

# Payment Solutions Agreement

This Payment Solutions Agreement (**Agreement**) is among \_\_\_\_\_ (**Company**); First Data Merchant Services LLC (dba Express Merchant Processing Solutions) (**EMPS**); and Wells Fargo Bank, N.A. (**Bank**).

The parties agree:

## 1 Services

EMPS (along with Bank or Debit Sponsor Bank, as described in this Agreement) will provide Company with services according to the terms of this Agreement, the services described in Schedule 1 (**Clover Services and Clover Equipment Schedule**), as well as additional services that the parties agree to in writing (together, **Services**). EMPS may provide the Services itself or through its affiliates; and, except for Bank's or Debit Sponsor Bank's specific responsibilities described in this Agreement, EMPS is solely responsible for the Services.

## 2 Acquiring Services

2.1 Bank's Role. Bank is a member of the Visa and Mastercard Networks, permitting it to acquire Visa and Mastercard payment transactions. Bank sponsors EMPS as a Member Service Provider under the Network Rules, allowing EMPS to process payment authorizations, transmissions, and settlement activities for Visa and Mastercard transactions under Bank's direction. With respect to Visa and Mastercard transactions that are part of the Acquiring Services described below, references to EMPS include Bank; however, ***Bank's responsibilities are limited solely to the sponsorship and settlement of certain card transactions submitted in accordance with this Agreement and the Visa and Mastercard Network Rules, and Bank will not have any obligation or liability of any nature in connection with any services of any kind provided by EMPS or its affiliates. Specifically, Bank is: (1) the only entity approved to extend Visa and Mastercard product acceptance to merchants; (2) responsible for educating merchants on applicable Visa and Mastercard Network Rules (available, respectively, at: [usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf](https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf) and [mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf](https://mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf)), which may be provided through EMPS; and (3) responsible for all funds derived from settlement that are held in reserve.***

Bank's interests or obligations under this Agreement may be assigned or otherwise transferred to another financial institution that is a member of the Networks; further, Bank may assign any of its rights or delegate any of its obligations under this Agreement to a subsidiary, affiliate, or entity that is acquiring all or any portion of its assets.

2.2 EMPS will acquire Company's electronic transactions for payment organizations and networks (together, **Networks**) identified below (**Acquiring Services**). EMPS will be Company's exclusive provider of the Services during the Term of this Agreement.

2.3 Networks. EMPS will provide Company with Acquiring Services for the following Networks:

- Visa
- Mastercard
- American Express
- Discover

2.4 Additional Card Acquiring Services

2.4.1 Additional Cards. EMPS, and not Bank, will provide the Acquiring Services to Company for its transactions that are initiated with Cards issued by Networks other than Visa and Mastercard, and that are identified in this Agreement. A **Card** is a card, code, device, or other means allowing access to a credit, debit, prepaid, stored value, or similar account. An **Additional Card** is a Card issued by a Network other than Visa or Mastercard

2.4.2 Additional Card Network Agreements. Payment transactions for Additional Cards are subject to separate agreements between Company and the Additional Card issuing Networks (**Additional Card Network Agreements**). Company will comply with the terms of its Additional Card Network Agreements and obtain any consents required by these Networks to submit Additional Card transactions to EMPS for processing. Company will promptly notify EMPS if any of its Additional Card Network Agreements expire or terminate. EMPS will not be obligated to process Company's

Additional Card transactions if Company does not have an effective Additional Card Network Agreement with the applicable Network. EMPS and Bank have no responsibility to Company for a Network's performance obligations, responsibilities, or liabilities to Company under their Additional Card Network Agreements.

- 2.4.3 Processing. EMPS will only provide Company with data capture and authorization processing services for transactions initiated with Additional Cards; EMPS will not provide settlement services for the Additional Card Networks. EMPS will submit settlement files for Additional Card transactions to the appropriate Networks on behalf of Company. Additional Card transactions will be settled directly between Company and the corresponding Network according to their Additional Card Network Agreements.
- 2.5 Debit Transactions. EMPS will also provide Company with Acquiring Services for its debit Card transactions (**Debit Services**). EMPS will process Company's debit Card transactions based on: (1) availability of the debit Networks; (2) whether a debit Card is enabled for a particular debit Network; or (3) other factors. EMPS will have discretion to choose any available debit Network when routing a particular debit Card transaction for Company, subject to applicable Laws. EMPS will provide the Debit Services using a financial institution (**Debit Sponsor Bank**) that is a member of a debit Network that is accessible to Company and can sponsor acceptance of Company's debit Card transactions within the debit Network. EMPS will choose the financial institution that acts as the Debit Sponsor Bank for Company's transactions. The Debit Sponsor Bank may assign its interests or obligations under this Agreement to another financial institution that is a member of the debit Networks. EMPS may also substitute, or assign, the Debit Sponsor Bank's interest or obligations under this Agreement to another financial institution that is a Member of the debit Networks. References to the term "Bank" in this Agreement include the Debit Sponsor Bank with respect to the Debit Services; however, the financial institution that is the Debit Sponsor Bank is only responsible for the performance obligations described as Bank's under this Agreement with respect to Company's debit Card transactions.
- 2.6 Network Rules. Company will comply with all rules, requirements, and standards of each of the Networks (together, **Network Rules**). Company acknowledges receipt of EMPS' current payments acceptance guide (**Your Payment Acceptance Guide**), which will assist Company with properly accepting and submitting its transactions for processing. Under Network Rules, Company does not own the Card account, Cardholder, personal, or other payment transaction information generated when a payment transaction is processed using the Acquiring Services. Company will not use, retain, disclose, sell, or disseminate any Card or Cardholder information (including, names, addresses, and Card account numbers) obtained in connection with payment transactions except for (1) authorizing, processing, and settling transactions; or (2) resolving chargebacks, retrieval requests, or similar issues related to its transaction. Company will not reproduce electronically captured Cardholder signatures except as requested by EMPS or the Networks. A **Cardholder** is the individual who was issued a Card.
- 2.7 Locations. EMPS will perform the Acquiring Services for payment transactions submitted from all Company's locations in the United States (excluding Puerto Rico, and other U.S. territories).
- 2.8 Submitting Transactions. Company is responsible for:
- (1) properly transmitting the transaction data (including all transaction detail required by the Networks) to EMPS' systems using the format and specifications provided by EMPS (Company will maintain and update the systems that it uses to accommodate changing Network requirements as specified by EMPS);
  - (2) all payment transactions submitted for processing under its merchant identification numbers (**MIDs**), including, without limitation, all returns, refunds, or chargebacks, whether charged back by Cardholders or Card issuers;
  - (3) preventing its employees, agents, and others from submitting returns or refunds that do not reflect valid returns or refunds corresponding to prior transactions;
  - (4) retaining transaction records according to the timelines required by the Network Rules or applicable Laws; and
  - (5) maintaining transaction fraud and chargeback rates below thresholds established by the Networks.

2.9 Transaction Acceptance. Company will only accept and submit transactions where:

- (1) the transaction represents a genuine sale of Company's goods or services to the Cardholder;
- (2) the transaction is not materially different than the transactions Company has described to EMPS with regard to the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to the Cardholder;
- (3) the transaction complies with all requirements of the applicable Network Rules, the laws of all relevant jurisdictions, and all other requirements of this Agreement;
- (4) the transaction is not a duplicate of any other transaction;
- (5) the transaction is authorized by the rightful Cardholder for the amount of the transaction in satisfaction of the Cardholder's obligations to Company;
- (6) the transaction is in payment of goods or services provided simultaneously with the payment transaction (except for delayed delivery, advance deposit, or other partial transactions specifically allowed under the Network Rules and explicitly authorized by EMPS in writing);
- (7) the transaction is not a refinancing of an existing obligation;
- (8) the transaction is valid, collectible, and is not subject to any dispute, setoff, or counterclaim; and
- (9) in the case of a refund, the transaction is submitted to reimburse the Cardholder for a sale transaction that was previously submitted.

Company represents and warrants that each transaction that it submits will comply with this Section.

2.10 Sales Drafts. Company will provide EMPS a copy of any sales draft(s) upon request.

2.11 Settlement

- 2.11.1 Company will identify a bank account held in Company's name (the **Settlement Account**) that EMPS will use in connection with all Services. Company authorizes EMPS to initiate: (1) credits to the Settlement Account for proceeds of transactions submitted, and (2) debits to the Settlement Account for any amounts that may be owed or required to be paid under this Agreement. EMPS will process credits to the Settlement Account via Automated Clearing House (**ACH**) entry unless the parties agree to transfer funds by wire. EMPS will process debits to the Settlement Account via ACH entry.
- 2.11.2 Company may identify more than one bank account as the Settlement Account. If Company designates more than one Settlement Account, credits to any of these Settlement Accounts will satisfy EMPS' obligations, and successful debits to any of the Settlement Accounts will satisfy Company's obligations under this Agreement.
- 2.11.3 Each banking day, EMPS will initiate a transfer to the Settlement Account of the funds that the Networks deliver for Company's Card payment transactions, less any amounts due from Company for fees, refunds, chargebacks, pass through expenses, or other of its obligations.
- 2.11.4 Company does not have a property or ownership interest in any proceeds of transactions or funds received by EMPS in connection with Company's Card transactions (including any funds held in a Reserve) until those funds are transferred to the Settlement Account. EMPS' obligations to fund Company represent a general obligation and not a property interest in any specific funds.
- 2.11.5 All deposits into the Settlement Account are provisional. Cardholders, Card issuers, and the Networks have the right to require reimbursement of transactions, to impose obligations relating to violations of the Network Rules, to assess additional interchange or other assessments, and to impose fees, fines, or charges relating to the qualification of transactions.
- 2.11.6 Company must promptly notify EMPS if it fails to receive any settlement funding or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if

Company provides inaccurate information about, or fails to notify EMPS of changes to, the Settlement Account. EMPS is not responsible for settlement errors that arise if Company provides inaccurate information about, or fails to notify EMPS of changes to, the Settlement Account.

2.12 MATCH Reporting. Under some circumstances, EMPS may be required to report Company to the Member Alert to Control High Risk (**MATCH**) listing or similar listings maintained by the Networks. Company acknowledges that EMPS's obligation to Company in regard to such reporting is limited to submitting any corrective notice if any such reporting is in error.

2.13 Mark License, Network Decals

2.13.1 EMPS grants Company a revocable, royalty free, non-exclusive, limited license that cannot be assigned, transferred, or further sublicensed to use the Networks' trademarks and service marks (together, **Protected Marks**) in the United States according to the applicable Network Rules. This license does not grant Company any other intellectual property right, title, interest, or claim (express or implied, by estoppel, or otherwise) to the Protected Marks. Company will not take any action that impairs an owner's intellectual property rights in its Protected Marks.

2.13.2 Company will discontinue use of the Networks' decals, Protected Marks, promotional, or other materials immediately after termination of this Agreement.

2.13.3 Company will not indicate that its products or services are endorsed by any of the Networks.

### **3 Financial Information; Audit**

Company will promptly provide any financial or other information reasonably requested by EMPS to perform credit risk, security, qualification, and other reviews related to the provision of the Services, transactions submitted, fulfillment of obligations to EMPS or Cardholders, or the financial condition of Company. Company authorizes EMPS to obtain information from third parties when performing credit risk, security, qualification, and other reviews. EMPS, Bank, or their designees may perform a reasonable audit of Company's records related to its performance under this Agreement with 30 days' advance written notice to Company, during Company's normal business hours, and at EMPS' or Bank's expense.

### **4 Notice of Material Changes; Third Parties**

Company will provide EMPS with reasonable advance notice of any material change in the nature of Company's business (including any change in control or merger, any liquidation, any transfer or sale of substantially all of its assets, or any change to Company's operations that would materially affect the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to a Cardholder). Company will provide EMPS with written disclosure identifying the third parties, systems, and services Company uses to receive, transmit, process, or otherwise manage information or its information technology systems (e.g., without limitation, encryption, or firewall providers) related to the transaction information or payment data processed in connection with this Agreement (these third parties must be registered providers with the Networks).

### **5 Company's Payment Obligations**

Company will pay EMPS for:

- (1) all fees and charges for the Services;
- (2) all transactions that are charged back by Cardholders, Card issuers, or the Networks;
- (3) all refunds submitted in connection with Company's transactions;
- (4) all costs, liabilities, or other obligations imposed on EMPS by the Networks or other third parties as a result of transactions submitted by Company or the actions taken (or not taken) by Company or its third party service providers; and
- (5) the Early Termination Fee.

## 6 Reserve

- 6.1 EMPS may require Company to fund a cash reserve (**Reserve**) in an amount that reflects EMPS' assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of EMPS, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that Company may have to EMPS. The Reserve is not a segregated fund that Company may claim to own. EMPS is obligated to pay to Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Company's payment transactions have expired (as provided for under the Network Rules).
- 6.2 The obligations due to Company from the Reserve will not accrue interest unless required by applicable Laws.
- 6.3 EMPS will notify Company if a Reserve is established (including its amount) or if the amount of the Reserve is modified.
- 6.4 EMPS may set off any obligations that Company owes to EMPS from the Reserve.
- 6.5 Although Company acknowledges that the Reserve is a general obligation of EMPS, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Company that is held by EMPS, Company grants and acknowledges that EMPS has a security interest in the Reserve and, at EMPS' request, will provide documentation to reflect this security interest.

## 7 Setoff and Priority

All funds that EMPS owes to Company under this Agreement are subject to Company's payment obligations under this Agreement. EMPS may set off amounts Company owes to EMPS against any funds that EMPS owes to Company.

## 8 Statements, Reporting

EMPS will provide Company with statements or electronic reporting (either, **Statements**) reflecting the fees, settlement amounts, and other information related to the Services. Company must review the Statements and inform EMPS of any errors within 60 days following the date that the error was, or should have been, reported. The reporting of any errors will enable EMPS to recover amounts or prevent the errors from continuing. EMPS will have no obligation to provide refunds for errors that Company reports more than 60 days after they were, or should have been, reported. Company and EMPS will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

## 9 Term

- 9.1 This Agreement commences on the later of the dates it is signed by EMPS or Company (that date, the **Effective Date**).
- 9.2 Following the Implementation Period, this Agreement will continue for an initial term of 5 years (**Initial Term**), unless terminated as allowed under the terms of this Agreement. This Agreement will renew for successive 1-year periods (each a **Renewal Term**), unless either party gives the other 90 days' advance written notice of non-renewal before the end of the Initial Term. Either party may terminate this Agreement for any reason (without cause) during a Renewal Term by giving the other party 90 day's advance written notice of termination. Together, the Initial Term and any Renewal Term(s) are the **Term** of this Agreement.

## 10 Confidential Information

- 10.1 Confidentiality. No party will disclose non-public information about another party's business (including the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

- 10.2 Disclosure. The recipient may disclose another's party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors, or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, request from a regulator, or as required under applicable Laws or Network Rules.

## 11 Data Security

- 11.1 Company is responsible for any unauthorized access to any transaction data from Company or from third parties retained by or on behalf of Company.
- 11.2 EMPS is responsible for any unauthorized access to Company's transaction data on EMPS' systems.
- 11.3 Company must comply with Payment Card Industry Data Security Standards (**PCI DSS**) and obtain timely certification of its systems and processes (which must be maintained during the Term) as required under the Network Rules. Company will comply with all additional standards that the Networks may require. Company will allow the Networks, EMPS, or Bank to audit its PCI DSS compliance and information technology systems related to the Services provided under this Agreement.
- 11.4 EMPS must comply with all PCI DSS requirements and the Network Rules that apply to its performance under this Agreement.
- 11.5 Security Incident
- 11.5.1 If Company becomes aware that there has been unauthorized access to transaction data (a Security Incident), it will promptly notify EMPS. If requested by EMPS, Company will retain a reputable firm that is certified and approved by the Networks that provides forensic information security services and risk assessments in order to: (1) assess the nature and scope of the Security Incident; and (2) identify the access controls or transaction data involved in the Security Incident. Company will take appropriate steps to contain, control, stop, and remediate any Security Incident.
- 11.5.2 Company will provide reasonable details regarding the Security Incident to, and cooperate with, EMPS, any Networks, and the forensics firms that are involved in the investigation and remediation of a Security Incident. Company will take all actions that the Networks require in connection with the investigation and remediation of a Security Incident.
- 11.5.3 Company will reimburse EMPS and/or Bank for all fines, fees, penalties, assessments, or other obligations of any kind imposed by a Network or a regulator on EMPS or Bank due to a Security Incident caused by Company or its third party service providers (together, **Network Security Fees**).
- 11.6 Data Use. EMPS may use transaction data obtained from providing the Services to Company to fulfill performance obligations under this Agreement and investigate fraud, or suspected fraud, related to Company's transactions. EMPS may also use transaction data obtained from providing the Services under this Agreement in aggregated and anonymized form (as required by applicable Laws) for research and development, or to provide services generally.

## 12 General Suspension; Termination

- 12.1 General Termination. Either Company or EMPS may terminate this Agreement by giving 30 days' advance written notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it.
- 12.2 Risk Termination. EMPS may immediately suspend or terminate this Agreement, in its discretion, upon notice if Company:
- (1) engages in fraud, misrepresentation, or intentional misconduct related to its performance under this Agreement;
  - (2) experiences excessive chargebacks, irregular, or fraudulent payment transactions (based on Network thresholds), or engages in business practices creating excessive risk for Cardholders or EMPS;

- (3) experiences a material adverse change in its financial condition;
- (4) fails to provide notice of a material change in the nature of its business;
- (5) fails to disclose the third parties or systems it uses in connection with the transaction information or payment data processed under this Agreement;
- (6) fails to fund a Reserve when required under this Agreement;
- (7) experiences a Security Incident or fails to comply with PCI DSS or a material Network requirement;
- (8) materially changes its operations, products, services, or procedures for payments acceptance;
- (9) sells substantially all of its assets, undergoes a change in ownership or control, merges, or effects an assignment without obtaining the prior consent of EMPS;
- (10) defaults under any other agreement it has with EMPS or its affiliates; or
- (11) a Network, a governmental authority, or Bank instructs EMPS to suspend its performance under or terminate this Agreement (in which case the Early Termination Fee will not apply).

Together, the events described in this Section are **Default Events**.

- 12.3 EMPS's and Bank's provision of Services under this Agreement is expressly contingent upon EMPS's and Bank's satisfactory completion of their risk, credit and regulatory reviews of Company. Company agrees to provide EMPS and Bank with any documentation and assistance as may be reasonably required from time-to-time to facilitate these reviews. Should EMPS and Bank be unable to satisfactorily complete their reviews as described in this Section, the parties agree to terminate the Agreement without penalty, such termination to be memorialized in writing.

### 13 Early Termination Fee

EMPS will suffer substantial injury, and it would be difficult to determine the damages, if Company breaches this Agreement's exclusivity requirements or this Agreement is terminated before the end of the Term due to any Default Event. EMPS and Company agree an accurate reflection of the damages caused by an early termination of this Agreement is an amount equal to 80% of the average monthly fees paid to EMPS during the 12-month period preceding the termination, multiplied by the number of months (including partial months) remaining in the Term (the **Early Termination Fee**). Company will pay EMPS an Early Termination Fee if this Agreement terminates prior to the end of its Term because Company breaches this Agreement's exclusivity requirements or there is a Default Event (no Early Termination Fee will be due if this Agreement is terminated due to EMPS' uncured breach).

### 14 Indemnification

- 14.1 Company will indemnify EMPS and Bank (including their respective affiliates, directors, officers, managers, and employees) for losses, damages, costs, or expenses (together, **Losses**) due to third party claims that result from Company's or their third party service providers gross negligence, willful misconduct, or breach of this Agreement. EMPS will indemnify Company (including its respective affiliates, directors, officers, managers, and employees) for Losses due to third party claims that result from EMPS' gross negligence, willful misconduct, or breach of this Agreement.
- 14.2 The indemnified party will promptly notify the indemnifying party of any third party claim that is subject to indemnification under this Agreement. The indemnifying party will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts. The parties will cooperate with regard to any other conditions of settlement as well as in providing records, access to personnel or other information reasonably necessary to defend any indemnified claims.

### 15 Exclusion of Damages

EMPS, Bank, and Company will not be liable to each other for lost profits, revenues, or business opportunities, nor any exemplary, punitive, special, indirect, incidental, or consequential damages (whether direct or indirect) under this Agreement; regardless of whether these damages were foreseeable or a party was advised they were possible.

Network Security Fees, the Early Termination Fee, and other amounts for which a party is liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement) are not excluded by this Section.

## **16 Limitation of Liability**

EMPS' and Company's aggregate liability to the other for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to \$250,000.00 (**Liability Cap**). The Liability Cap will not apply to: (1) EMPS' obligation to remit the proceeds of Company's transactions that are processed under this Agreement (after accounting for all offsetting obligations); OR (2) Company's payment obligations related to the Services, Network Security Fees, the Early Termination Fee, and other amounts for which it is specifically liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement). Bank will have no liability to Company except for what is set forth in *Section 2.1*.

## **17 Notices**

Written notices (other than normal operations) required under this Agreement will be sent by email, certified mail, or courier (all with tracking and delivery confirmation). Notices will be effective upon receipt.

Notices to Company will be sent to: \_\_\_\_\_.

Notices to EMPS will be sent to: First Data Merchant Services LLC (dba Express Merchant Processing Solutions), Attn: Legal Department, 4000 NW 120th Avenue, MS/CON – MER, Coral Springs, Florida 33065; with a copy to First Data Merchant Services LLC (dba Express Merchant Processing Solutions), Attn: General Counsel, 6855 Pacific Street, Omaha, NE 68106. Emailed notices to EMPS will be sent to: [legalpapers@fiserv.com](mailto:legalpapers@fiserv.com)

Notices to Bank will be sent to: Wells Fargo Bank, N.A., P.O. Box 6079, Concord, CA 94524. Bank's phone number is: 844-284-6834.

## **18 Third Party Beneficiaries, Providers**

There are no third party beneficiaries to this Agreement other than EMPS' or Bank's subsidiaries and affiliates involved in providing the Services to Company. Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement.

## **19 Waivers**

A party's waiver of a breach of this agreement will not be considered a waiver of a subsequent breach.

## **20 Compliance with Law, Choice of Law, Waiver of Jury Trial**

The parties will comply with all laws, rules (including Network Rules), and regulations (together **Laws**) that are applicable to their respective performance obligations under this Agreement. This Agreement will be governed by Louisiana law. The courts of Jefferson Parish, Louisiana will be the proper venue for legal proceedings brought in connection with this Agreement. ***EMPS and Company each waive their right to a jury trial for claims arising in connection with this Agreement.***

## **21 Entire Agreement, Amendment, Counterparts**

The defined term Agreement includes its schedules, addenda, and any amendments (capitalized terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Schedules, addenda, amendments, or any other modifications to this Agreement related to Services that are provided solely by EMPS and not Bank need only be executed by Company and EMPS (references in these Schedules to **party** or **parties** will mean EMPS and Company, as applicable, and not Bank). This Agreement and any addenda, or amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together. Electronic and other copies of the executed Agreement are valid.



## 22 Assignment

The parties may not assign this Agreement without the others' written consent (not to be unreasonably withheld), except as provided in *Sections 2.1 and 2.5*, or otherwise under its terms. This Agreement will be enforceable against a party's permitted successors or assigns.

## 23 Publicity

Company and EMPS may make general references about each other and the Services to third parties, such as auditors, regulators, financial analysts, and prospective customers and clients, provided that Company or EMPS does not breach *Section 10*. EMPS may issue a press release regarding this Agreement, including its renewal and the Services provided, subject to Company's review and approval, which shall not be unreasonably withheld or unduly delayed. Company must obtain prior written approval for any publicity, statements, or references related to the Bank and its role in connection with this Agreement.

[Signature Page Follows]

### Authorized Signatures:

\_\_\_\_\_

#### **First Data Merchant Services LLC (dba Express Merchant Processing Solutions)**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

#### **Wells Fargo Bank, N.A.**

*as Bank and Debit Sponsor Bank under Section 2.5  
By EMPS pursuant to a Limited Power of Attorney*

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_



## Acquiring Fee Schedule

### 1 Acquiring Fees

Company will pay EMPS the fees described below (**Acquiring Fees**) for the Acquiring Services. The Acquiring Fees are based on Company's business methods and the types of transactions it will submit for processing that Company disclosed to EMPS. EMPS may modify the Acquiring Fees if Company materially changes its business methods or the types of transactions that it submits for processing.

Acquiring Fees	Amount	Driver
Transaction <sup>1</sup> (Visa and Mastercard Cards)	\$	per transaction
Transaction <sup>1</sup> (Other Cards)	\$	per transaction
Transaction <sup>1</sup> (Debit Cards)	\$	per transaction
Authorization (Voice) <sup>2</sup>	\$	per call
Authorization (IVR) <sup>2</sup>	\$	per IVR call
Chargeback	\$	per chargeback
Retrieval	\$	per retrieval
Adjustment	\$	per adjustment
ACH Deposit	\$	per deposit
ACH Reject	\$	per rejection
Wire Deposit	\$	per wire
ClientLine Reporting	\$	per month
Paper Statement	\$	per statement
Imprinter (includes plate)	\$	per imprinter
Activation	\$	per POS terminal
Down-line Loads (full)	\$	per load
Down-line Load (partial)	\$	per load
Implementation Fee	\$	per project
Application Fee	\$	per application
Maintenance Fee	\$	per month
Merchant ID Set-Up Fee	\$	per MID
Merchant ID Monthly Fee	\$	per MID
PCI Compliance Program Fee (per MID)	\$	per year
PCI Non-Compliance Fee (per MID)	\$	per month
Custom Reporting	\$	per hour
Custom Report (recurring reports)	\$	per report

<sup>1</sup> This amount is charged for each authorization attempt (whether approved or declined), purchases, reversals, or returns. This amount includes authorization and data capture for Visa, Mastercard, American Express, and Discover transactions; and settlement for Visa and Mastercard transactions. American Express and Discover charge settlement processing fees separately to Company under separate agreements these Networks have with Company

<sup>2</sup> This fee is in addition to the applicable transaction fee

### 2 Network Fees

The Networks and other third parties impose fees on Company's transactions, some of which are charged to EMPS. Company will pay EMPS for all fees and charges that are imposed by the Networks and other third parties (together **Network Fees**) on the gross amount of Company's transactions that are processed using the Acquiring Services. The Networks and other third parties may modify their Network Fees during the Term of this Agreement. Modifications to the Network Fees will be effective on the dates set by the Networks or other third parties. Network Fees are in addition to the Acquiring Fees and include:

Interchange  
Excessive Chargebacks  
Dues and Assessments  
Access Fees

Debit Network Fees

Other Fees (including Network Security Fees)

# Schedule 1

## Clover Services and Clover Equipment Schedule

This Clover Services and Clover Equipment Schedule (**Schedule**) is between EMPS and Company.

### 1 Background

- 1.1 This Schedule adds the Clover Services (defined below) to the Payment Solutions Agreement (**PSA**) between EMPS and Company. The terms of the PSA and this Schedule apply to the Clover Services, but if anything in this Schedule conflicts with the PSA, this Schedule will control. The Clover Services are **Services** under the PSA and are provided by EMPS and not by Bank. Bank is not a party to this Schedule and is not liable to Company in connection with the Clover Services or this Schedule.
- 1.2 Capitalized words or phrases that are not defined in this Schedule use the definitions give to them in the PSA. Together, the PSA and this Schedule are the **Agreement**.

### 2 Services Description

- 2.1 EMPS will provide Company with software applications (**Clover Services**) that reside on Clover-branded point-of-sale equipment (**Clover Equipment**) or on other devices or form factors that EMPS periodically designates. EMPS will also give Company access to a website associated with the Clover Services. The applications that make up the Clover Services may reside on the Clover Equipment when Company receives it, or Company may download the applications during or after initial set-up. The applications (and their functionality) that make up the default Clover Services may vary from time to time.
- 2.2 The Clover Services may provide Company with access to the Clover App Market and links to software applications that Company may obtain from developers (**Apps**). **Although designed to function with the Clover Services, these Apps are not part of the Clover Services.** Developers provide Apps directly to Company. Company must execute separate agreements with the App developers in order to use the Apps. Company acknowledges that Company is solely responsible for its use of all Apps, compliance with corresponding agreements for Apps, and any associated fees or charges for the Apps.
- 2.3 Company may designate Apps that Company wants pre-installed and enabled with its Clover Services. Company authorizes EMPS to (1) accept the developer's agreements (which govern Company's use of their applications), (2) pre-install or install the designated Apps, and (3) enable the designated Apps, all on Company's behalf.
- 2.4 **Company uses Apps at its own risk. EMPS is not responsible for, makes no representations or warranties related to, and disclaims all liability for the Apps, their content, advertising, additional hardware or peripheral requirements, or additional goods or services provided through them, all of which are the responsibility of the App developers.**
- 2.5 The Clover Services will support electronic communications with Company's customers (for example, sending digital transaction receipts, marketing, or other materials via email or text). These customers must provide their consent and enter their email address or phone number

when prompted by the Clover Services in order to receive electronic communications from Company, Clover Networks, Inc. (**Clover**), or a third party (such as an App developer) through the Clover Services. **Company may not independently provide or modify a customer's consent.** Company must send electronic communications to its customers via the Clover Services by using the contact information those customers provide. Some state laws may impose limitations on how Company may use its customers' contact information through the Clover Services, and Company is responsible for knowing and following those laws and limitations.

- 2.6 Company will provide accurate information when creating Company's member or merchant account (**Account**) for the Clover Services and will update this information periodically so that it remains accurate. Clover collects all information or transaction data that Company provides in connection with its Account through the clover.com website or when using the Clover Services (together, **Account Information**). Account Information will be managed according to the Agreement and Clover's privacy policy (available at [clover.com/privacy-policy](https://clover.com/privacy-policy)). Company authorizes EMPS to access its Account Information in connection with providing the Clover Services or other supported Services under the Agreement.
- 2.7 Company is responsible for maintaining the confidentiality of the account numbers, passwords, security questions and answers, login details, and other information (together, **Credentials**) needed to access its Account or Account Information. EMPS will rely on Company's Credentials to authenticate access to Company's Account or Account Information. Company must notify EMPS immediately if it becomes aware of any loss or theft of, or unauthorized access to, its Credentials, Account, or Account Information. EMPS may deny any access to Company's Account or Account Information if it believes someone is misusing Company's Credentials.
- 2.8 The Clover Services will support offline payment transactions and point-of-sale activities. Payment transactions that Company processes while offline will be held and submitted for authorization when Internet connectivity with the Clover systems is restored. If Company chooses to conduct offline payment transactions, it does so at its own risk and will be solely responsible for all risks (such as subsequent transaction denials) associated with any offline payment transactions that Company accepts.
- 2.9 EMPS will provide Company documentation, periodic updates, and an operating guide for the Clover Services. Periodic updates may include maintenance releases or bug fixes, and EMPS may make the operating guide available via the Internet. Maintenance or bug fixes for the Clover Services may result in service interruptions, delays, or errors. EMPS will not be liable to Company for any service interruptions, delays, or errors that result from maintenance or bug fixes for the Clover Services. EMPS may contact Company or access Company's Account, Account Information, or transaction information and payment data in order to identify errors or perform maintenance for the Clover Services.

### **3 Clover Equipment**

EMPS will provide Company with the Clover Equipment selected in the table at the end of this Schedule. Company is solely responsible for choosing Clover Equipment that meets Company's needs. Company must order Clover Equipment using forms that EMPS provides to Company

(**Orders**). EMPS will reject any other forms, purchase orders, or correspondence that Company attempts to submit as Orders, as well as any additional or inconsistent terms in documents Company attempts to submit.

#### **4 Limited Warranty**

4.1 EMPS warrants that the Clover Equipment will be free from manufacturer-induced defects in materials or workmanship for one year (**Warranty Period**) beginning on the date that EMPS, or its designee, ships the Clover Equipment to Company. This limited warranty is the **Clover Equipment Limited Warranty**.

4.2 The Clover Equipment Limited Warranty does not:

- (1) Include a warranty that the Clover Equipment will operate uninterrupted or errorfree;
- (2) Apply to the Clover Services, any Apps, or any other software or peripherals used in connection with the Clover Equipment;
- (3) Cover accident, damage to, or misuse of the Clover Equipment, including damage resulting from smashed or cracked units or screens; extraneous materials in the interior of the unit (such as hair, soil, or dust); contact with liquids; missing unit covers; fire damage; melted or burnt units; cosmetic damage (such as scratches, dents, or broken plastic on ports); improper or inadequate maintenance by Company (or Company's vendors); other visible damage; or Company's breach of this Schedule; or
- (4) Apply to defects or damage resulting from software, interfaces, or supplies EMPS does not provide; negligence, accident, or acts of nature (including flood or lightning damage); loss or damage in transit; improper site preparation by Company (or Company's vendors); failure to follow written instructions on proper use of the Clover Equipment; unauthorized modification or repair; or normal wear and tear.

4.3 Company may not transfer the Clover Equipment Limited Warranty to any third parties.

4.4 Company will contact EMPS's support center for assistance with defective Clover Equipment. EMPS will provide a Return Merchandise Authorization (**RMA**) call tag to Company if EMPS deems Clover Equipment defective during the Warranty Period. Company may use the RMA to ship the defective Clover Equipment to EMPS's repair facility. Company is responsible for all return shipping costs to EMPS's repair facility. EMPS will arrange for defective Clover Equipment covered by the Clover Equipment Limited Warranty to be repaired or replaced and shipped back to Company at no additional charge. EMPS warrants replacement hardware for the remainder of the Warranty Period corresponding to the original Clover Equipment.

#### **5 Fees**

5.1 Company will pay EMPS: (a) the Clover Services fees reflected at the end of this Schedule or in the Clover App Market; and (b) the Clover Equipment fees reflected at the end of this Schedule. Clover Services fees and Clover Equipment fees do not include any fees that

EMPS charges under the Agreement for payment processing/acquiring or for other Services provided to Company.

- 5.2 Developers of applications in the Clover App Market charge fees separate from the Clover Services or Clover Equipment. Company is responsible for paying all fees for Clover App Market applications to the developers. Company authorizes Clover to collect all Clover App Market application fees on behalf of their developers.

## **6 Term, Termination, and Changes**

- 6.1 This Schedule begins on the latest date that appears in the signature block and continues in effect until the Bankcard Schedule expires or terminates, in which case, this Schedule will automatically terminate.
- 6.2 EMPS may suspend or terminate the Clover Services if:
- (1) Company uses the Clover Services for any fraudulent, illegal, or unauthorized purpose or provides inaccurate or false information related to its Account; or
  - (2) EMPS terminates its agreements with any third parties involved in providing the Clover Services.
- 6.3 A breach of this Schedule constitutes an Event of Default under the Agreement.
- 6.4 EMPS may update or modify the Clover Services or amend this Schedule periodically by providing notice to Company. Company's use of the Clover Services after update, modification, or amendment will constitute Company's acceptance of the change.

## **7 Intellectual Property**

- 7.1 EMPS grants Company a revocable, limited, non-exclusive, non-transferrable, non-sub-licensable, royalty-free license during the term of this Schedule to use the Clover Services and related documentation in the United States to operate Company's business and conduct point-of-sale activities. Company will not decompile, disassemble, reverse engineer, or otherwise attempt to discover the Clover Services' source code, ideas, or algorithms. Company may not:
- (1) Distribute, lease, sell, republish, modify, copy, alter, or create derivative works from the Clover Services or related documentation;
  - (2) Access any part of the Clover Service that EMPS does not intend for Company's use;
  - (3) Use the Clover Services through any time-sharing, service bureau, network, consortium, or other multiparty access structure;
  - (4) Remove, relocate, or otherwise alter any proprietary rights notices from the Clover Services, Clover Equipment, or Clover Marks (defined below);
  - (5) Export the Clover Services outside the United States; or



- (6) Impose unreasonably large loads on EMPS's infrastructure, networks, or bandwidth.
- 7.2 EMPS reserves to itself (or its licensors, as applicable) all right, title, interest, and license (express or implied) to the Clover Services that are not specifically granted to Company under this Schedule. Company may not use the Clover logos, trademarks, or service marks (together, **Clover Marks**) in any manner (such as advertisements, displays, or press releases) without EMPS's prior written consent. Any challenge to EMPS's ownership of the Clover Services is a breach of this Schedule and an Event of Default under the Agreement.
- 7.3 Company may submit comments or ideas about the Clover Services or Clover Equipment (including ideas about improving them). Company's comments or ideas about the Clover Services or Clover Equipment are not Confidential Information and do not constitute Company's intellectual property. EMPS may use or disclose Company's comments or ideas about the Clover Services and Clover Equipment without compensating or sending notice to Company.

## **8 Electronic Communications**

- 8.1 Company agrees that while this Schedule is in effect, EMPS can:
  - (1) Contact Company using electronic communication methods (such as email, SMS/text messaging, fax, live agent calls, automatic telephone dialing system, or artificial/pre-recorded voice messages), including for marketing purposes;
  - (2) Give Company legal disclosures electronically, including disclosures required by law, notices about the Clover Services or Clover Equipment that are required or permitted under this Schedule or the Agreement, and other information about your legal rights and obligations; and
  - (3) Give Company billing statements and other information about the Clover Services or Clover Equipment electronically.
- 8.2 Company also agrees that EMPS may contact Company using information or telephone number(s) that Company provides to EMPS (including landline or mobile numbers) even if the numbers have been registered on a Do Not Call list or similar non-solicitation registry.

**Clover device (all base, without accessories or required standard monthly fees)-**

(See Pricing Exhibit)

<b>Clover Services Fees</b>	<b>Amount</b>	<b>Driver</b>
Clover Services Monthly SaaS Fee	\$	per device, per month
Clover Station Load Fee	\$	per device
Equipment Deployment Fee	\$	per deployment