

# Clover Merchant Processing Amendment

### Merchant Information

Doing Business As (DBA) Name	Merchant Identifier (MID) if applicable	Merchant Email	
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	
Business Street Address	City	State	Zip Code
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>
Merchant Website URL	Telephone Number		
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>		

	Quantity	Price Per Unit	Cost
Clover Station Solo			
Clover Mini Wi-Fi + LTE			
Clover Mini Wifi			
Clover Flex LTE			
Clover Flex Wifi			
Clover Station Duo			
Clover Go			
<b>Accessories:</b>			
Clover Cash Drawer			
Clover Weight Scale			
Clover Kitchen Printer			
Clover Bar Code Scanner			
FD40 PIN Pad			
<b>Total Cost</b>			

	Quantity	Monthly Fee	Cost
Data Protection Services Fee (Per MID)	<b>1</b>		
Total Monthly Service Fees			

### Equipment Payment Plans

Purchase\* - Total to be paid by Merchant \_\_\_\_\_  
 Clover Lease – Requires leasing agreement to be completed  
 \*ACH Authorization Form and additional documentation required

By signing below, you separately consent to the e-sign consent agreement below, which you acknowledge is required for your acceptance of the Clover Service and Processor’s acceptance of this amendment.

Name  Title  Date

## **Clover™ and Data Protection Services Participation Addendum**

This Clover and Data Protection Services Participation Addendum (this "Addendum") supplements, and is hereby made a part of, the merchant services agreement (the "Agreement") you ("Client") have entered into with PPS (the entity named and defined in the signature block below) and Bank or their respective predecessors. Payroc Payment Systems, LLC ("PPS") and Client hereby agree as follows:

This Addendum governs the provision of the Clover Service and the Data Protection Service Services (each as defined below) (collectively, as applicable, the "Service" or "Services") to you by PPS. 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 the Data Protection Service for each merchant identification number ("MID"). The Clover Service is provided to you by PPS, through First Data Merchant Services, LLC ("FDMS"), 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. All capitalized terms not otherwise defined in this Addendum shall have the meaning as set forth in the Agreement.

### **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 PPS and you. For all purposes FDMS is a third party beneficiary of this agreement. For the purposes of the Clover Terms and Conditions, the words "we" "our" and "us" refer only to PPS 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, PPS 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. OmahaWCloverDPTA1901(ja) Please refer to your equipment purchase agreement with PPS or your equipment lease agreement with the leasing company 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 (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 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. FDMS may perform maintenance on the Clover Service from time to time which may result in service interruptions, delays, or errors. Neither PPS nor FDMS will be liable for any such interruptions, delays, errors, or bugs. You agree that PPS or FDMS 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:

OmahaWCloverDPTA1901(ja)

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 AND THE OPERATING 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. NEITHER PPS NOR FDMS WILL BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND PPS AND FDMS EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. PPS AND FDMS DO 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 HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PPS 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. FDMS 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, PPS and/or FDMS 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 FDMS may access your Account Data upon its request to Clover, and FDMS's 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 OmahaWCloverDPTA1901(ia) 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 and the Agreement. 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 FDMS and its 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 PPS and/or FDMS, and money damages would be inadequate to compensate for that harm. PPS and/or FDMS 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 PPS AND FDMS MAKE 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 PPS and FDMS 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 PPS, FDMS OR THEIR 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, PPS, FDMS AND THEIR 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) OmahaWCloverDPTA1901(ia)

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. PPS 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 PPS.

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  
Payroc Payment Systems, LLC,  
1350 E Touhy Ave  
Des Plaines, IL 60018,  
with a copy to  
First Data Merchant Services LLC,  
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 email 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 to 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. PPS shall 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. 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 PPS 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 PPS, which is approved by 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 PPS and/or 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 OmahaWCloverDPTA1901(ia) 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.

## E-SIGN CONSENT AGREEMENT

A. Consent. By signing this Addendum, you consent and agree that:

- a. PPS and FDMS can provide disclosures required by law and other information about your legal rights and duties to you electronically.
- b. 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.

c. PPS, FDMS, their Affiliates and their 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.

d. If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.

e. You agree that PPS, FDMS, their affiliates and their 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.

f. 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 PPS and/or 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 PPS and/or 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 IPSs 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, PPS 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 PPS 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. PPS 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 IPS's systems. During the period when the transaction is being transmitted to PPS for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. PPS 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 OmahaWCloverDPTA1901(ia) 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 PPS, you must use the service provided by PPS 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 PPS.

- 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 PPS 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. PPS 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 PPS 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 PPS 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, PPS agrees to indemnify and hold you harmless from direct damages, including third party claims, resulting from IPS's breach of the Limited Warranty. The express remedy for IPS's breach of the Limited Warranty set forth in this paragraph constitutes IPS's entire liability and your sole and exclusive remedy for IPS'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, PPS 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.

## 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. These fees will be billed and collected by PPS to you directly, or by FDMS, at the option of PPS. In the event these fees are billed and collected by FDMS you hereby authorize FDMS to bill and collect these fees via ACH debit in the same manner as PPS.

### 5. NOTICES.

PPS or FDMS 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, 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.

## POSPAY ADDENDUM

Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Merchant Processing Agreement.

Merchant elects to utilize PPS' POSPay™ product. By executing this Amendment, where indicated below, Merchant agrees to enroll in POSPay™ and to pay PPS the following fees: 10% administrative fee applied on the purchase price.

**NOTE:** If there is a significant change in monthly Visa/MasterCard volume, the monthly fee is subject to adjustment (up or down). Merchant will be pre-notified if an adjustment is required.



Merchant authorizes PPS to collect the aforementioned fee by electronically debiting the Merchant's bank account using the ACH System. PPS, in its sole discretion, reserves the right to terminate Merchant's participation in the POSPay™ program at any time.

This document amends the Merchant Processing Agreement between PPS and Merchant. Except as expressly modified herein, all terms and conditions of the Merchant Processing Agreement remain in full force and effect, including without limitation IPS's rights under the Merchant Processing Agreement to hold funds and IPS's right to create a reserve.

This Amendment shall not be effective until the date on which it is signed by PPS.

Merchant hereby instructs PPS to withhold the Percentage from amounts due from PPS to Merchant under the PPS Merchant Agreement arising from credit and debit card transactions and to pay the amount so withheld to Payee by sending a check to Payee or by making an Automated Clearing House ("ACH") deposit to an account designated by Payee to the extent Payee allows payments of this type to be made by ACH transfer. Merchant shall provide PPS with all information necessary to ensure that the check or the ACH deposit is sent to the correct address and entity and to ensure that the payment is properly credited to Merchant's account and Merchant. Merchant shall also designate what information shall be included in connection with any payment made by PPS to Payee on behalf of the Merchant. PPS shall not be liable for any damages or losses suffered by Merchant in the event that any payment sent by PPS on behalf of the Merchant is lost or misapplied by Payee, unless the payment is lost or misapplied as a result of PPS failing to correctly include with the payment the information provided in writing by the Merchant and designated in writing by the Merchant for inclusion with the payment.

Such payments shall continue to be made by PPS to and until such time as Merchant provides PPS with written notice to cease making such payment at least five (5) business days prior to the date on which Merchant wishes such payments to stop. Such payments to Payee shall be made in partial or complete satisfaction of any obligation PPS may have to Merchant under the PPS Merchant Agreement. MERCHANT ACKNOWLEDGES THAT SUCH PAYMENTS TO PAYEE ARE IN ADDITION TO ANY FEES OWED BY MERCHANT TO PPS PURSUANT TO THE PPS MERCHANT AGREEMENT OR ANY OTHER AGREEMENT BETWEEN MERCHANT AND PPS. Merchant hereby agrees to indemnify PPS from any and all losses, damages or claims, liabilities and expenses, including attorneys' fees, arising from PPS following the instructions set forth in this letter or from any information provided by Merchant being incorrect or inaccurate. Merchant further agrees that PPS will have no liability to Merchant for any payments made by PPS in accordance with the terms of this letter.

Merchants that are in default of payments and merchants that do not process for 30 days consecutively will be debited for the full cost of all Clover equipment.

Merchants that taken longer than 6 months to be paid will be reviewed and the holdback % may be increased.