

Clover Merchant Services Agreement

This Clover Merchant Services Agreement (this "Agreement") is entered into as of _____, 20____(the "Effective Date"), by and between _____ ("Client") and First Data Merchant Services Corporation ("FDMS"), with regard to Client obtaining the Clover Services (as hereinafter defined). The Clover Services may be performed by us or our agents including, without limitation, any affiliate of FDMS we may designate from time to in connection with this Agreement.

Merchant Address: _____

Fax No: _____ **Merchant Email:** _____

Merchant DBA: _____ **Existing MID# (if applicable):** _____

Services Fees:

Clover Services (25T) Qty: _____ \$ _____ (\$ _____ *monthly per Clover Station*)

Clover Equipment Details: The following is for information purposes only. You are not purchasing equipment from FDMS and you acknowledge and agree that FDMS will have no obligation or liability relating to such purchase or equipment. Your purchase is subject to separate terms and conditions between you and the equipment seller.

Network: Nashville						
Purchased/Lease (circle one)		QTY	Equipment Type	Retail*	Restaurant*	Quick Service Restaurant
P	L	_____	Clover Station Bundle (with Cash Drawer)	R	RE	QSR
P	L	_____	Clover Station Bundle (w/o Cash Drawer)	R	RE	QSR
P	L	_____	Kitchen Receipt Printer	R	RE	QSR
P	L	_____	Clover Scanner 1	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.

THE PARTIES HERETO AGREE AS FOLLOW:

1 Definitions.

"Affiliate" of a Person means another 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 trademarks or service marks 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 we provide you with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) that are designed to assist with the management of your business and enable payment processing at the point of sale, and any materials, documentation and derivative works released by 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 downloaded by you through an application marketplace).

"Customer" means a person or entity who makes a purchase of goods or services from you, the transaction for which utilizes the Clover Service.

"Customer Information" means any information about your Customers (e.g. credit card number, 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.

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

2. Term and Termination. This Agreement 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. This Agreement shall automatically renew until terminated by either party upon at least thirty (30) days' notice. This Agreement 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 this Agreement 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.

3. Fees. You shall pay Processor the fees for the Clover Service as set forth (a) on the first page above or (b) in the lease agreement, as applicable. Clover Equipment Lease: Please refer to your equipment lease agreement with First Data Global Leasing for the fees, terms and conditions of any lease.

4. License Grant. During the term of this Agreement, 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 solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with this Agreement. For purposes of this Agreement "United States" does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. This Agreement does 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 this Agreement are deemed withheld.

5 Restrictions. You may not, nor may you permit any third party to do any of the following: (a) access or attempt to access the Clover Service (or any part) that are not intended 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 4**.

You shall not take any action inconsistent with the stated title and ownership in **Section 4**. 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 this Agreement. We have the right to immediately terminate this Agreement and your access to and use of the Clover Service in the event of a challenge by you.

6. Clover Service Limitations and Requirements.

- 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.
- 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.
- 6.3 The Clover Service does not function with every mobile device. Processor may alter which Devices are approved as compatible with the Clover Service in our discretion from time-to-time.
- 6.4 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.
- 6.5 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**").
- 6.6 You shall comply with the following requirements in connection with your use of the Clover Service:
 - a) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.
 - b) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are NOT permitted to add or modify a Customer's consent indication on his behalf.
 - c) 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.

d) 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, 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 TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

7. Third Party Services. The Clover Service may contain links to 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). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. FDMS WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND FDMS EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. FDMS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR 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 FDMS WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

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.

9. Privacy and Data Use. All data collected from you at 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 Service (collectively, "Account Data"), is collected by Clover Network, Inc. and not your card processor;

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). 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 this Agreement.

10. Protecting Your Information. 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 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. When we receive communications containing Account Data, we assume you sent it to us. We may in our sole discretion, suspend or terminate services under this Agreement 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.

11. Confidentiality.

11.1 You must not use, disclose, store, sell or disseminate any Account Data except as may be allowed under this 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.

11.2. You will treat this Agreement, 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 this Agreement, Client shall return to us or destroy all of our confidential information in its possession or control.

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 (v) is subsequently and independently developed by your employees, consultants or agents without use of or reference to our confidential information.

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.

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.

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.

12. Accuracy of Information. You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Clover Service (e.g., menus loaded onto the Device). 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.

13. Clover Service Disclaimer. USE OF THE CLOVER SERVICE OR CLOVER EQUIPMENT 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) WITH REGARD TO THE CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

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 breach of any term, condition, representation or warranty in this Agreement, 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 unique username, password, or other appropriate security code.

15. Ideas. You may choose or we may invite you to submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service ("Ideas"). 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.

16. Exclusion of Consequential Damages; Limitation on Liability.

16.1. Exclusion of Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT 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.

16.2. Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT 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 THIS AGREEMENT FOR CLOVER SERVICE PERFORMED IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS.

17. Default. If either party defaults in the performance of any of its obligations hereunder, and if any such default is not corrected within 30 days after notice in writing, the non-defaulting party may terminate this Agreement upon written notice. This Agreement 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 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.

18. Compliance with Laws. In performing its obligations under this Agreement, the parties agree to comply with all federal and state laws, rules and regulations applicable to it for the Clover Service provided hereunder.

19. Assignment. Neither party may assign its rights or delegate its obligations under this Agreement 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.

20. 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 this Agreement. 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.

21. Amendment. We have the right to change or add to the terms of this Agreement 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 this Agreement. Any use of the Clover Service after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

22. Third Party Beneficiaries. FDMS's Affiliates and any Persons FDMS uses in providing the Clover Service are intended third party beneficiaries of this Agreement, and each of them may enforce its provisions as if it was a party hereto. Except as expressly in this provided in this Agreement, nothing in this Agreement 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 Agreement.

23. Miscellaneous.

23.1. Headings. The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

23.2. Entire Agreement; Waiver. This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. Except as provided herein this Agreement can be changed only by a written agreement signed by all parties. A party's

waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition. 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 this Agreement and are expressly rejected by FDMS. The words "including", "include" and "includes" will each be deemed to be followed by the term "without limitation".

23.3. Severability. Every provision of this Agreement is severable. If any provision of this Agreement 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 this Agreement 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.

23.4. Choice of Law and Venue. This Agreement 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 this Agreement shall be in the appropriate state or federal court located in New York.

23.5. 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 THIS AGREEMENT.

23.6. 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.

23.7. 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 this Agreement.

23.8. Counterparts. This Agreement 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.

E-SIGN CONSENT AGREEMENT

1. Consent.

By signing this Agreement, you consent and agree that:

- a. 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 Clover Service have the same effect as if you signed them in ink.
- c. FDMS can send all communications, billing statements, amendments to this Agreement, notices, and other disclosures or information regarding the Clover Service or your use of the Clover Service or the Clover Service as defined 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, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.

- d. If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.
- e. This consent applies to all future Disclosures sent to you in connection with this Agreement, or your use of the Clover Service.

2. 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.

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 FDMS'S ACCEPTANCE OF THIS AGREEMENT.

CLIENT:

FIRST DATA MERCHANT SERVICES CORPORATION

By: _____

By: _____

Title: _____

Title: _____