiver of a breach of any term or condition of these Clover Terms and Conditions shall not be deemed a waiver of any subsequent breach of the same or another term or condition. Purchase orders, requests for production, pre-printed terms or other Client-generated documents that FDMS may receive are for administrative convenience only and do not modify these Clover Terms and Conditions and are expressly rejected by FDMS. The words "including", "include" and "includes" will each be deemed to be followed by the term "without limitation".
- 1.22.3. **Severability.** Every provision of these Clover Terms and Conditions is severable. If any provision of these Clover Terms and Conditions is held to be invalid, illegal, void or unenforceable by reason of any judicial decision, then such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision, and all other provisions of these Clover Terms and Conditions will nevertheless remain in full force and effect. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.
- 1.22.4. **Choice of Law and Venue.** These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to these Terms and Conditions shall be in the appropriate state or federal court located in New York.
- 1.22.5. **Waiver of Jury Trial.** THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THESE CLOVER TERMS AND CONDITIONS.
- 1.22.6. **Force Majeure.** FDMS shall not be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), the nonperformance, delay or error by a third party or in any other third party system for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications, transmission links or other equipment; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, earthquake, fire, flood, elements of nature or other acts of God, any act or omission of Client or any government authority, or other causes reasonably beyond the control of FDMS.
- 1.22.7. **Survival of Obligations.** The rights and obligations of the parties that would be intended to survive by their nature or

context will survive expiration or termination of these Clover Terms and Conditions.

- 1.22.8. **Counterparts.** These Clover Terms and Conditions may be executed in counterparts (including by means of signature pages transmitted via facsimile or other electronic means), any one of which need not contain the signatures of more than one party. Each signature will be deemed to be: (a) an original; and (b) valid, binding, and fully enforceable

**1.23. Bundles.** By selecting the Data Protection Service, the terms and conditions set forth in Section 2 shall apply. By selecting the TransArmor Solution Services, the terms and conditions set forth in Section 3 shall apply (and certain provisions of Section 2 as incorporated therein and set forth below).

## E-SIGN CONSENT AGREEMENT

### A. Consent.

By signing this Addendum, you consent and agree that:

- FDMS can provide disclosures required by law and other information about your legal rights and duties to you electronically.
- Where required or requested, your electronic signature (via "click-through" or other method) on agreements and documents relating to the Services has the same effect as if you signed them in ink.
- FDMS, its affiliates and its third party subcontractors and/or agents, can send all communications, billing statements, amendments to this Addendum, notices, and other disclosures or information regarding the Services or your use of the Service or the Services as defined herein and in the Agreement (collectively defined as "Disclosures") 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, (3) via SMS and text messages, or (4) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.
- If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.
- You agree that FDMS, its affiliates and its third party subcontractors and/or agents, may contact you via telephone, live or artificial, even if the number you 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.
- This consent applies to all future Disclosures sent to you in connection with this Addendum, the Agreement, or your use of the Clover Service or the other Services as defined herein and in the Agreement.

**B. Legal Effect.** By consenting, you agree that electronic Disclosures have the same meaning and effect as if FDMS provided paper Disclosures to you. When FDMS sends you an email or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if FDMS provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

## DATA PROTECTION TERMS AND CONDITIONS

### 2. DATA PROTECTION SERVICE.

If you elect the Data Protection Service, the terms and conditions set forth in this Section 2 shall apply (the "Data Protection Terms and Conditions").

**2.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Addendum or as defined elsewhere in the Agreement.

"Data Protection Service" or "Encryption and Tokenization" means those services described in Section 2.3 below.

"Multi-Pay Token" means the option to support businesses that need to submit a financial transaction in a card-not-present situation. These

tokens are unique to each merchant that uses them and are stored in place of the primary account number (PAN). With these tokens, merchants can initiate new or recurring payments within their own environment instead of using the original card number.

Multi-Pay Token allows a Token Registration process a non-financial transaction to request a token to be placed in their payment page or “e-wallet” for future or recurring payments. It is common for eCommerce merchants to ask their customers to register by providing profile information such as name, address, and phone number to the merchant website before or upon checkout.

“**Registered PAN**” means the processing of creating a Client specific Token for a PAN.

“**Token/Tokenization**” means a form of data substitution replacing sensitive payment card values with non-sensitive token, or random-number, values. Post-authorization transactions are handled via Processors SafeProxy tokenization technology, which returns a token with the transaction's authorization to the merchant. Tokens are shared universally with other merchants and cannot be used to initiate a financial transaction.

“**Token Request**” means your ability to obtain a Multi-Pay Token for credit card information only without an immediate authorization required which permits you to store a Multi-Pay Token for future transactions involving its customer.

**2.2. Grant of License.** Subject to the terms of this Addendum, Processor grants to you a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Addendum to use the Data Protection Service and the Data Protection Service Marks (as identified in the Data Protection Rules and Procedures) in the United States in accordance with this Addendum, including without limitation the Data Protection Rules and Procedures. Any rights with respect to the Data Protection Service not expressly granted by Processor in this Addendum are deemed withheld.

**2.3. Services.** The Data Protection Service applies only to Card transactions sent from you to us for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check transactions. Processor will provide an encryption key to you to be used to encrypt (make unreadable) Card data during transport of the authorization request from your point of sale to Processor's systems. During the period when the transaction is being transmitted to Processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Processor will then generate or retrieve a unique, randomly generated token assigned to the Card number that will be returned to you in the authorization response (the “Token”).

**2.4. Responsibilities of Client.** You are responsible to comply with the following regarding your use of the Data Protection Service:

- a) You are required to comply with the Card Organization Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). You must ensure that all third parties and software use by you in connection with your payment processing are compliant with PCI DSS. Use of the Data Protection Service will not, on its own, cause you to be compliant or eliminate your obligations to comply with PCI DSS or any other Card Organization Rule. You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to your business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Card Organization Rules and PCI DSS.
- b) Use of the Data Protection Service is not a guarantee against an unauthorized breach of your point of sale systems or any facility

where you process and/or store transaction data (collectively, “Merchant Systems”).

- c) You must deploy the Data Protection Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your Merchant Systems including replacing existing Card numbers on your Merchant Systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.
- d) You must use the Token in lieu of the Card number for **ALL** activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- e) If you send or receive batch files containing completed Card transaction information to/from Processor, you must use the service provided by Processor to enable such files to contain only Tokens or truncated information.
- f) You must use truncated report viewing and data extract creation within reporting tools provided by Processor.
- g) You are required to follow rules or procedures we may provide to you from time to time related to your use of the Data Protection Service (“Data Protection Rules and Procedures”). We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.
- h) You have no right, title or interest in or to the Data Protection Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to you. You shall not take any action inconsistent with the stated title and ownership in this Addendum. You will not file any action, in any forum that challenges the ownership of the Data Protection Service, any related 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 this Addendum and your access to and use of the Data Protection Service in the event of a challenge by you. No additional rights are granted by implication, estoppel or otherwise.
- i) You will not: (1) distribute, lease, license, sublicense or otherwise disseminate the Data Protection Service or any portion of it to any third party; (2) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the Data Protection Service or any portion of it; or (3) sell, license or otherwise distribute the Data Protection Service or any portion of it; (4) make any copies, or permit any copying, of the Data Protection Service or any portion of it; or (5) use any portion of the Data Protection Service as a standalone program or in any way independently from the Data Protection Service. If any portion of the Data Protection Service contains any copyright notice or any other legend denoting the proprietary interest of Processor or any third party, you will not remove, alter, modify, relocate or erase such notice or legend on such item.
- j) You will only use the Data Protection Service for your internal business purposes in a manner consistent with this Addendum.
- k) You will use only unaltered version(s) of the Data Protection Service and will not use, operate or combine the Data Protection Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this Section 2.
- l) You will promptly notify us of a breach of any terms of this Addendum.

**2.5. Tokenization Limited Warranty.** Processor warrants that the Token returned to you, as a result of using the Data Protection Service, cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside the Merchant Systems. This warranty by Processor is referred to herein as the “Limited Warranty” and is subject to the terms and conditions set forth in this Addendum. To be eligible for the Limited Warranty, you must maintain a processing relationship with Processor and be in compliance with all the terms of the Agreement, including this Addendum, and any other agreement relating to Cards eligible for the Data Protection Service. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, Processor agrees to indemnify and hold you harmless from direct damages, including third party claims, resulting from Processor’s breach of the Limited Warranty. The express remedy for Processor’s breach of the Limited Warranty set forth in this paragraph constitutes Processor’s entire liability and your sole and exclusive remedy for Processor’s breach of the Limited Warranty. The Limited Warranty is void if (i) you use the Data Protection Service in a manner not contemplated by, or in violation of, the Agreement, including this Addendum, or any other agreement relating to Cards eligible for the Data Protection Service or (ii) you are grossly negligent or engage in intentional misconduct.

**2.6. Data Protection Disclaimer.** IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO THE DATA PROTECTION SERVICE: EXCEPT AS EXPRESSLY PROVIDED IN SECTION 2.5 OF THIS ADDENDUM, PROCESSOR MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO THE DATA PROTECTION SERVICE INCLUDING THE UNINTERRUPTED OR ERROR-FREE OPERATION OF THE DATA PROTECTION SERVICE.

**2.7. Miscellaneous; Termination.** Our obligations hereunder are subject to our ability to obtain and maintain any and all required governmental licenses, permits or other authorizations, and our ability to comply with any and all laws, regulations, orders and other governmental directives which may be imposed related to the Data Protection Service. We may terminate any or all of the Data Protection Service at any time for any reason.

## TRANSARMOR SOLUTION SERVICES TERMS AND CONDITIONS

### 3. TRANSARMOR SOLUTION SERVICES.

If you elect the TransArmor Solution Services, the terms and conditions set forth in this Section 3 shall apply (the “TransArmor Solution Services Terms and Conditions”).

**3.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Addendum or as defined elsewhere in the Agreement.

“**Cardholder Information**” means the data contained on a Card, or otherwise provided to Customer, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction;

“**Card Organization Assessment**” means a monetary assessment, fee, fine or penalty levied against you or us by a Card Organization as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; the Card Organizational Assessment shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a “**Data Security Event**” by the applicable rules or agreement in effect as of the inception date of this Addendum for such Card Organization;

“**Card Replacement Expenses**” means the costs that the we or you are required to be paid by the Card Organization to replace compromised Cards as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event;

“**Data Security Event**” means the actual or suspected unauthorized access to or use of Cardholder Information, arising out of your possession

of or access to such Cardholder Information, which has been reported (i) to a Card Organization by you or us or (ii) to you or us by a Card Organization. All Security Event Expenses and Post Event Services Expenses resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of one Data Security Event;

“**EMV Upgrade Costs**” means cost to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Card in a manner compliant with PCI Data Security Standards;

“**Forensic Audit Expenses**” means the costs of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI Security Standards Council to determine the cause and extent of a Data Security event;

“**Liability Waiver**” has the meaning as set forth in Section 3.5 below;

“**Pollutants**” means, but are not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, asbestos, acids, alkalis, chemicals and waste. “Waste” includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials; and

“**Post Event Services Expenses**” means reasonable fees and expenses incurred by us or you with our prior written consent, for any service specifically approved by us in writing, including without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of us or you within one (1) year following discovery of a Data Security Event to a Cardholder whose Cardholder Information is the subject of that Data Security Event for the primary purpose of mitigating the effects of such Data Security Event;

“**Program Year**” means the period from June 1st through May 31st of each year; and

“**Security Event Expenses**” means Card Organization Assessments, Forensic Audit Expenses and Card Replacement Expenses. Security Event Expenses also includes EMV Upgrade Costs you agree to incur in lieu of a Card Organization Assessment.

“**TransArmor Solution Services**” or “**TransArmor Solution Services Full Bundle**” means those services described in Section 3.2 below.

**3.2. TransArmor Solution Services.** The following is a description of the TransArmor Solution Services available to you, subject to the terms of this Addendum. The TransArmor Solution Services are available during a calendar year only if you have less than 1 million Visa Card transactions and less than 1 million MasterCard Card transactions in such year.

#### 3.2.1. Data Protection.

(a) The terms and provisions of Section 2 are incorporated in this Section 3.2.1. and made a part of this Section 3.

3.2.2. **POS software monitor (“POS Software Monitor”)** that provides a suite of monitoring, scanning and anti-virus software services to help protect point of sale computer systems;

3.2.3. **PCI Rapid Comply (“PCI Rapid Comply Service”)** which provides access to on-line PCI DSS Self-Assessment Questionnaires (SAQ) to validate PCI data standards. If an internet scan is required to complete the SAQ, you will have access to such scanning services;

3.2.4. **POS hardware monitor (“POS Hardware Monitor”)** which is a tool to assist in detecting physical terminal tampering and substitution, in accordance with additional terms and conditions provided to you upon downloading the POS Hardware Monitor; and

3.2.5. **Liability warranty** under which Processor will provide a waiver of your liability for card association expenses in the event of a security breach up to \$100,000 per MID, and up to \$500,000 aggregate for all MID’s, subject to terms and conditions set forth herein.



**3.3. POS Software Monitor.**

- 3.3.1. **Software as a Service.** Subject to the terms and conditions of this Addendum, we agree to provide you with the POS Software Monitor software application, including all updates, upgrades, new versions, and other enhancements or improvements thereto (the "Software"), to the extent the applicable fees are paid. You hereby authorize us or our vendors to begin scanning immediately upon your installation and/or deployment of the Software. The Software can only be used with certain computer operating systems. It is your responsibility to ensure that your computer has the software in order to use the POS Software Monitor.
- 3.3.2. **License Grant.** Subject to the terms of this Addendum, we hereby grant to you a non-exclusive, non-transferable, non-assignable, revocable sub-license during the term of this Addendum to (i) access and use the Software solely for the benefit of you and only for systems owned or licensed by you; (ii) access and use the Software solely for its intended use; and (iii) use all applicable end user documentation.
- 3.3.3. **Revocation of License.** Upon expiration or termination of the Agreement or this Addendum for any reason, your license shall automatically be revoked. Furthermore, your right to use or access the Software shall cease.
- 3.3.4. **IP & Other Data Retrieval, Transmission and Scanning.**
- (a) **IP/Data Retrieval and Transmission.** You hereby grant us or our vendors, the right to retrieve, transmit and monitor, for the intended purpose of the POS Software Monitor, any dynamic or static IP address and other data, including without limitation policy and system settings, point of sale system type, version, security event logs, or other related information, from any system with the POS Software Monitor loaded, deployed, or otherwise installed. You shall not, in any event or in any manner, impede the retrieval or transmission of such IP addresses or data. You hereby assume full responsibility for all damages and losses, of any nature, for all adverse results caused by your impeding the such retrieval and transmission of the IP addresses and data. You further agree to defend, indemnify and hold us harmless from any third party claim resulting from your impeding this process.
- (b) **IP Scanning & Log Monitoring.** You acknowledge and understand that provisioning of the Software will enable static or dynamic IP addresses associated with the POS Software Monitor to be scanned. You further acknowledge that such IP addresses may be for external network devices which protect the POS Software Monitor host system. You hereby grant us and our vendors (i) the right to access and scan the IP addresses associated with the POS Software Monitor whether they are dynamic or static IP addresses (the "Authorized IP Addresses"), (ii) the right and authority to gather and transmit system data, including point of sale system information, to us or our vendors, and (iii) the right and authority to collect, transmit and review security event logs from the systems on which the Software is deployed. You further agree to provide us or our vendors reasonable assistance to enable such access and scanning. You understand that your failure to cooperate with the provision of services may significantly impair the services.
- (c) **Updates.** You acknowledge and understand that the POS Software Monitor, in our sole discretion, can automatically install, download, and/or deploy updated and/or new components ("update process"), which may include a new version of the POS Software Monitor itself. You shall not, in any event or in any manner, impede the update process. You hereby assume full responsibility for all damages and losses, of any nature, for all adverse results caused by your impeding

the update process. You agree to defend, indemnify and hold us harmless from any third party claim resulting from your impeding the update process.

- (d) **Authorized Disclosure.** You acknowledge that, in conjunction with providing the Software, we may make certain "pass" or "fail" determinations regarding your online security and the electronic vulnerability of your IP addresses. You hereby authorize us or our vendors to share these "pass/fail" results, point of sale data, and other information collected during the scans to Card Organizations, Payment Card Industry Security Standards Council or any Card Organization sponsor bank.

**3.4. PCI Rapid Comply Service.**

- 3.4.1. **License Grant.** Subject to the terms of this Addendum, we hereby grant to you a non-exclusive, non-transferable, non-assignable revocable sub-license to (i) access and use the PCI Rapid Comply Service solely for the benefit of you and only on a single computer or computer network owned or licensed by you, (ii) access and use the PCI Rapid Comply Service solely for its intended use and (iii) use all applicable end user documentation. Upon expiration or termination of the Agreement or this Addendum for any reason, your license shall automatically be revoked. Furthermore, your right to use or access the PCI Rapid Comply Service shall cease.
- 3.4.2. **Access.** You acknowledge and agree that, although you will generally have access to the PCI Rapid Comply Service twenty-four hours per day, seven days per week (except in the event of a force majeure event), access to customer accounts and certain other services may not be available on a continuous basis and the PCI Rapid Comply Service will be subject to periodic downtime to permit, among other things, hardware and/or software maintenance to take place.
- 3.4.3. **Data Disposal.** From time to time, your account data or information, which is over 180 days old, may be deleted, purged or otherwise disposed. In addition, only a limited amount of your account data or information may be available online. Therefore, you are advised to print and download your account data and information, for record keeping purposes, on a periodic basis. You specifically agree that we are authorized to delete or dispose of your data or information and shall not be responsible for the deletion or disposal of your data or information from the PCI Rapid Comply Service. You assume full responsibility to backup and/or otherwise protect your data against loss, damage or destruction prior to and during all phases of the PCI Rapid Comply Service, and to take appropriate measures to respond to any potential adverse impact of the systems or disruption of service.
- 3.4.4. **Copyrighted Material.** The PCI Rapid Comply Service (including the website), contains copyrighted material, trademarks and other proprietary information, including, but not limited to, text, software, photos, video, and graphics. You may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, in whole or in part, whether copyrighted, trademarked or proprietary, or otherwise. You may download copyrighted material solely for your own internal use as contemplated under this Addendum. Except as expressly provided by copyright law, any copying, redistribution, or publication must be with the express permission of the owner. In any copying, the redistribution or publication of copyrighted material and any changes to or deletion of author attribution or copyright notice is expressly prohibited.
- 3.4.5. **TransArmor Solution Services PCI Only.** To the extent you elect the Data Protection Service set forth in Section 2 above but still want a PCI service, as set for on the first page above,

you may separately elect to receive the PCI Rapid Comply Service.

### 3.5. Liability Waiver.

3.5.1. **Data Security Event Expenses.** Subject to the limitations, terms and conditions of this Section 3.5, we agree to waive liability (the “**Liability Waiver**”) that you have to us under the Agreement for Security Event Expenses and Post Event Services Expenses resulting from a Data Security Event first discovered by you or us while this Addendum is in effect. Except for the Liability Waiver for expenses as specifically set forth in this Addendum, (i) you remain responsible to perform all agreements and obligations under the Agreement and this Addendum including, without limitation your obligation to comply with data security requirements and (ii) we waive no rights or remedies under your Agreement including, without limitation, our right to terminate the Agreement in the event of a Data Security Event.

#### 3.5.2. Maximum Waiver Amount.

(a) The maximum amount of liability that we shall waive under the Agreement for all Security Event Expenses and Post Event Services Expenses arising out of or relating to the your Data Security Events first discovered during any Program Year regardless of the number of such Data Security Events is as follows:

- (1) \$100,000.00 maximum per each MID (merchant identification number) you have; and
- (2) \$500,000 aggregate maximum for all of your MID's.

(b) The maximum amount of liability during any Program Year that we will waive under the Agreement for EMV Upgrade Costs is as follows:

- (1) \$10,000 maximum per each MID you have; and
- (2) \$25,000.00 aggregate maximum for all of your MID's.

For avoidance of doubt, the limit set forth in this Section 3.5.2(b) is part of and not in addition to the maximums set forth in Section 3.5.2(a).

### 3.6. Duties in the Event of a Data Security Breach.

3.6.1. You shall contact us immediately and, as directed by us, investigate, perform all remedial events and cooperate fully with us, in the event of a Data Security Event. In all events, you shall not take any action, or fail to take any action, without our prior written consent, which prejudices our rights hereunder.

3.6.2. Under all circumstances, you shall not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any Data Security Event without our prior written consent. If you do so, it will be at your own expense.

### 3.7. Exclusions.

The Liability Waiver hereunder shall not apply to:

- 3.7.1. Any Security Event Expenses and Post Event Services Expenses arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, if committed by you or your employees, officers, agents or director;
- 3.7.2. Any Security Event Expenses and Post Event Services Expenses arising out of or resulting from a claim, suit, action or proceeding against you that is brought by or on behalf of any federal, state or local government agency;
- 3.7.3. Any Data Security Event relating to you which has experienced a prior Data Security Event unless you were later certified as PCI compliant by a qualified security assessor;

- 3.7.4. Any Data Security Event arising out of your allowing any party (other than its employees or us) to hold or access Cardholder Information;
- 3.7.5. Any Data Security Event if Client: (i) is categorized by any Card Organization as “Level 1” or (ii) processes more than six million (6,000,000) Card transactions during the twelve month period prior to the date this Addendum became effective;
- 3.7.6. Any expenses, other than Security Event Expenses and Post Event Services Expenses, incurred by you arising out of or resulting, directly or indirectly, from a Data Security Event, including without limitation, expenses incurred to bring you into compliance with the PCI Data Security Standard or any similar security standard;
- 3.7.7. Any Security Event Expenses, and Post Event Services Expenses arising out of or resulting, directly or indirectly, from physical injury, sickness, disease, disability, shock or mental anguish sustained by any person, including without limitation, required care, loss of services or death at any time resulting therefrom;
- 3.7.8. Any Security Event Expenses, and Post Event Services Expenses arising out of or resulting, directly or indirectly, from any of the following:
  - (a) fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused; or
  - (b) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions;
- 3.7.9. Any Security Event Expenses, and Post Event Services Expenses arising out of or resulting, directly or indirectly, from the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, or in any way respond to or assess the effects of pollutants;
- 3.7.10. Your failure to comply with this Addendum or the Agreement in connection with a Data Security Event;
- 3.7.11. Any Data Security Event occurring before the effective date of this Addendum;
- 3.7.12. Any expenses incurred for, or as a result of, regularly scheduled, recurring or routine security assessments, regulatory examinations, inquiries or compliance activities;
- 3.7.13. Any fines or assessment levied against you that are not the direct result of a Data Security Event;
- 3.7.14. Any Data Security Event arising out of any software not within your control; provided, however, this exclusion shall not apply to a Data Security Event arising out of a virus, Trojan horse or other software used by a third party to obtain fraudulent access to data to your computer system or to collect data in transit to or from your computer system; or
- 3.7.15. Any Data Security Event arising out of a breach in a computer system in which you and other merchants, with no legal relationship to one another, have hosted accounts or share a common database, operating system or software applications.

**3.8. Processor Technology and IP.** All technology used by us or our licensors in connection with performing the TransArmor Solution Services including, software, portals, data processing systems (each of the foregoing, in object code and source code form), report templates, documentation and materials (collectively, “Processor Technology”), and any of our or our licensor's patents, trademarks, copyrights, trade secrets

and other intellectual property (“Processor IP”), and any derivative works of or modifications to the Processor Technology or Processor IP, is the sole and exclusive property of, and is valuable, confidential and proprietary to, Processor or its licensors. Except as otherwise expressly provided herein, you shall not acquire any rights in any Processor Technology or IP as a result of receiving the TransArmor Solution Services. You will not file any action, in any forum that challenges the ownership any of the TransArmor Solution Services, Processor Technology or Processor IP. Failure to comply with this provision will constitute a material breach of this Addendum. We have the right to immediately terminate your access to and use of the TransArmor Solution Services in the event of a challenge by you. No additional rights are granted by implication, estoppel or otherwise.

**3.9. Data Collection.** In the course of providing the TransArmor Solution Services, we may collect information relating to activities on your network (the “Data”) including, but not limited to, network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use the Data or aggregations thereof for any reasonable purpose.

**3.10. Service Does Not Guarantee Compliance or Security.**

3.10.1. You acknowledge and agree that your use of the TransArmor Solution Services does not guarantee your compliance with any of the rules or security standards established by the Card Organizations. You further acknowledge and agree that your use of the TransArmor Solution Services does not guarantee the security of your IP addresses or that your systems are secure from unauthorized access. You are responsible for establishing and maintaining your own security policies and procedures, and for compliance with the Card Organization Rules and security standards, including any obligation to notify a Card Organization and/or us of any suspected breach of your systems or any suspicious transactions or fraudulent activity. You are responsible for any fines or penalties imposed by any Card Organization any other expenses and liabilities pursuant to the Agreement less only the benefits to which you may be entitled under the Liability Waiver provisions of this Addendum. In the event of a suspected breach of your systems or any suspicious transactions or fraudulent activity, you authorize us to share the details of any questionnaire or compliance report with the Card Organizations, and grant us and our vendors the right to access and perform a scan of the IP addresses identified within your profile. You agree and authorize payment for the additional scan. You further agree to cooperate with an investigation into such matter to include complying with the Card Organization and us pursuant to the terms of the Agreement.

3.10.2. In addition to your obligations under the Agreement to comply with all laws, you are solely responsible for monitoring legal developments applicable to 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.

**3.11. Scanning Authority; Scanning Obligations.** You represent and warrant that you have full right, power, and authority to consent for the TransArmor Solution Services to scan for vulnerabilities the IP address and/or URL and/or domain names identified to us by you for scanning, whether electronically or by any other means, whether during initial enrollment or thereafter. If applicable, you shall obtain all consents and authorizations from any third parties necessary for us or our vendors to perform the TransArmor Solution Services, including, without limitation, third party datacenters, co-locations and hosts. We will not be required to execute agreements with any such third parties. You agree to defend, indemnify and hold us and our vendors harmless from any third party claim that such access was not authorized. You may

use the TransArmor Solution Services and portals only to scan IP addresses, URLs and domain names owned by and registered to you. You understand that your failure to provide a complete list of and complete access to your IP addresses will significantly impair the scanning services and may result in incomplete or inaccurate results. You agree that all TransArmor Solution Services hereunder, including without limitation their functionality and contents, is confidential information, and Client’s use and/or access to the TransArmor Solution Services is subject to the terms of Confidentiality in the Agreement.

**3.12. Scanning Risks.** You acknowledge and understand that accessing, retrieving, transmitting, and scanning IP addresses and other data involves inherent risks, including, without limitation, risks related to system or network performance and availability, and data corruption. You assume full responsibility to backup and/or otherwise protect your data against loss, damage or destruction, and to take appropriate measures to respond to any potential adverse impact of the systems or disruption of service.

**3.13. Use of TransArmor Solution Services and Portals.**

Your use of our or our vendors’ services, portals, reports, and scanning solution is subject to the following restrictions: (i) TransArmor Solution Services, portals, and reports may only be used for the stated purposes in this Addendum for your internal business purposes in accordance with all applicable laws (including any export control laws); (ii) TransArmor Solution Services and portals utilized for scanning may only scan IP addresses, URLs and domain names owned by and registered to you; and (iii) you shall limit access to the portals to only those employees and/or contractors who have an obligation of confidentiality with you and only to those who have a requirement for such access on a “need to know” basis and you shall be solely responsible for disabling portals accounts for those employees and/or contractors who no longer require access. You shall promptly notify us of any unauthorized use of the TransArmor Solution Services. You shall not (i) decompile, reverse engineer, disassemble, or otherwise derive the source code from any component of the TransArmor Solution Services or portals including the software embedded therein; (ii) modify, enhance, translate, alter, tamper with, upgrade or create derivatives works of the portals, software or documentation; (iii) distribute, lease, license, sell, assign, sublicense or otherwise disseminate or transfer its rights to use any portion of the TransArmor Solution Services to any third party or (iv) strip out or alter any trademark, service mark, copyright, patent, trade secret, ownership or any other proprietary or Intellectual Property notices, legends, warnings, markings or indications on or within any component of the portals, software or documentation, or attempt (i), (ii), (iii) and/or (iv) above. You shall notify us immediately if you know, suspect or have reason to know that you or anyone you have granted access to the TransArmor Solution Services violated any provision of this Addendum. Further you agree not to share your personal information (DDA, tax ID, MID, etc.) with a third party so they may gain access to the TransArmor Solution Services.

**3.14. Disclaimers.**

3.14.1. We do not make and hereby expressly disclaim all representations or warranties including, without limitation (i) that access to the TransArmor Solution Services will be uninterrupted or error free; (ii) that security breaches will not occur with respect to any information communicated through the TransArmor Solution Services, the Internet, or any common carrier communications facility; and (iii) as to the results that may or may not be obtained by you in connection with your use of the TransArmor Solution Services. **WE DO NOT MAKE ANY WARRANTY, GUARANTEE OR REPRESENTATION (EITHER EXPRESS OR IMPLIED) OF ANY KIND INCLUDING, WITHOUT LIMITATION, THE MERCHANTABILITY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF ANY SERVICES PROVIDED UNDER THIS ADDENDUM, AND ALL SUCH WARRANTIES,**

**GUARANTEES AND REPRESENTATIONS ARE HEREBY EXPRESSLY DISCLAIMED. ALL SERVICES PROVIDED UNDER THIS ADDENDUM ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS".**

**USE OF THE SERVICES DOES NOT GUARANTY SECURITY OR PREVENT A SECURITY BREACH OR COMPROMISE. WE MAKE NO WARRANTIES, EITHER EXPRESSED OR IMPLIED THAT PARTICIPATION AND/OR USE OF OUR SERVICES WILL DETECT EVERY VULNERABILITY ON YOUR SYSTEM, IF ANY, OR THAT OUR VULNERABILITY ASSESSMENTS, SUGGESTED SOLUTIONS OR ADVICE WILL BE ERROR-FREE OR COMPLETE. CUSTOMER AGREES THAT WE SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY OR USEFULNESS OF ANY INFORMATION PROVIDED BY US, OR FOR ANY USE OF SUCH INFORMATION.**

3.14.2. You acknowledge and 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 (i) 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; (ii) any failure, disruption or malfunction of any of the TransArmor Solution 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; (iii) your failed attempts to access the TransArmor Solution Services or to complete transactions via any of the TransArmor Solution Services; (iv) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by you; (v) any damages resulting from any delays and/or losses arising in connection with the TransArmor Solution Services provided hereunder; or (vi) any loss of or inability to access data or information stored or generated by TransArmor Solution Services.

**3.15. Limitation of Liability.** Notwithstanding anything to the contrary in this Addendum or elsewhere, our cumulative liability to you for any claim related to this Addendum, and your use of the Services (whether arising from tort, statute, contract or otherwise) shall in all cases be limited to the actual, direct and proven out-of-pocket losses, damages or expenses suffered or incurred by you. Furthermore, our cumulative liability to you shall not, in any case, exceed the TransArmor Solution Fees paid to us by you during the 12 month period immediately preceding the date the event giving rise to the claim occurred. Notwithstanding anything to the contrary in this Addendum or elsewhere, in no event shall we be liable to you or to any third party for any indirect, special, incidental, consequential, punitive or unproven losses, damages or expenses of any kind, including, without limitation, lost profits or loss of goodwill arising from the use or inability to use the Services including, without limitation, the inability to access your data or information generated or stored on

the Services, and regardless of whether such claim arises in tort, in contract or by statute or regulation, each of which is hereby excluded, regardless of whether such damages were foreseeable or whether you have been advised of the possibility of such damages.

The parties acknowledge and agree that the provisions and limitations of this Section 3.15 are of the essence of this Addendum and that absent them, the parties would not have agreed to this Addendum.

**3.16. Third Party Beneficiary.** We have been granted the right by FDMS to sublicense the Data Protection Service and TransArmor Solution Services Marks to you. As such, while we are providing the Data Protection Service and the TransArmor Solution Services to you, FDMS is a third-party beneficiary of the provisions set forth in Section 2 and Section 3 hereof, with the right to receive all benefits that we receive under Section 2 and Section 3 hereof and the right to initiate enforcement of the terms of this Addendum, including applicable terms of the Agreement against you at FDMS's sole discretion, including its successors or assigns. Except as may be provided in this Addendum or the Agreement, a person who is not a party to this Addendum shall have no rights or remedies under this Addendum.

**3.17. Miscellaneous; Termination.** Our obligations hereunder are subject to our ability to obtain and maintain any and all required governmental licenses, permits or other authorizations, and our ability to comply with any and all laws, regulations, orders and other governmental directives which may be imposed related to the TransArmor Solution Services. We may terminate any or all of the TransArmor Solution Services at any time for any reason.

**GENERAL TERMS AND CONDITIONS**

**4. FEES.**

**4.1 Service Fees.** You shall pay the fees for Services as set forth on the first page of this Addendum.

**5. NOTICES.**

We may provide notices and other information regarding the Services to you via the method(s) described in the Agreement or, with respect to Clover Service, in the E-Sign Consent Agreement set forth above.

**6. AMENDMENT.**

We have the right to change or add to the terms of this Addendum at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Services with notice provided to you as set forth in the Notices section of this Addendum. Any use of the Services after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

**7. THIRD PARTY BENEFICIARIES.**

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

**BY SIGNING BELOW, YOU SEPARATELY CONSENT TO THE E-SIGN CONSENT AGREEMENT ABOVE, WHICH YOU ACKNOWLEDGE IS REQUIRED FOR YOUR ACCEPTANCE OF THE CLOVER SERVICE AND PROCESSOR'S ACCEPTANCE OF THIS ADDENDUM.**

CLIENT: \_\_\_\_\_ ("PROCESSOR")

By: \_\_\_\_\_

Title: \_\_\_\_\_

**FIRST DATA MERCHANT SERVICES CORPORATION:**

By: \_\_\_\_\_ Title: \_\_\_\_\_