



Merchant Conditions

The terms and conditions you'll need to understand and follow to work with us.

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1.1 In your Merchant Agreement

- 1.1 (unless it is clear from the words in the clause that we do not mean this) if we refer to one gender we are also referring to all genders and if we refer to the singular or plural we are also respectively referring to the plural or singular;
- 1.1.2 we have put in the clause headings for your convenience only and these do not affect the meaning or interpretation of the clause concerned;
- 1.1.3 we have referred to statutes, statutory provisions, regulations and statutory instruments and where we have done so we are also referring to the amended, extended or re-enacted or updated versions of these as may be in force from time to time;
- 1.1.4 the word "including" means "including, without limitation", and the word "include(s)" means "include(s), without limitation";
- 1.1.5 reference to a clause is to a clause in these Merchant Conditions;
- 1.1.6 in the event of any inconsistency between any provision in these Merchant Conditions and any provision in the Application Form, the Operating Guide and all other operating guides provided to you in respect of any Clover Products, the provision in these Merchant Conditions shall prevail; and
- 1.1.7 where Clover approval, consent or authority is required, we may exercise that approval or consent right subject to any applicable Card Scheme Rules, legal or regulatory requirements.

1.2 Definitions and interpretation

Annual Participation fee means the yearly fee applied for Card Scheme registration programmes.

Applicable Laws means any and all regional, national, local or other laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated in any jurisdiction in the world by any court or regulator, to the extent applicable to us or you, our or your business, or our or your performance of obligations under this Agreement.

Applicant means the person who applied for Merchant Services from Clover, who submitted the application form to us.

Application Form means the form submitted by the Applicant applying for Merchant Services from Clover to be provided under the terms of your Merchant Agreement.

Assessment fees means the Assessment fees charged by Clover by reference to the rates set by the Card Schemes from time to time for each Card Transaction processed on behalf of a Merchant under your Merchant Agreement.

Assured Reservations means the facility whereby a Merchant who makes a reservation of accommodation for a Cardholder will maintain that reservation, regardless of the time of arrival of the customer on the day for which the reservation is made and may charge the Cardholder in respect of the reservation where the customer does not arrive.

Attest means to demonstrate and confirm your compliance with the PCI DSS and any changes which may occur to those standards, by completing a self-assessment questionnaire and attestation through the PCI DSS Compliance Programme, either on-line, over the telephone or in paper form, or submitting a report of compliance from a PCI DSS audit.

Authorisation means our approval for a Card Transaction to go ahead. Authorisation only confirms that the Card has not been registered as lost or stolen and has available credit at the time of the Card Transaction. It does not confirm that the person who presents the Card is the genuine Cardholder and, therefore, alone it does not prevent the Card Transaction being charged back to you in accordance with clause 19. All Card Transactions above your Floor Limit must normally be authorised.

Authorisation fee also known as **Consolidated Authorisation fee** means the fee charged in respect of each electronic request for Authorisation of a Card Transaction.

Bureau de Change Transactions means Card Transactions accepted as part of a Bureau de Change business.

Business means your Business as a Merchant as described in your Merchant Agreement or such other description as we may agree from time to time.

Business Day means any day which is not a Saturday, Sunday or a bank holiday in any part of the United Kingdom.

Card means any valid Payment Card approved by Clover from time to time and to which your Merchant Agreement applies.

Card Acquirer means any bank or other body duly authorised to process Card Transactions from a Merchant.

Cardholder means the company, firm, individual or other body for whose use a Card has been issued at any time.

Cardholder's Account means the account in the name of the Cardholder which may be debited or credited by the Card Acquirer in respect of Card Transactions.

Cardholder Information means any information relating to a Cardholder including any Card Number and any Personal Data.

Card Issuer means any bank or other body authorised by a Card Scheme to issue Cards.

Card Not Present Floor Limit means the Total Value for each Card Not Present Transaction at which you must obtain Authorisation. This is set out in the Application Form and we may increase or decrease this at any time by giving you written notice from time to time.

Card Not Present Transaction means any type of Card Transaction where the Cardholder is not present or the Card is not provided physically to you at the time of the transaction, including Card Transactions made through the telephone, mail order and/or a Website.

Card Number means the number displayed on a Card identifying the Cardholder's Account.

Card Present Floor Limit means the Total Value for each Card Present Transaction at which you must obtain Authorisation. This is set out in the Application Form and we may increase or decrease this at any time by giving you written notice from time to time.

Card Present Transaction means any type of Card Transaction where the Cardholder is present and the Card is physically provided to you at the time of the transaction.

Card Refund means any Refund given in respect of a Card Transaction for credit to the Cardholder's Account.

Card Refund Data means the details of a Card Refund processed through a Terminal or a Website in a form we approve.

Card Sales Data means the details of a Card Transaction processed through a Terminal or a Website in a form we approve.

Card Scheme means Visa International, Mastercard International, Diners, Japanese Credit Bureau and any other card scheme we approve from time to time.

Card Scheme Rules means the rules and operating instructions issued by the Card Schemes from time to time. Card Transaction means any payment made by the use of a Card, a Card Number or in any other manner authorised by the Cardholder for debit to the Cardholder's Account.

Cashback means a service provided to Cardholders whereby cash is dispensed with a Payment Card purchase transaction at the Point-of-Sale.

Cashback fee means the fee charged monthly if we permit you to offer Cashback to Cardholders.

Charges has the meaning assigned to it in Clause 16.1.

Chargeback means a Card Transaction that is disputed by a Cardholder or Card Issuer and is returned to Clover under the relevant Card Scheme Rules.

Chargeback fee means the fee charged in respect of each Card Transaction which is subject to a Chargeback.

Chip and PIN Card means a Card in respect of which a PIN may be entered in a PIN Entry Device.

Clearing fee means the fee charged by us in respect of each Card Transaction we clear through the Card Schemes.

ClientLine fee means the fee charged monthly for online access to transaction, bank deposit and Chargeback data history.

Clover means Clover Limited, a private limited company incorporated in England (company number 02012925) with a registered address at Janus House, Endeavour Drive, Basildon, Essex, SS14 3WF.

Clover Products means the products made available to you by Clover from time to time on the terms set out in your Merchant Agreement.

Controller has the meaning given in the GDPR.

Data Protection Laws means the GDPR and any other laws or regulations applicable to the processing of Personal Data.

Data Subject has the meaning given in the GDPR.

Debit Card means a Visa Debit Card, Visa Electron Card, International Maestro Card, Maestro Card, Debit Mastercard and such other Cards as notified by us to you from time to time as being Debit Cards.

Deferred Payment has the meaning set out in clause 17.5.

Deferred Supply Period means the maximum period specified in your Application Form, or the period agreed with the Cardholder at the time of the Card Transaction (if less), within which you must supply goods, services, accommodation or other facilities following the time of the Card Transaction.

Deferred Supply Transactions means Card Transactions where the goods, services, accommodation or other facilities are supplied to the Cardholder at a time later than the time of the Card Transaction.

Disabling Device means any software, viruses, worms, time or logic bombs, Trojan horses or other computer instructions, intentional devices or technologies that can or were designed to threaten, infect or disrupt, damage, disable or shut down all or any part of a computer program, network or computer data.

eCommerce means a business transaction conducted electronically. This includes Card Transactions taken over the internet.

Electronic Link means any computer system, server or network used by you to communicate with Clover or with Cardholders.

Equipment means all equipment, including Terminals, hardware and software that we or our agents have approved or supplied to you in connection with your Merchant Agreement.

Express Checkout means a facility that enables Merchants offering accommodation to improve the efficiency of their checkout procedures, which involves having their Terminal downloaded with the appropriate software.

Express Funding means the funding method that facilitates payment of Transaction Data settlement within a specified number of days following the transaction processing day.

Express Funding fee means the monthly fee charged for the Express Funding method.

Fallback means a transaction taken using a paper voucher when your electronic Terminal/Point-of-Sale systems have failed.

Fallback Floor Limit means the Total Value for each Card Transaction at which you must obtain Authorisation while your Terminal or other Equipment is out of order or the Website or any Electronic Link is not available or functioning correctly. This would normally be the Card Present Floor Limit or the Card Not Present Floor Limit (as applicable) unless we notify you otherwise.

Fallback Procedures means the procedures you must follow, as set out in the Operating Guide or as we may notify you from time to time, if your Terminal or other Equipment has failed for a technical reason or a Website or Electronic Link is not available or functioning correctly.

Fallback Vouchers means the Vouchers we supply or approve which you must use for Card Transactions where your Equipment has failed for a technical reason or the Website or Electronic Link is not available or functioning correctly. Fallback Vouchers may be in the same form as Sales Vouchers.

Floor Limit means the Card Present Floor Limit or Card Not Present Floor Limit (as applicable).

Foreign Currency Card Transactions means Card Transactions where the currency of payment is to be in a currency other than pounds sterling.

Funding Method means the chosen method of payment for Card Transaction Settlement.

Gateway Documentation means any and all manuals, operating policies and procedures and other written materials in any form or format provided or made accessible to you in conjunction with any element of the Gateway Services, as amended by us from time to time.

Gateway Services means the provision to you by Clover of: (i) our gateways, together with related Gateway Software and Gateway Documentation, which provide an interface for transmission of Transaction Data and the transmission of response and related data from us to you in connection with your use of the Merchant Services and includes Clover API Services and Clover Connect; and (ii) support services and any other ancillary or value-added services related to our gateways that are provided to you under your Merchant Agreement.

Gateway Set-Up fee means the fee charged to configure your Gateway Services.

Gateway Software means all protocols, software components and other interfaces and software relating to the Gateway Services provided by us to you or accessed by you pursuant to your Merchant Agreement, including any and all updates.

Gateway Transaction fee means the fee charged for each Authorisation request that is submitted through the Gateway Services. VAT applies to this charge.

GDPR means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data.

Group means Clover, any holding company of ours or any subsidiary of ours or our holding company. For the purposes of this definition, "subsidiary" and "holding company" shall have the meanings given to them in section 1159 of the Companies Act 2006 including any subsidiary acquired after the date of your Merchant Agreement.

Independent Sales Organisation means a third party Clover may retain to refer new customer relationships.

Insolvency Event means one or more events described in clause 28.2.2.2 to clause 28.2.2.9 (inclusive).

Intellectual Property Rights means all present and future intellectual property rights, including patents, utility models, trade and service marks, trade or business names, domain names, rights in design, copyrights, moral rights, topography rights, database rights, trade secrets and rights of confidence in all cases whether or not registered or registrable in any country for the full term of such rights, rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.

Interchange fees means the percentage of the value of a transaction or other amount charged by or payable to Card Issuers as interchange fees for a transaction processed on your behalf under your Merchant Agreement, as determined in accordance with the Card Scheme Rules.

Interchange Plus means Interchange fees plus the Processing fees.

Interchange Plus Plus means the Interchange fees plus Assessment fees plus the Processing fees.

Internet Card Transactions means an eCommerce Card Transaction made over the internet.

Joining fee also known as **A/C Startup fee** means the fee charged when your Application Form is accepted.

Mastercard/Maestro EU Acceptance fee means the additional fee charged for each transaction processed on a Mastercard or Maestro card issued in the area defined as Europe by Mastercard.

Mastercard/Maestro EU eCommerce fee means the additional fee charged for each eCommerce transaction processed on a Mastercard or Maestro card issued in the area defined as Europe by Mastercard.

Mastercard International Acceptance fee means the additional fee charged for each transaction processed on a Mastercard or Maestro card issued outside the area defined as Europe by Mastercard.

Mastercard/Maestro International eCommerce fee means the additional fee charged for each eCommerce transaction processed on a Mastercard or Maestro card issued outside the area defined as Europe by Mastercard.

Merchant means any supplier of goods or services and authorised by a Card Acquirer (in your case, Clover) to accept Cards.

Merchant Account means the bank accounts you nominate which we may debit or credit with payments in respect of Card Transactions.

Merchant Agreement means the Application Form, these Merchant Conditions, the Operating Guide and all other operating guides provided to you in respect of any Clover Products. These documents together form the agreement between you and Clover.

Merchant Conditions means these terms and conditions, as varied from time to time.

Merchant Liabilities means your actual liabilities, or anticipated liabilities for which we reasonably believe you may become liable for, under or in relation to your Merchant Agreement.

Merchant Services means the Settlement of funds relating to Transactions that are: i) submitted to us by you; and ii) which are Authorised and accepted by us, and includes any related services to be provided by us to you pursuant to your Merchant Agreement.

Merchant Statement means the monthly statement we issue to you, or which we agree you may view electronically, in respect of all Card Transactions processed by Clover for you in the preceding month.

Merchant Systems means any hardware or software used by you to access website(s) operated or maintained by us through which Transactions are submitted for processing, and all other associated systems.

Minimum Gateway Transaction fee means the Minimum Monthly Charge for Authorisations submitted through the Gateway Services. VAT applies to this charge.

Minimum Monthly Charge also known as **Minimum MSF** means the fee charged for each month in which the amount of the Processing fees in respect of Card Transactions do not exceed this amount.

Monthly Maintenance fee also known as **Monthly Service Charge or Account on File fee** means the fee charged for maintenance and administration of your Merchant Account.

Monthly Statement fee (excluding VAT) means the fee charged monthly for the production and distribution of paper statements.

Multicurrency means the acceptance of transactions in currencies other than GBP. A foreign exchange protection margin applies where the transaction currency and merchant funding currency differs. The rate of exchange is calculated using Reuters (end of day rate) plus a foreign exchange protection fee of up to 3% of the gross transaction value charged in consideration of currency fluctuations over the period between payment by the Cardholder and Settlement to you.

Multicurrency Merchant means a Merchant authorised by us to accept Multicurrency Card Transactions.

Non Qualifying means a transaction taken outside the terms of your Merchant Agreement with Clover or not undertaken in accordance with Card Scheme Rules as detailed in the Operating Guide.

Operating Guide means the Operating Guide issued and varied by Clover from time to time setting out those detailed procedures and operating instructions you must follow in connection with accepting and processing Card Transactions and your other obligations under your Merchant Agreement.

Payment Card Industry Data Security Standards (PCIDSS) means the standards and any changes which may occur to those standards laid down by the Card Schemes and published by the Payment Card Industry Data Security Standards Council or its successors, to minimise the potential for Card and Cardholder data to be compromised and used fraudulently.

Payment Regulations means the United Kingdom Payment Services Regulations 2017.

Payment Service Provider (PSP) means a provider of a secure online payment gateway link between you and Clover.

PCI DSS Compliance Programme means our Payment Card Industry Data Security Standard Compliance Programme or such other compliance programme devised to test PCI DSS Compliance as we may notify you from time to time.

PCI DSS Management fee means the fee charged monthly per outlet, for the monitoring and reporting of PCI DSS Compliance status.

Personal Data has the meaning given in the GDPR.

PIN means a personal identification number issued by a Card Issuer to a Cardholder for use with a PIN Entry Device.

PIN Entry Device means the device present at the Point-of-Sale in which a Cardholder can enter their PIN as part of a Card Present Transaction.

Point-of-Sale means the physical location at which you accept Card Transactions and, in the case of Card Not Present Transactions through a Website, where you have your fixed place of establishment.

Polling means the process by which Card Transactions are collected electronically by us or by a third party polling bureau appointed by you (and approved by Clover) and submitted to us for processing.

Polling fee means the fee charged monthly for each Terminal for which Polling is used.

Pre-Authorised Orders means those Card Transactions for which a Merchant has sought Authorisation prior to the debiting of the Cardholder Account.

Premium Cards means Visa Consumer Charge Cards,

Mastercard World Cards and Mastercard World Signia Cards and such other Cards as notified by us to you from time to time as being Premium Cards.

Principal means an individual who is:

- A sole trader;
- A partner;
- In the case of a limited company, a director or a company secretary;
- In the case of a limited liability partnership, a member or a designated

member; who provides information in the Application Form or otherwise as part of an application for Merchant Services from Clover or in performance of your Merchant Agreement including during financial reviews and interviews.

Privacy Policy means a policy explaining how Personal Data is processed and explaining the rights of the person whose Personal Data is processed under the Data Protection Laws.

Processing Day means the day on which a Card Transaction is processed following acceptance through a Point-of-Sale device.

Processing fees means the charge made by Clover to you for the processing of Card Transactions under your Merchant Agreement.

Processor has the meaning given in the GDPR.

Purchase with Cashback means a Card Transaction in which a Cardholder receives cash as well as goods or services.

Qualifying means a transaction undertaken within the terms of your Merchant Agreement with Clover in accordance with Card Scheme Rules, as detailed in the Operating Guide.

Recurring Transactions means those Card Transactions for which the Cardholder authorises you to debit their account on a periodical, recurring basis.

Refund means the reimbursement to a Cardholder of an earlier Card Transaction between that Cardholder and you.

Refund Charge means the fee charged for each refund transaction processed.

Refund Receipt means a receipt in respect of Refunds in the form we approve including an Electronic Refund Receipt or a Terminal Refund Receipt.

Reserve Account means an account under our sole control where funds due to you are credited until we agree to release the funds to you.

Sales Receipt means a receipt in respect of a Card Transaction in a form we approve, including an Electronic Sales Receipt and a Terminal Sales Receipt.

Sales Voucher means the Vouchers we supply or approve for your use to make manual Card Transactions.

Settlement means the payment of amounts to be paid by us to you, or by you to us, under your Merchant Agreement.

Specific Assessment fees means the fees referred to in the Application Form.

Terminal means the hardware approved by Clover which you use to process Card Transactions electronically.

Terminal Agreement means the agreement relating to the supply of your Terminal.

Terminal Collection fee means the fee we may charge you for collection by Clover of any Equipment provided to you or your agents.

Terminal User Guide means the user guide supplied with the Terminal by the Terminal manufacturer.

Termination fee means the fee payable by you on termination of your Merchant Agreement if terminated within six months of your Merchant Agreement commencing.

Total Value means the Total Value (in pounds sterling) of any goods, services, accommodation or other facilities purchased using a Card (including any part of the value of the purchase paid for by another Card or other method of payment). For example, a Cardholder may purchase goods for £100 but pay for it using £50 in cash and £50 on their credit card. The Total Value in that example is £100.

Transaction Data means data relating to a Card Transaction including Card Sales Data and Card Refund Data.

United Kingdom means the United Kingdom of Great Britain and Northern Ireland, but excludes for the avoidance of doubt, the Isle of Man and the Channel Islands.

Unregulated Card Transaction means any Card Transaction with a Card that is a commercial card as defined in Regulation (EU) 2015/751 or issued by a Card Issuer outside the EEA.

Virtual Terminal or VT means an online device used to capture Card details for submitting Card Not Present Transactions to a Card Acquirer.

VT Application Form means a VT application form completed and delivered by you, for the purpose of receiving VT Services.

VT Charges means the charges we apply to you for the provision of VT Services.

Virtual Terminal User Guide means the user guide supplied by us with your VT and varied by us from time to time, which sets out the detailed procedures and operating instructions you must follow in connection with accepting and processing Card Transactions through the VT and other obligations.

VT Services means the provision of a VT through the internet by us to you to enable you to process Card Transactions.

Visa EU eCommerce fee means the additional fee charged for each eCommerce and mail order or telephone order transaction processed on a Visa Card issued within the area defined as Europe by Visa.

Visa International Acceptance fee means the additional fee charged for each transaction processed on a Visa Card issued outside the area defined as Europe by Visa.

Visa International eCommerce fee means the additional fee charged for each eCommerce and mail order or telephone order transaction processed on a Visa Card issued outside the area defined as Europe by Visa.

Vouchers means Sales Vouchers, Refund Vouchers and Fallback Vouchers.

we, us and **our** mean Clover and its successors and assignees.

Website means any internet website owned, or operated by you or your agents or otherwise used by you or your agents to process Card Transactions.

you or your means the Merchant who has entered into your Merchant Agreement and if you are jointly and severally liable with other persons under clause 35 then each such person.

2. Acceptance of Cards
- 2.1 If a Cardholder wants to purchase goods, services, accommodation or other facilities offered by you, acceptance by you of any Cards must be in accordance with Applicable Law, Card Scheme Rules, these Merchant Conditions, the Operating Guide and any other fraud prevention material provided by Clover.
- 2.2 You may only charge a fee for Unregulated Card Transactions. If you indicate a price to a Cardholder for an Unregulated Card Transaction which is not a price applicable to all methods of payment accepted by you then before you accept the Unregulated Card Transaction you must display a statement explaining any methods of payment to which the indicated price does not apply and the difference in price either as an amount or a percentage. The statement must be displayed at each public entrance to your premises and (except for Card Not Present Transactions) at each Point-of-Sale. You must also inform the Cardholder of the difference in price for the Unregulated Card Transaction (either as an amount or a percentage) when they present the Card. You must not charge more for accepting an Unregulated Card Transaction than the actual cost to you of accepting that Card Transaction. Statements in respect of Card Not Present Transactions must be made in accordance with the Operating Guide.
- 2.3 You must not accept any Card Transaction and must not present any Voucher or Transaction Data relating to any Card Transaction in respect of goods, services, accommodation or other facilities for which the Point-of-Sale is outside the United Kingdom unless we give you prior written consent.
3. Authorisation
- 3.1 If a Cardholder wishes to purchase goods, services, accommodation or other facilities from you which are equal to or cost more than the relevant Floor Limit for the Card concerned you must get prior Authorisation at the time of purchase by following the procedures set out in the Operating Guide. For Recurring Transactions your Floor Limit will always be nil. We may vary the Floor Limits at any time and by such means and on such notice as we may think fit.
- 3.2 If Authorisation is refused, the Card Transaction must not proceed and you must not seek Authorisation for any different amount.
- 3.3 All Card Transactions using an International Maestro Card or a Visa Electron Card must, regardless of the amount, be Authorised in accordance with the Operating Guide.
- 3.4 If a Cardholder does not immediately conclude the Card Transaction following receipt of the Authorisation, you must telephone Clover as soon as possible to cancel the Authorisation except if otherwise allowed in the Operating Guide.
- 3.5 If you get Authorisation, you must record the details of the Authorisation on the Sales Voucher.
- 3.6 If we have specified a Floor Limit which is higher than the standard for your type of Business (as determined by the Association for Payment and Clearing Services from time to time), any Card Transaction disputed by the Cardholder equal to or in excess of such standard limit may be charged back even where you have complied with your Merchant Agreement and even where we have given Authorisation. Any such Authorisation operates only to confirm the availability of funds and that the Card has not been reported lost or stolen at the time of Authorisation.
- 3.7 Authorisation is not a guarantee of payment.
- 3.8 A Cardholder may ask you to split a payment between more than one Card, or between a Card and cash or cheque. In such an event, if the value of the Card element is below your relevant Floor Limit but the Total Value of the sale is equal to or exceeds it, you must still obtain Authorisation for the value of the Card element.
- 3.9 You must obtain Authorisation as and when required in your Merchant Agreement following the procedures in your Merchant Agreement or as we may otherwise instruct you.
4. Card Transactions
- 4.1 You must not use more than one Sales Voucher or process more than one sale through your Terminal for any one Card Transaction unless the Cardholder gives you more than one Card, each with a different Card Number.
- 4.2 Where the Card is provided physically to you then you agree to retain any Card that we request.
- 4.3 Following a Card Transaction, a Sales Receipt must be provided to the Cardholder in accordance with the terms of your Merchant Agreement.
- 4.4 You must not accept or process Recurring Transactions, Deferred Supply Transactions, any prepayment, or a deposit using a Card unless we specifically allow you to do so in writing and then only in accordance with the Operating Guide.
- 4.5 You must not accept or process Card Transactions in order to give Cardholders cash unless we have specifically allowed you to offer Purchase with Cashback under clause 6.2.

- 4.6 You must not accept any payment from a Cardholder or other person for the credit of the Cardholder's Account.
- 4.7 In presenting or submitting Vouchers or Transaction Data to Clover, you warrant and represent to Clover that:
 - 4.7.1 the Card Transaction entered into by you is one which relates directly to your Business;
 - 4.7.2 the Card Transaction has been entered into by you in good faith and in compliance with all legal requirements to which you are subject and your Merchant Agreement;
 - 4.7.3 all information contained in the Vouchers or Transaction Data is true and complete;
 - 4.7.4 you have supplied (or, where the Voucher or Transaction Data relates to a Deferred Supply Transaction, you have agreed to supply) the goods, services, accommodation or other facilities to which the Voucher or Transaction Data relates and to the value stated therein;
 - 4.7.5 you are not aware of any dispute relating to, or any matter which may affect the validity of, a Card Transaction;
 - 4.7.6 you are not aware that the Card Transaction has been previously subject to a Chargeback;
 - 4.7.7 you are not aware of any circumstances that would or might result in a breach of any law or other legal or regulatory requirement; and
 - 4.7.8 the Card Transaction does not involve any Card issued in your name or your account, or of a partner in, or director or other officer of your Business, or of the spouse or any member of the immediate family or household of any such person.
- 4.8 If you use a Terminal, Card Transactions must be processed through the Terminal except if the Terminal fails to operate. If the Terminal fails to operate, you must process Card Transactions following the Fallback Procedures and in such event Authorisation must be sought for Card Transactions equal to or in excess of the Fallback Floor Limit. Visa Electron Cards must not be accepted if your Terminal fails to operate.
- 4.9 You must not accept or process a Card Transaction on behalf of any other Merchant or third party (other than a Cardholder in accordance with the terms of your Merchant Agreement) and must notify Clover in advance if you wish to have Card Transactions processed by another bank or Card Scheme member.

5. Recurring Transactions and Pre-Authorised Orders

- 5.1 If you are allowed to process Recurring Transactions you will:
 - 5.1.1 in addition to getting Authorisation under clause 3, obtain the Cardholder's written authority to debit the Cardholder's Account periodically with sums due to you;
 - 5.1.2 process Transaction Data in a form we approve in accordance with the Cardholder's authority and provided that notice of cancellation has not been given by the Cardholder;
 - 5.1.3 notify the Cardholder of the amount of any Recurring Transaction or the date on which the Recurring Transaction will take place if such amount or date is different from that specified in the Cardholder's authority, not less than fourteen (14) Business Days prior to presentation to Clover of the Transaction Data;
 - 5.1.4 cease presenting Transaction Data in relation to Cards we so notify you of from time to time; and
 - 5.1.5 immediately cease making further debits to a Cardholder's Account upon any receipt of a cancellation from the Cardholder of their written authority to you.
- 5.2 You process Recurring Transactions at your own risk. Any Recurring Transaction which is in breach of any of the obligations in clause 5.1 above or the Operating Guide or such other requirements as we may notify you from time to time and which is disputed by the Cardholder and/or Card Issuer may be charged back to you (in accordance with clause 19).
- 5.3 You may only offer Pre-Authorised Orders if we specifically allow you to do so in writing and then only in accordance with the Operating Guide and any other requirements we may notify you of from time to time.

6. Deferred Supply Transactions, Purchase with Cashback and Polling

- 6.1 If you are allowed to process Deferred Supply Transactions and you have not supplied the relevant goods, services, accommodation or other facilities within the Deferred Supply Period of the Card Transaction, you must provide a Refund to the Cardholder and advise the Cardholder that you have done so.
- 6.2 You must not offer Purchase with Cashback to any Cardholder unless we specifically allow you to do so in writing and then only using your Terminal approved by Clover for use when offering Purchase with Cashback and in accordance with the Terminal User Guide and any other requirements we may notify you of from time to time.
- 6.3 When using the Fallback Procedures you may only offer Purchase with Cashback for Maestro Cards and Visa Debit Cards. You may not offer Purchase with Cashback when you have to use the Fallback Procedures for other Debit Cards (including Visa Electron Cards and International Maestro Cards).
- 6.4 Purchase with Cashback may only be offered in Card Transactions using Cards and where the Cardholder receives goods or services as well as cash. The amount of the cash provided must not exceed the Cashback Limit and Authorisation should be sought for all Card Transactions involving Purchase with Cashback.
- 6.5 Card Transactions involving Purchase with Cashback are in all cases at your own risk. Any Card Transaction involving Purchase with Cashback disputed by the Cardholder may be charged back (in accordance with clause 19) even where you have complied with your Merchant Agreement, the Operating Guide and any other requirements we may notify you of even where we have given Authorisation.
- 6.6 You may only use Polling in respect of Card Transactions if we specifically allow you to do so in writing and then only in accordance with our requirements and instructions.

7. Purchasing Card Transactions and other facilities

- 7.1 You may only offer or undertake Assured Reservations, Bureau de Change Transactions, Express Checkout, Foreign Currency Card Transactions or Purchasing Card Transactions if we specifically allow you to do so in writing and then only in accordance with the Operating Guide and any other requirements we may notify you of from time to time.
- 7.2 You will only process Purchasing Card Transactions and Refunds in respect of Purchasing Card Transactions so as to enable the Cardholder to obtain such benefits as may from time to time be made available by the relevant Card Scheme to their Purchasing Card Cardholders. If you are unable to do so for any reason you must, prior to processing the Purchasing Card Transaction, inform the Purchasing Card Cardholder that you are unable to process the Purchasing Card in a way that will enable the Cardholder to obtain such benefits and that you will process the Purchasing Card as a Card Transaction (subject to the provisions in clause 7.3 and 7.4).
- 7.3 For the purposes of your Merchant Agreement the authorised Floor Limit for all Purchasing Card Transactions is £0 (nil) irrespective of any other Floor Limit referred to in your Merchant Agreement. We reserve the right to vary the Floor Limit for Purchasing Card Transactions at any time.
- 7.4 You should wherever practicable obtain from the Cardholder their customer reference number prior to the processing of any Purchasing Card Transaction. For the purposes of this clause "customer reference number" shall mean a Cardholder specific number which a Cardholder should supply when using a Purchasing Card for all business to business transactions.

8. Card Not Present Transactions

- 8.1 You must not accept or process Card Not Present Transactions unless we specifically allow you to do so in writing and then only in accordance with the Terminal User Guide and the Operating Guide and any requirements we notify you of from time to time.
- 8.2 If you are allowed to accept Card Not Present Transactions you are still not permitted to accept or process Card Transactions through the Internet unless we give you prior written consent and then only in accordance with the Operating Guide.
- 8.3 Card Not Present Transactions are in all cases at your own risk. Any Card Not Present Transaction disputed by the Cardholder may be charged back (in accordance with clause 19) even where you have complied with your Merchant Agreement and we have given Authorisation.

- 8.4 If you accept or process Card Not Present Transactions through the Internet you warrant and represent to Clover that:
 - 8.4.1 you will, and you will also ensure your agents and customers, do not use any Website in any way which might jeopardise the integrity or security of our or our agents' Equipment, any Electronic Link or other computer systems including through Disabling Devices and unsolicited emails; and
 - 8.4.2 you will display and maintain an appropriate Privacy Policy on each Website and provide information on the Website's security capabilities. The Privacy Policy and information on security capabilities must be in accordance with the requirements in the Operating Guide and all Applicable Laws.
- 8.5 We may immediately on giving you notice withdraw our permission for you to accept or process Card Not Present Transactions where there are in our sole opinion unacceptable levels of:
 - 8.5.1 Cardholder disputes resulting from Card Not Present Transactions; or
 - 8.5.2 fraudulent Card Transactions.

9. Refunds

- 9.1 If, in the usual course of your Business, you provide Refunds to your customers, You must also provide Refunds to Cardholders on the same terms you provide Refunds to your other customers. Refunds must be provided to Cardholders in accordance with the requirements in the Operating Guide.
- 9.2 A Refund may be issued only in reimbursement (full or partial) of an earlier Card Transaction using a Card and must be made on the same Card used in the Card Transaction.
- 9.3 You must not accept money from a Cardholder in connection with processing a Refund to the Cardholder's Account.
- 9.4 When you provide Refunds, you must complete a Refund Voucher or produce Card Refund Data and a Refund Receipt. The Refund Receipt or Refund Voucher must be provided to the Cardholder and the Refund Voucher or Card Refund Data must be presented to Clover in accordance with the requirements in the Operating Guide.
- 9.5 You must not make a Refund:
 - 9.5.1 with cash or by cheque to a customer who paid for the goods, services, accommodation or other facilities using a Card; or
 - 9.5.2 to a Card where the customer paid for the goods, services, accommodation or other facilities with cash or by cheque.

10. Presentation of Vouchers and Transaction Data

- 10.1 You must, if using Vouchers, submit Vouchers to Clover within three (3) Business Days of the Card Transaction, or if submitting Transaction Data electronically, submit such data to Clover within two (2) Business Days of the Card Transaction.
- 10.2 Vouchers or Transaction Data not properly completed or submitted in accordance with the Operating Guide and within the time periods specified in clause 10.1 will be Non Qualifying Transactions.
- 10.3 If you present Refund Vouchers or Card Refund Data, the total amount of the Refund shall be deducted from the total amount represented by the Sales Vouchers and Card Sales Data presented and within three (3) Business Days we shall credit your Merchant Account with this net amount.
- 10.4 If on presentation the total amount represented by the Refund Vouchers and Card Refund Data is more than the total amount represented by the Sales Vouchers and Card Sales Data presented, then we may collect payment from you by direct debit for the amount by which the total amount represented in the Refund Vouchers and Card Refund Data is more than the total amount represented in the Sales Vouchers and Card Sales Data.
- 10.5 If requested you will give Clover reasonable assistance to facilitate the successful collection and delivery of Transaction Data. We will assist you where we are unable to gain access to the Transaction Data but reserve the right to make additional Charges.

- 10.6 In circumstances where Transaction Data is to be delivered to Clover through your nominated agent, you accept responsibility for the collection, security, integrity and delivery of the Transaction Data to us in a medium and format agreed with Clover. In circumstances where you deliver Transaction Data to us by way of magnetic tape (or other similar medium) or by way of a direct communications link established between you and Clover:
- 10.6.1 you accept responsibility for the collection, security, integrity and delivery of the Transaction Data to Clover in a medium and format agreed with Clover;
- 10.6.2 we reserve the right to refuse to accept Transaction Data where the requirements specified in any instructions issued by or on behalf of Clover are not satisfied in full.

11. Promotional materials

- 11.1 You must at all times keep prominently displayed at each of your premises at the Point-of-Sale, and in any catalogue or other advertising material of yours (whether on a Website or otherwise) such promotional materials as we supply to you from time to time but only to indicate that you accept Cards for payment.
- 11.2 You must not use any promotional material that refers to us or any other name associated with Clover or our agents, or contains any of our trademarks, logos or those of our agents or of any Card Scheme without our prior written consent.
- 11.3 You must not indicate that any Card Scheme endorses the goods, services, accommodation or other facilities offered, sold or provided by you.

12. Use of information, security, confidentiality and processing of Personal Data

- 12.1 You must and you will ensure that your agents and any sub-contractors have in place appropriate technical and organisational measures which ensure an appropriate level of security for the processing of Cardholder Information and protect Cardholder Information against accidental or unlawful destruction or alteration, accidental loss, or unauthorised disclosure access or processing.
- 12.2 You must not retain or store magnetic stripe or CVV/ CVC2 data after Authorisation has been requested for a Card Transaction.
- 12.3 You agree to comply with the PCI DSS and any changes which may occur to those standards. You shall attest your compliance with those standards by participating in the PCI DSS Compliance Programme. In the event that we reasonably deem you to be non-compliant with PCI DSS, we will issue you with a noncompliance notice and you shall promptly remedy areas of noncompliance. We may charge a fee for noncompliance. If at any time you determine or suspect that Transaction Data has been compromised you must notify us immediately and provide all cooperation and assistance as required by us or applicable law enforcement agency, including assistance in providing notification to such parties as may be required by law or Card Scheme Rules, or as we otherwise reasonably deem necessary.
- 12.4 Any information relating to our business, our agents, or your Merchant Agreement shall be treated as confidential information by you and may not be disclosed by you to any third party except to:
- 12.4.1 our agents;
- 12.4.2 your agents (acting under a similar obligation of confidentiality); or
- 12.4.3 as required by law.
- 12.5 We will treat the information you provide to Clover or our agents in your Application Form or otherwise as part of your application, or in performance of your Merchant Agreement including details given to Clover Limited or our agents during any financial reviews and interviews, details of Card Transactions and any information relating to your account with Clover Limited under your Merchant Agreement, as confidential information even when your Merchant Agreement with Clover has been terminated.
- 12.6 When making credit decisions and when managing your account with Clover, we or our agents may make searches at credit reference agencies, including electoral register information. These may be recorded by the credit reference agencies. We or our agents may also disclose information, including how you have run your account, to the credit reference agencies for the purposes of obtaining credit assessments on you as a Business or if you are an individual then in your personal capacity. If false or inaccurate information is provided and/or fraud is identified, details will be passed to fraud prevention agencies by us or our agents to prevent fraud and money laundering.

- 12.7 We or our agents may record telephone conversations to offer you additional security, resolve complaints and improve our service standards. Conversations may also be monitored for staff training.
- 12.8 You undertake that you are entitled to disclose information about any guarantor and/or any other person whose information is provided by you to Clover or our agents.
- 12.9 In order to process, use, record and disclose Personal Data, we or our agents may transfer such information to countries outside the European Economic Area including the United States of America, which may not have laws comparable to those in the European Union to protect Personal Data. We are responsible for ensuring that Personal Data continues to be adequately protected during the course of any such transfer.

12.10 Processing of Personal Data

- 12.10.1 **Compliance.** Each of Clover and you, acting as a Controller, will process the Cardholder Information in compliance with applicable Data Protection Laws.
- 12.10.2 **Purposes.** We will only process the Cardholder Information:
- (a) as required in order to meet our obligations pursuant to the Agreement;
 - (b) as agreed in writing between the parties;
 - (c) as required or allowed by law applicable to us;
 - (d) for fraud prevention or investigation purposes, or other risk management purposes;
 - (e) for customer identification and information verification purposes, including in connection with “know your customer”, anti-money laundering or anti-terrorism financing purposes;
 - (f) in accordance with Card Scheme Rules;
 - (g) to enforce our rights, or the rights of other persons in a financial transaction; or
 - (h) to comply with policies applicable to our obligations under the Merchant Agreement, including to protect the security of the Cardholder Information.
- 12.10.3 **Transparency:**
- (a) As a Controller of the Cardholder Information, you will provide an information notice to Data Subjects meeting the requirements of Data Protection Laws, including the information referred to in Articles 13 and 14 of the GDPR (the “Customer Privacy Notice”); and
 - (b) As a Controller of the Cardholder Information, we will provide an information notice to Data Subjects meeting the requirements of Data Protection Laws, including the information referred to in Articles 13 and 14 of the GDPR (the “Acquirer Privacy Notice”).
- 12.10.4 **Assistance:** Each party will provide the other party with such assistance and co-operation as it reasonably requests to enable the requesting party to comply with any obligations imposed on it by Data Protection Laws in relation to the Processing of the Cardholder Information. A party will be entitled to refuse or limit its assistance where the requesting party is in the position to fulfil the obligations without that party’s assistance.
- 12.10.5 **Notices:** All notices and other communications between the parties under this Section 12.10 must be provided in accordance with Section 25 and, in the case of Clover, also by email to our Data Protection Officer, DPO@fiserv.com.
- 12.10.6 **Privacy Policy.** For full details of our Privacy Policy, please visit our website at uk.clover.com/legal/privacy.

13. Use and ownership of Equipment, Vouchers and data

- 13.1 You may not use any Equipment until we have tested and approved its location and operation. You must operate and keep all Equipment in accordance with any Terminal Agreement, Terminal User Guide, Operating Guide, all operating guides provided to you in respect of Clover Products and all requirements as we notify you from time to time. You are responsible for keeping all Equipment in good working order and you will replace and/or upgrade all such Equipment as we may require from time to time.
- 13.2 All Equipment and Vouchers which we supply you with or which are supplied on our behalf shall be and remain at all times our property. If we so direct, you must return to Clover as soon as possible all Equipment and Vouchers which we or our agents have supplied to you. We may charge you a Terminal Collection fee if we collect any Equipment provided to you. You may not make or permit any agent of yours or any third party to make any changes to any Equipment including moving its location without our prior written consent.

- 13.3 Cards accepted by you under any agreement other than your Merchant Agreement may only be used with Equipment with our prior written consent. You acknowledge that we have no responsibility to reimburse you for the cost of goods, services, accommodation or other facilities supplied against presentation of such Cards.
- 13.4 All Transaction Data shall be and remain at all times our property. During the term of your Merchant Agreement we grant you a revocable, nonexclusive, non-transferable licence to use, store, copy and distribute the Transaction Data as necessary for the performance of a Card Transaction or your Merchant Agreement.
- 13.5 You must not give, rent, lease, sub-licence or sell to any third party or grant any form of security, lien or other encumbrance over or cease to be in possession of all or any part of the Equipment, Vouchers and/or Transaction Data. You shall prevent any third party, other than our agents, from using the Equipment except as authorised by us in writing.
- 13.6 You must permit Clover, during your normal business hours and on reasonable notice, to have access to:
 - 13.6.1 any Equipment (either physically or electronically, as appropriate) to inspect, test, remove, replace, amend, alter or update such Equipment or data stored within the Equipment (other than Transaction Data); or
 - 13.6.2 any Electronic Link, Vouchers or Transaction Data including where held on your or your agents computer systems, and must permit Clover to make copies, if necessary.

14. Indemnity

- 14.1 You agree to indemnify and keep Clover and our agents indemnified against any and all claims, losses, costs, penalties, expenses and liabilities which we or our agents may suffer or incur which in any way, directly or indirectly, arise from or relate to any claim whether in contract, delict or tort (including negligence or breach of statutory duty) in respect of any Card Transaction between you and any Cardholder. In respect of any such claim the onus shall be upon you to prove to our satisfaction that any Card Transaction was authorised by the Cardholder.
- 14.2 You will at your own expense provide Clover with all information and assistance which we or our agents may reasonably require in relation to any Card Transaction between you and any Cardholder.
- 14.3 We shall have sole discretion whether or not to resist, defend or compromise any claim or to negotiate any settlement with the Cardholder. Any decision whether or not to resist, defend or compromise any claim or to negotiate any settlement shall be binding on you.
- 14.4 In respect of any claim, the burden shall be upon you to prove to our satisfaction that any Card Transaction was authorised by the Cardholder.

15. General indemnity and liability

- 15.1 You agree to indemnify and keep Clover and our agents indemnified on a full and continuing basis against any and all claims, losses, costs, expenses, fines, penalties or liabilities which we or our agents may suffer or incur, arising directly or indirectly:
 - 15.1.1 in connection with your Merchant Agreement as a result of anything done or omitted to be done by you or any employee or any agent of yours including any breach or alleged breach of any of the warranties and representations in this Agreement;
 - 15.1.2 from your failure to require the entry of a PIN into a PIN Entry Device where a Chip and PIN Card is used as part of a Card Present Transaction;
 - 15.1.3 from operation or use of any Website, including in contravention of any law, regulation or code of practice or any infringement or other violation of any Intellectual Property Rights of any third party;
 - 15.1.4 out of a breach of any of the obligations (whether by you or by any of your agents) set out in clause 12.1, 12.2 or 12.4; and
 - 15.1.5 in connection with your noncompliance or breach of Applicable Laws, the Card Scheme Rules, or any other reason where a Card Scheme levies a fee, fine penalty or charge against Clover due to any action or inaction by you. You shall at your expense, provide us or our agents with all assistance necessary to resolve any dispute arising under the Card Scheme Rules.

- 15.2 Subject to Clause 15.4, Clover's maximum aggregate liability for all claims or losses whether arising in contract, delict or tort (including negligence and breach of statutory duty) or otherwise shall not exceed the lesser of:
- 15.2.1 £30,000; or
- 15.2.2 the amount of Charges received by Clover in the immediately preceding twelve (12) months.
- 15.3 You agree that Clover shall not have any liability to you or your agents whether in contract, delict or tort (including negligence or breach of statutory duty) or otherwise and whatever the cause for any:
- 15.3.1 increased costs or expenses;
- 15.3.2 loss of profit, loss of business, loss of goodwill, loss of data, or loss of revenue or anticipated savings; or
- 15.3.3 special, indirect or consequential loss or damage of any nature whatsoever.
- 15.4 Nothing in your Merchant Agreement shall exclude or limit any liability of you or Clover for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused or to the extent that any such exclusion or limitation is not permitted by Applicable Laws.

16. Charges

- 16.1 You will pay to us all Charges that become due and payable to us under your Merchant Agreement.
- 16.1.1 The additional fees set out below may be charged and represent the additional costs related to investigations of your account, actions resulting from a breach of your Merchant Agreement or due to your acts or omissions in performance of your obligations under your Merchant Agreement, or termination of your Merchant Agreement:
- (a) Notification of unauthorised account activity. A fee of £35 may be charged for each warning to you of irregular or improper usage of your Merchant Account or notices to you of a breach or potential breach of your Merchant Agreement;
- (b) Non-payment of a direct debit. A fee of £30 may be charged in respect of each direct debit request from us to your bank that is rejected;
- (c) Excessive Chargeback fee. A fee of £25 per Chargeback may be charged in respect of each Chargeback which occurs after the Total Value of Chargebacks in any month exceeds 1% of the Total Value of your Card Transactions for that month for Visa, Mastercard or Diners Card Transactions.
- (d) Administrative fee for operational guidance. A fee of £40 per mailing may be charged where we need to remind you of, or provide guidance as to, your responsibilities under your Merchant Agreement or the Operating Guide.
- (e) Collections fee. A fee of £40 per incidence may be charged where we agree to enter into a repayment plan with you for repayment of your outstanding amounts due to us.
- (f) Management fee. We may charge you a fee of £50 per hour where we have to take steps to manage your account to include daily monitoring as a result of fraudulent Card Transactions; failure by you to follow standard operating procedures in the Operating Guide; implementing a Chargeback reduction plan; managing any repayment programme with you; collecting any outstanding amounts owed by you; carrying out a review following change of your trading terms or operating procedures; and managing or enforcing any security that we may hold in respect of your liabilities or in recovery of amounts due to us.
- (g) Termination fee. A £200 fee may be charged in the event your Merchant Agreement is terminated within six (6) months of the Agreement commencing, due to:
- (i) you giving notice pursuant to clause 28.1 of the Merchant Conditions;
- (ii) us giving notice pursuant to clause 28.2.1;
- (iii) you being in material breach of your Merchant Agreement pursuant to clause 28.2.2.1;
- (iv) any other event of default by you pursuant to clauses 28.2.2.2 to 28.2.2.10 (inclusive);

- (v) instructions received from any Card Scheme pursuant to clause 28.2.2.11; or
 - (vi) there being an excessive number of Chargebacks pursuant to clause 28.2.2.12 of the Merchant Conditions.
 - (h) PCI DSS Non Compliance. A monthly fee of £35 may be charged in the event that you remain noncompliant with the Payment Card Industry Data Security Standard (PCI DSS), pursuant to clause 12.5 of the Merchant Conditions.
- 16.2 We may alter the level of the Charges from time to time. If we do so, we will give you notice before the change takes effect in accordance with clause 23.1.
- 16.3 We may also require one or more of the following payments:
- 16.3.1 the amount of any Refunds issued (if not already deducted from sums paid by you to us);
 - 16.3.2 the amount of any overpayments made by us in respect of Vouchers or Transaction Data;
 - 16.3.3 the amount of any payments made by us in respect of invalid Vouchers or Transaction Data;
 - 16.3.4 the amount of any fees, fines, penalties and/or other Charges payable by Clover to a Card Scheme or any other person as a result of any failure by you to comply with the PCI DSS, Card Scheme Rules, Applicable Laws or your Merchant Agreement; and
 - 16.3.5 any other sums due and payable by you under your Merchant Agreement.
- 16.4 Any sum due to us under your Merchant Agreement is payable at the time specified. If no time is specified it is payable immediately. We may charge interest on unpaid sums at the rate of 2% per year above Bank of England base rate from time to time. Interest shall accrue on a daily basis on any sum that you fail to pay on time and will continue to accrue until you have paid the sum due (including interest) in full.
- 16.5 If you fail to present Refund Vouchers or Card Refund Data within the time specified in clause 10.1, interest shall accrue in accordance with the rate specified in clause 16.4. Interest shall accrue on the total amount that you should have paid to us if you had complied with the time limits in clause 10.1.
- 16.6 You will complete and sign a direct debit mandate authorising the bank at which you hold your account to pay on presentation all requests for payment of a direct debit originated by us in respect of sums due under your Merchant Agreement. You will not during the term of your Merchant Agreement revoke such mandate other than to change your account to another bank. If you intend to so change your account, you must give Clover at least thirty (30) days written notice and must complete a new direct debit mandate to the new bank.
- 16.7 Unless otherwise stated, all Charges, fees and other payments to be made by you under your Merchant Agreement are exclusive of VAT and any other relevant taxes (if any) and in addition to paying such sums you will be responsible for paying.

17. Payment/Settlement

- 17.1 We will endeavour to settle Transactions within four (4) Business Days of their receipt by us, unless we have informed you otherwise.
- 17.2 You agree that we may deduct all amounts due to us from amounts due to you in Settlement of Transactions, including fees, charges, costs and Chargebacks due and payable pursuant to your Merchant Agreement or as set out in your Merchant Statement.
- 17.3 Subject to clauses 17.4, 17.5 and 22.2, we will pay to you all sums due as recorded on Vouchers or as Transaction Data (less the amount of any Refunds and fees), submitted in accordance with your Merchant Agreement, by crediting your Merchant Account.
- 17.4 We may without notice withhold payment of sums relating to Card Transactions if we suspect that any Card Transaction between you and a Cardholder:
- 17.4.1 is fraudulent;
 - 17.4.2 involves any other illegal activity;
 - 17.4.3 was not in the ordinary course of your Business; or
 - 17.4.4 was non-compliant with PCI DSS obligations under this Merchant Agreement. We may continue to withhold payment due to you until in our reasonable opinion any of the matters referred to in clauses 17.4.1 to 17.4.4 (inclusive) no longer apply and such Card Transactions are no longer liable to be the subject of a Chargeback.

- 17.5 We may alter the way we settle Card Transactions between you and a Cardholder by moving you on to a system under which we settle such Card Transactions by holding back payments to you for a pre-determined number of days ("Deferred Payment") if:
- 17.5.1 either party provides written notice of termination of this Merchant Agreement under clause 28.1 or 28.2
 - 17.5.2 we reasonably suspect that your financial position has deteriorated;
 - 17.5.3 the number and/or size of Card Transactions becomes in our opinion excessively high for a Business of your type and size; or
 - 17.5.4 based on our reviews of your processing history we are of the opinion that there is a potential risk of loss to Clover through Chargebacks.
- Where we move (or intend to move) you on to a system of Deferred Payment, we will tell you when the Deferred Payment will start (which other than in cases of urgency or where we exercise our rights under this clause 17.5 will be at least seven (7) days after we contact you) and explain the terms on which Card Transactions will be settled from that date.
- 17.6 No interest shall accrue in respect of any amount withheld under this clause 17.

18. Statements

- 18.1 Clover will provide you a periodic Merchant Statement which shall provide details of all Card Transactions and constitute a proper demand for payment of the amount shown by it as being due from you to us, which will be conclusive unless inaccurate on the face of the Merchant Statement. You must check each such Merchant Statement on receipt and notify us or our agents within one (1) month of any errors in it.

19. Chargebacks

- 19.1 We may charge back to you any Card Transaction with respect to which:
- 19.1.1 there is no signature on the Sales Receipt, except where the lack of a signature is because a PIN was used, or the signature on the Sales Receipt is different from that on the Card, or the Sales Receipt is signed by a person other than the Cardholder;
 - 19.1.2 the Card Transaction in respect of which the Sales Receipt was issued is illegal or of no legal effect;
 - 19.1.3 the Card has expired, is not yet valid or has been cancelled or revoked, at the date of the Card Transaction;
 - 19.1.4 the amount of the Card Transaction was equal to or exceeded the relevant Floor Limit and the Card Transaction was not Authorised by Clover;
 - 19.1.5 you have in any way failed to comply with the Operating Guide, the Terminal User Guide or all operating guides provided to you in respect of Clover Products or are otherwise in breach of your Merchant Agreement;
 - 19.1.6 the goods, services, accommodation or other facilities to be supplied by you under the Card Transaction have not been supplied, are defective or not as described;
 - 19.1.7 the information recorded in the Sales Receipt presented to the Cardholder materially differs from the information recorded on the Voucher or contained in Transaction Data presented to Clover;
 - 19.1.8 we have notified you, whether in a list or otherwise, that the Card is fraudulent, lost or stolen;
 - 19.1.9 two or more Vouchers or sets of Transaction Data have been completed or sent to Clover for a single Card Transaction;
 - 19.1.10 the Voucher or Transaction Data is incomplete or not presented to Clover within relevant time limits;
 - 19.1.11 the Cardholder denies having authorised the Card Transaction and you are unable to provide evidence satisfactory to us that the Card Transaction was so authorised;
 - 19.1.12 the Card Transaction is a Card Not Present Transaction or involves Purchase with Cashback and is disputed by the Cardholder or Card Issuer;
 - 19.1.13 the Card Transaction is charged back for any other reason within the relevant Card Scheme Rules; or

19.1.14 the Card Transaction disputed is a Card Present Transaction where a Chip and PIN Card is presented and you did not require the person presenting the Chip and PIN Card to enter a PIN in a PIN Entry Device.

19.2 We may, at our complete discretion, apply Chargebacks immediately or detail them in your Merchant Statement and collect them together with your monthly Charges. We may at our discretion treat an invalid Voucher or Transaction Data as valid.

19.3 We shall not be obliged to notify you of the validity or invalidity of a Voucher or Transaction Data except where a Chargeback is in fact made. We shall have no obligation to procure, or assist you in procuring, payment from a Cardholder where a Voucher or Transaction Data has been charged back.

19.4 Our Chargeback rights shall not be affected by any arrangement between you and the Cardholder.

20. Evidence of Card Transactions

20.1 We may at any time require you to prove to our satisfaction that any Card Transaction was authorised by the Cardholder. You must retain the original paper, microfilm or electronic copy of the Sales Receipt and any Refund Receipt for at least eighteen (18) months from the date of the Card Transaction (or for Recurring Transactions, at least eighteen (18) months from the date of the last Card Transaction forming part of the Recurring Transaction) and produce them to us or our agents on request. Failure to do so within the period set by Clover may result in a Chargeback.

20.2 If any Vouchers or Transaction Data that have been submitted are lost or damaged, you will resubmit the relevant data by the method agreed between you and Clover.

20.3 It is your responsibility to ensure that all Vouchers and Transaction Data, which you retain or are submitting to us or our agents, are complete and not damaged and that all Transaction Data is securely held in accordance with the Operating Guide and can be reconstituted in a complete and easily readable form.

20.4 Neither Clover nor its agents will in any circumstances, other than if due to our negligence, be liable in respect of the face value of any Vouchers or Transaction Data which you retain or are submitting to us in the event of loss or damage to such Vouchers or Transaction Data, or for the costs of reconstituting such Vouchers or Transaction Data, or for any other loss or damage. If any loss or damage to any Vouchers or to the physical medium containing any Transaction Data is due to our negligence, we will reimburse to you the replacement value of the lost or damaged Vouchers or medium.

21. Financial and other information

21.1 Upon request you will provide us or our agents with such copies of financial accounts (including management accounts), trading terms, supplier invoices, customer contracts, product information and such other documentation or information concerning your Business.

21.2 You authorise us and our agents to obtain the documents and information referred to in clause 21.1 from third parties and members of our Group.

21.3 You authorise us and our agents to contact the individuals at your Business identified in your Application Form and those whom you may notify Clover from time to time.

21.4 You must advise us and our agents immediately of any change in the circumstances affecting your Business including:

21.4.1 any Insolvency Event;

21.4.2 any change of voting control in you or your parent company;

21.4.3 any change in your trading terms, directors, other officers, members or partners, business or trading name, legal status, email address, business or trading address or in any of your other details that you have provided to Clover; and

21.4.4 any sale or other disposal of all or any material part of your assets.

22. Security and Set Off

- 22.1 We may at any time, acting reasonably, require you to provide additional or new collateral (as the case may be) in a form to be decided by us where, in our absolute discretion, we determine that such collateral is necessary to act as security in relation to the performance of your obligations under this Agreement on account of, inter alia, Chargebacks, Refunds, corrections and your liability for loss or damage suffered by us, penalties and all other amounts which you owe or may in future owe to us under or in connection with this Agreement.
- 22.1.1 For example, we may establish a Reserve Account in relation to you, require you or a company within your group of companies to provide guarantees or other security, and/or apply special terms and conditions in relation to your acceptance of Card Transactions at any time, for the purpose of providing a source of funds to pay us for any and all Merchant Liabilities.
- 22.1.2 The Reserve Account may, at the reasonable discretion of us, be funded by:
- (i) requiring you to deposit into the Reserve Account a cash amount determined by us within seven (7) Business Days of written notice from us;
 - (ii) us debiting your Merchant Account for any amount for deposit to the Reserve Account; and/or
 - (iii) us depositing into the Reserve Account any payments that we are obliged to pay to you under your Merchant Agreement.
- 22.1.3 The amount of any Reserve Account may be set in our sole discretion and increased or decreased by us as we may determine from time to time. All funds held in any Reserve Account and all rights, title and interest to such funds, are at all times (and in the event of you becoming involved in any Insolvency Event) exclusively for our benefit and vested in us.
- 22.1.4 If we request that you provide, or ensure that a company within your group of companies provides, a parent company guarantee, such guarantee shall be provided in the form prescribed by us and receipt by us of such guarantee shall be a condition for us to provide, or continue to provide, the Merchant Services to you.
- 22.2 We may at any time (without notice to you) set off any sum which you owe to Clover under your Merchant Agreement against any sum which we owe you (whether under your Merchant Agreement or some other agreement with Clover).

23. Variation

- 23.1 We may from time to time change your Merchant Agreement (including the Charges and the Operating Guide). Unless we are required to implement a change on shorter notice pursuant to Applicable Laws or Card Scheme Rules, we will give you at least two (2) months' notice before making the changes. However, changes in interest or exchange rates may be applied immediately and without notice where such a change is a favourable to you.
- 23.2 We may change Floor Limits or cancel facilities without letting you know beforehand in exceptional circumstances, for example, where we suspect fraud.
- 23.3 If you do not wish to accept the changes we make to your Merchant Agreement, you may terminate your Merchant Agreement immediately by giving Clover notice in writing within one (1) month of such change coming into effect. Such notice should be sent to the address set out in clause 25.5.
- 23.4 You may ask for a copy of your Merchant Agreement at any time. These Merchant Conditions are available at uk.clover.com.

24. Force majeure

Neither we nor our agents shall be liable for any failure to perform our obligations under your Merchant Agreement where the failure arises directly or indirectly through war, civil disturbance, industrial dispute (whether including our employees or not), any Equipment failure (including if any data processing system or transmission link fails), any act of God or any circumstances or event occurs beyond our control.

25. Notices

- 25.1 Any notice required to be given under the Merchant Agreement must be in writing and in English. Notices shall be served on the other party in the manner detailed below. Written notices we give you may be sent by: (a) post to your last known place of business or head office, or where none, your last known address; (b) email to the email address advised by you; or (c) notification on a statement message or statement insert.
- 25.2 When notices are sent by post, they shall be deemed to have been received by the addressee at noon on the second Business Day after posting for first class post, and five (5) Business Days after posting for second class post (excluding the day of when they were actually put in the post).
- 25.3 When notices are given by email, they shall be deemed to have been received 24 hours after the time of transmission.
- 25.4 If we suspect fraud or a security threat, or if there has been an actual fraud or security incident which may affect you, we may contact you by secure means using your contact details.
- 25.5 Any written notice you give Clover should be sent by first class post or hand delivery to Clover, Janus House, Endeavour Drive, Basildon, Essex SS14 3WF (or any other address we tell you).

26. Sub-contractors and agents

- 26.1 We may appoint at any time, and without notice to you, an agent or sub-contractor to process Card Transactions or perform any of our obligations to you under your Merchant Agreement.
- 26.2 If you want to appoint a sub-contractor or agent in connection with the performance of any part of your Merchant Agreement you need our prior written consent, which we may withdraw at any time. If we withdraw our consent, your sub-contractor or agent must stop acting for you immediately. If we do consent you must ensure that the sub-contractor or agent acts and complies with all terms of your Merchant Agreement.
- 26.3 You acknowledge that where you appoint a sub-contractor or agent, you are and will remain primarily liable for anything done (or not done) by any such sub-contractor or agent appointed by you and you will indemnify Clover and our agents on demand in respect of any and all claims, costs, losses, expenses and liabilities which we or our agents may suffer or incur as a result, direct or indirect of anything done (or omitted to be done) including negligence by such sub-contractor or agent.

27. Compliance with legal requirements

You shall comply with all Applicable Laws, Card Scheme Rules, PCI DSS, and any changes which may occur to those standards and codes of practice, which you are obliged to follow for the purposes of your Merchant Agreement. You also warrant that all activities conducted under your Merchant Agreement do not infringe the rights of any third party, including Intellectual Property Rights. We shall comply with all Applicable Laws and Card Scheme Rules which we are obliged to follow for the purposes of your Merchant Agreement.

28. Termination

- 28.1 You may terminate your Merchant Agreement at any time by giving not less than one (1) months' written notice to Clover.
- 28.2 Your Merchant Agreement may be terminated by Clover at any time:
- 28.2.1 by giving not less than two (2) months' written notice to you; or
- 28.2.2 immediately in the event that:
- 28.2.2.1 you are in material breach of your Merchant Agreement;
- 28.2.2.2 an application for an administration order is presented, an administration order is made or an administrator is appointed in relation to you, or a notice of intention to appoint an administrator is served in relation to you, or a resolution for the appointment of an administrator is passed;
- 28.2.2.3 a petition for a winding up order is presented, a winding up order is made or a resolution for winding up is passed in relation to you;
- 28.2.2.4 you suffer an incumbrancer to take possession, or to exercise or attempt to exercise any power of sale, or a receiver or manager is appointed of the whole or any part of your assets or undertaking;
- 28.2.2.5 you become or are deemed to be unable to pay your debts within the meaning of Section 123 Insolvency Act 1986, you suspend payment of any debt or declare a moratorium, or are otherwise insolvent or bankrupt;

- 28.2.2.6 you enter or propose to enter into any compromise arrangement or composition with any or all of your creditors;
- 28.2.2.7 you are the subject of any judgment or order made against you which is not complied with within seven (7) days or you are the subject of any execution, distress, sequestration or other process levied upon or enforced against any part of your undertaking, property assets or revenue;
- 28.2.2.8 if you are an individual or a partnership, you (or any of your partners) are the subject of a bankruptcy petition or order or you (or any of your partners) are unable to pay or have no reasonable prospect of paying your debts or, if in Scotland, you (or any of your partners) become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 or have a trustee in sequestration appointed to your estate;
- 28.2.2.9 any similar or analogous event or proceeding (or which has an equivalent or similar effect) to those set out in clauses 28.2.2.2 to 28.2.2.8 occurs in relation to you in any jurisdiction to which you are subject;
- 28.2.2.10 any event or circumstance becomes known to Clover which, in our sole opinion, gives rise to fraud or suspicion of fraud or other criminal activity, or causes or may cause Clover to be in breach of any legal or regulatory requirements including Card Scheme Rules, or is jeopardising or may jeopardise the integrity or security of any of our or our agents computer systems;
- 28.2.2.11 if we are required to do so by any Card Scheme;
- 28.2.2.12 the number of Chargebacks in relation to your Business are in our reasonable opinion excessively high; or
- 28.2.2.13 if you fail to Attest your compliance with the PCI DSS as required in clause 12.5 within six (6) months of us giving you notice of your noncompliance.

29. Effects of termination

- 29.1 Termination of your Merchant Agreement shall not affect obligations already incurred and in particular clauses 11 to 17, 19, 20 and 22 and clauses 29 to 36 shall remain in full force and effect.
- 29.2 If your Merchant Agreement is terminated:
 - 29.2.1 by Clover under clause 28.2, you agree that we may notify the Card Schemes of the termination and the reasons for it and that details of your Merchant Account may be notified to the Card Schemes and credit reference agencies;
 - 29.2.2 you may not commence Card Transactions after the date of termination of your Merchant Agreement;
 - 29.2.3 you may not use, after the date of termination of your Merchant Agreement, our or our agents names or any of our trademarks or logos or any promotional materials we or our agents have provided to you or which refer to Clover or the provision of Merchant Services by us or our agents to you as a Merchant;
 - 29.2.4 all Vouchers and Card Refund Data shall be presented by you to Clover;
 - 29.2.5 you will, at your cost, disconnect all Equipment and any Electronic Links and allow Clover access to remove all Terminals and other Equipment which we or our agents have supplied to you. If we so direct, you must at your cost, return to Clover or our agents as soon as possible all Terminals and other Equipment which we or our agents have supplied to you; and
 - 29.2.6 you will pay us the Termination fee (if applicable).

30. Rights of third parties

- 30.1 Your Merchant Agreement shall not be enforceable by a third party except that any rights and any exclusion or limitation of liability in any term may be enforced by or relied upon by our agents under the Contracts (Rights of Third Parties) Act 1999.

31. Entire agreement
- 31.1 Your Merchant Agreement together with any documents referred to in it and any variation to it constitutes the entire agreement and understanding between Clover and you relating to its subject matter.
- 31.2 Your Merchant Agreement supersedes all prior oral or written agreements, representation or warranties including any previous merchant agreements between you and Clover provided that any charges schedule set out in a previous merchant agreement will continue to apply until amended or replaced. Any liabilities for and any remedies in respect of any such agreements, representations or warranties made are excluded, save only in respect of such as are expressly made or repeated in your Merchant Agreement or any accrued rights, liabilities and obligations which have arisen under any previous merchant agreements between you and Clover which will continue.
- 31.3 You have not entered into your Merchant Agreement in reliance on any oral or written agreement, representation or warranty from Clover, other than those explicitly set out in your Merchant Agreement.
- 31.4 For the avoidance of doubt, nothing in this clause 31 shall operate to exclude liability for any fraudulent statement or act.

32. Remedies cumulative

Except where expressly agreed otherwise in your Merchant Agreement, the rights and remedies of you and Clover under your Merchant Agreement are cumulative, may be exercised as often as we or you consider appropriate and are in addition to your or our rights and remedies under general law.

33. Waiver and enforceability
- 33.1 No failure to exercise or delay by Clover in exercising any right, power or remedy provided by law or under your Merchant Agreement shall impair the same or be construed as a waiver or release of that right.
- 33.2 If any provision of your Merchant Agreement is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in your Merchant Agreement, but without invalidating any of the remaining provisions of your Merchant Agreement.

34. Assignment/ Assignment
- 34.1 We may assign (whether in whole or in part), novate, transfer, dispose of, charge or deal in any other manner with, your Merchant Agreement and any interest or rights that we may have under your Merchant Agreement upon notice to you. You agree to enter into such documents as we may reasonably require in order to effect such novation, transfer, disposal, charge or dealing.
- 34.2 You may not assign (whether in whole or in part), novate, transfer, dispose of, charge or deal in any other manner with, your Merchant Agreement nor any interest or rights or burdens under your Merchant Agreement without our prior written consent.

35. Joint and several liability
- 35.1 If you comprise more than one person, then your liability under your Merchant Agreement is joint and several. This means that each of you is treated legally as having assumed the obligation both collectively, on behalf of each of you and individually. We may proceed against any one or more of you for the full performance of any obligation owed to Clover under your Merchant Agreement or for all losses or damage arising from a breach or failure by any of you to perform, irrespective of which of you caused the breach. If such persons are a partnership, then any act or omission of any one partner shall be deemed to be an act or omission of all partners.
- 35.2 On termination of your Merchant Agreement, your Merchant Agreement will terminate with respect to all of you who are jointly and severally liable, subject to clause 29.

36. Governing law

This Agreement and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

37. Gateway Services

If you submit Transactions to Clover using the Gateway Services, the following terms and conditions shall apply, in addition to all other terms of your Merchant Agreement:

37.1 Description of the Gateway Service

37.1.1 **Use of Software and Documentation.** We hereby grant to you a personal, non-exclusive and nontransferable right to use the Platform, Software and Documentation in order to avail of the Gateway Services in relation to the Card Transactions, for the purposes expressly described in the Documentation, and for other Card Transactions which we have expressly agreed to process. In the event of conflict between your Merchant Agreement and anything set out in the Documentation, your Merchant Agreement shall prevail.

37.1.2 **Restrictions.** You shall not, and shall not cause or permit any third party to:

37.1.2.1 use the Gateway Services in any way, other than in accordance with your Merchant Agreement or as otherwise instructed by us in writing;

37.1.2.2 circumvent or attempt to circumvent any applicable security measures of any element of the Gateway Services including disassembling, decompiling, decrypting, extracting, reverse engineering or modifying the Software, or otherwise applying any procedures or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any algorithm, process, procedure or other information contained in the Software;

37.1.2.3 except as specifically authorised in accordance with your Merchant Agreement, allow to any third party access to the Gateway Services other than to your authorised employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of these Terms and Conditions;

37.1.2.4 make any copies of the Documentation, except as necessary to comply with the obligations of your Merchant Agreement; or

37.1.2.5 remove or alter in any way whatsoever any copyright notice or acknowledgements appearing on any element of the Gateway Services save to the extent instructed and approved in writing by us.

37.1.3 **Passwords.** You shall ensure that if you receive a password from us to access any element of the Gateway Services, you will:

(i) keep the password confidential;

(ii) not allow any other party to use the password or gain access to the Gateway Services except as expressly agreed by us;

(iii) be liable for all acts or omissions of any user of the password; and

(iv) notify us immediately if the Gateway Services have been compromised by use of the password.

If you receive passwords from a third party on our behalf or otherwise in connection with your Merchant Agreement, you must protect such passwords in the manner required by such third party.

37.2 Gateway Service Integration

37.2.1 **Integration with Merchant Systems.** While we provide the Gateway Services to you, you acknowledge that the Gateway Services are in themselves insufficient to allow your Merchant Systems to function with the gateways provided as part of the Gateway Services. Programming, development and maintenance of the Merchant Systems and their functionality are your sole responsibility. You have the ultimate responsibility to ensure the Merchant Systems function correctly. You shall be responsible for all technical support for the Merchant Systems and integration issues on your side. You will be responsible for all of your own development and implementation costs associated with such integration.

- 37.2.2 **Shut Downs and Suspension.** We reserve the right in our absolute discretion, without prior notice, to suspend the provision of the Gateway Services for a reasonable period of time for any reason including, but not limited to, maintenance and/or Gateway Software upgrades.

37.3 Intellectual Property Rights

- 37.3.1 All Intellectual Property Rights with respect to the Gateway Services and Clover, Fiserv and First Data names, trademarks and brands, whether now existing or in the future, are reserved to Clover and its licensor(s) (as may be the case).
- 37.3.2 Save for the limited licence granted under Section 37.1.1, nothing in your Merchant Agreement shall be interpreted as granting to you a licence to use Clover's or its licensors' Intellectual Property Rights.
- 37.3.3 You will promptly notify us of any infringement or threatened infringement or of any challenges to validity or ownership of any Intellectual Property Rights or other rights belonging to Clover which you become aware and you will provide reasonable assistance to us, at our reasonable expense, in connection therewith.
- 37.3.4 We may include, at our discretion, your company name, description and hyperlink on our website and other marketing material.
- 37.3.5 You may, at your discretion, display any graphic or hyperlink provided to you by us on your website(s) (without altering the form or presentation of such graphic, and in no way that implies or represents that you operate or own any element of the Gateway Services and our related brand(s)).

37.4 Legal Responsibility

- 37.4.1 You acknowledge that neither we nor any of our subcontractors underwrites or agrees to compensate you or any third party (including your customers) for the value of any Card Transaction (or Card Transaction Data) as a result of any failure or delay in processing of any such Card Transaction pursuant to or in connection with this Merchant Agreement. Your sole remedy for such failure or delay shall be for us to use commercially reasonable endeavours to complete processing of the relevant Transaction as soon as practicable after receipt of notification from you of the relevant failure or delay.
- 37.4.2 The provision of Gateway Services by us does not give rise to additional or separate liability for the Authorisation or non-Authorisation of Card Transactions, Chargebacks or any other losses incurred by you.
- 37.4.3 You acknowledge and accept that we will only be able to provide the Gateway Services to you if you properly collect and deliver relevant data (including, if applicable, Card Transaction Data) to us in accordance with the Gateway Documentation or as otherwise advised by us.
- 37.4.4 You acknowledge and accept that neither we nor our subcontractors shall have any liability whatsoever or howsoever to you in relation to any data submitted by you or the results of the Gateway Services, including any Authorisation request sought on your behalf.
- 37.4.5 You acknowledge and accept that we do not in any way guarantee the valid or non-fraudulent use of any payment method for the purchase of goods or services or of any of the Gateway Services by your customers. Fraudulent or invalid use of a payment method cannot be exhaustively checked for and we expressly exclude any liability for invalid or fraudulent use of any payment method or any of the Gateway Services, to the maximum extent permitted by Applicable Laws.

37.5 Indemnification

- 37.5.1 You shall on demand indemnify and hold harmless Clover and its subcontractors and our and their officers, directors, employees, shareholders and agents from and against all loss, liabilities, actions, claims, proceedings, demands, damages and expenses (including legal fees) arising out of or in connection with any representations made to a cardholder concerning the Gateway Services, including any communications made to a cardholder about the availability or non-availability of funds in its account. For avoidance of doubt, the indemnification provisions set out at section 14 above also apply to the Gateway Services.

38. Fraud Detect Services

- 38.1 Where you have elected to purchase fraud detect services (described in more detail in Sections 38.2 and 38.3 below) (**the Fraud Detect Services**), the terms of this Section 38 shall apply to you and shall form part of your Merchant Agreement from the time the first Fraud Detect real time score is successfully provided by us to you. Accordingly, any reference to Gateway Services in these Merchant Conditions or your Merchant Agreement shall be deemed

to include reference to the Fraud Detect Services. If anything in this Section 38 conflicts with any other Merchant Conditions, the terms of this Section 38 will take precedence in respect of the Fraud Detect Services only.

- 38.2 The Fraud Detect Services will provide you with information using Transaction Data, fraud products and/or data elements you provide or make available to us (which may include geolocation information and device identification), to assist you in detecting fraud on applicable Transactions. The information we will provide to you and the fraud products we use to provide that information to you will vary depending on the Fraud Detect package that you purchase. The Fraud Detect Services include data provided by our third party service providers.

38.3 Fraud Detect Package Options:

- 38.3.1 **Essentials Package:** Using a fixed real-time rules engine (which uses fixed transaction velocity rules, device ID attributes, and negative look-up rules), we will provide:
- (a) Real-Time Score, consisting of a pass/fail recommendation;
 - (b) Operational reporting:
 - (i) Positive/Negative List Report – indicates the data elements added to the positive and negative tables
 - (ii) Rule Performance Report – outlines how effectively the rule set is performing
 - (iii) Accept/Reject Report – number of transactions processed and whether they were accepted or rejected
- 38.3.2 **Advanced Package:** Using a platform/industry specific fixed real-time rules engine (which uses fixed transaction velocity rules, device ID attributes, and negative look-up rules) and a platform/industry specific intelligent machine learning algorithm, we will provide:
- (a) Real-time Score, consisting of a pass/fail/review recommendation;
 - (b) Access to a case management interface to review/resolve transaction alerts;
 - (c) Operational reporting:
 - (i) Fraud and False Positive Report – monthly transactional history, fraud and false positive rates
 - (ii) Rule Performance Report – outlines how effectively the rule set is performing
 - (iii) Model Performance Report – monitors machine learning model performance
 - (iv) Fraud Detect Transaction Score Report – a representation of the transaction scoring
 - (v) Accept/Reject/Review Report – number of transactions processed, and if they were accepted, reviewed or rejected
 - (vi) Analyst Efficiency Report (self-managed merchants only) – outlines fraud analyst Key Performance Indicators
 - (vii) High Risk Locations Report – indicates the highest risk locations based on historical fraud
 - (viii) Positive/Negative List Report – indicates the data elements added to the positive and negative tables
 - (ix) System Performance Report – summarises system performance
 - (d) Fraud Detect Annual Maintenance fee is required for this package.
- 38.3.3 **Premium Package:** Using a custom real-time rules engine (which uses custom transaction velocity rules, device ID attributes, and negative look-up rules), and a custom intelligent self-learning algorithm with industry specific historical data, we will provide:
- (a) Real-time Score, consisting of a pass/fail/review recommendation;
 - (b) Access to a case management interface to review/resolve transaction alerts;
 - (c) Operational reporting:
 - (i) Fraud and False Positive Report – monthly transactional history, fraud and false positive rates
 - (ii) Rule Performance Report – outlines how effectively the rule set is performing

- (iii) Model Performance Report – monitors machine learning model performance
 - (iv) Fraud Detect Transaction Score Report – a representation of the transaction scoring
 - (v) Accept/Reject/Review Report – number of transaction processed, and if they were accepted, reviewed or rejected
 - (vi) Analyst Efficiency Report (self-managed merchants only) – outlines fraud analyst Key Performance Indicators
 - (vii) High Risk Locations Report – indicates the highest risk locations based on historical fraud
 - (viii) Positive/Negative List Report – indicates the data elements added to the positive, and negative tables
 - (ix) System Performance Report – summarises system performance
- (d) Fraud Detect Annual Maintenance fee is required for this package.
- 38.3.4 Additional Fraud Detect managed and professional services are also available but are subject to you entering into a separate additional agreement with us for those services.
- 38.4 We may retain the data processed in connection with the Fraud Detect Services for statistical analysis and elements of such data, including data from fraudulent transactions, may be used, retained, and shared with our analysts and developers (including our Group and our third party contractors who are subject to nondisclosure obligations) to help improve the Fraud Detect Services and help identify further fraud. We will not disclose the source of the data or any personally identifiable information of any of your customers to our other customers receiving the Fraud Detect Services. However, such data may be anonymised and incorporated into the fraud models, scores and reporting provided to other Fraud Detect Services customers.
- 38.5 You represent and warrant that you have the right to provide or make available any data processed by us under your Merchant Agreement for our use, retention, and sharing as described in Section 38.4.
- 38.7 In addition to any termination rights under the Agreement, we may terminate the provision of Fraud Detect Services to you upon written notice to you if our rights or access to third party service providers' technology or software used to provide the Fraud Detect Services is terminated.
- 38.8 Upon termination of the Fraud Detect Services for any reason, you agree to pay any fees or expenses incurred for your use of the Fraud Detect Services prior to the termination date, cease attempts to access the Fraud Detect Services, and return all user manuals or other materials received in connection with the Fraud Detect Services.
- 38.9 The Fraud Detect Services are provided to you "As Is" without representations or warranties of any kind, and we disclaim all express and implied warranties. We make no assurances that the Fraud Detect Services will accurately identify every instance of fraud, or that every transaction that may appear fraudulent is in fact so.

39. Virtual Terminal

If you use a Virtual Terminal, the following terms and conditions shall apply, in addition to all other terms of your Merchant Agreement:

39.1 Service Specification

39.1.1 The following are not within the scope of the VT Services:

- (a) the provision of hardware or software;
- (b) the connection and data transfer between you and the Cardholder;
- (c) data transmission through third-party telecommunications networks or the flow of internet data traffic (we act only as a conduit for the transmission of data and have no influence over this and accept no responsibility for availability or reliability in this regard).

39.2 Your Obligations

39.2.1 You must:

- (a) provide us with all the relevant information that is necessary for the performance of the VT Services;

- (b) at all times comply with the current version of our Acceptable Use Policy as set out in section 39.1.1; and
 - (c) have internet-compatible hardware and software, an internet connection and an interface that enables you to use the VT Services.
- 39.2.2 Compliance. You agree to comply with all Applicable Laws, Card Scheme Rules and codes of practice including PCI DSS that apply or relate to the VT Services or otherwise to your Merchant Agreement.

39.3 Ownership and Acceptable Use of a Terminal

- 39.3.1 You acknowledge that all title, right and interest in any technology that is provided with the VT Services, and any of our trademarks or service marks are vested in us or in our licensors. You shall have no right, title or interest in any of the above, except for any right specifically granted to you in your Merchant Agreement.
- 39.3.2 You may not reproduce, duplicate, copy, sell, resell, or exploit any portion of the VT Services without our prior written consent. You will not use the VT Services in a manner prohibited by any Applicable Laws, and you will abide by all applicable Merchant Conditions.
- 39.3.3 Without limiting clause 39.3.2, you shall not:
- (a) use the VT Services, or allow the VT Services to be used, for any abusive purpose or in any way that damages our Systems or interferes with or disrupts our other users;
 - (b) attempt to circumvent user authentication or security of any host, System, or account (also known as cracking or hacking). This includes, but is not limited to (i) accessing data not intended for you, (ii) logging into a server or account that you are not expressly authorised to access, and (iii) probing the security of other networks;
 - (c) attempt to interfere with service to any user, host, or System (denial of service attacks). This includes, but is not limited to (i) flooding of networks, (ii) deliberate attempts to overload a service, and (iii) attempts to crash a host;
 - (d) use any kind of program/script/command, or send messages of any kind, that are designed to interfere with a user's session, by any means, locally or through the internet;
 - (e) use the VT Services or take any action that will result in
 - (i) excessive consumption or utilisation of our System or System resources,
 - (ii) weakening of our performance, or
 - (iii) reduced performance of the VT Services for other customers, all as determined in our sole discretion.

In the event that we detect excessive or abusive use of your VT Services, we may:

 - (i) restrict your access to the VT Services,
 - (ii) increase the VT Charges, including upgrading you to a higher class of VT Services, and/or
 - (iii) terminate or suspend your VT Services. We have the right to restrict any use of the VT Services that we believe, violate the Agreement or any Applicable Laws; or
 - (f) give, sub-licence or sell, or grant any form of security, lien or other encumbrance over all or any part of, the VT or the VT Transaction Data. You shall prevent any third party, other than our agents, from using the VT except as we may agree in writing.
- 39.3.4 We may immediately suspend or terminate your VT Services without notice to you if we suspect (i) abuse or fraudulent use of the VT Services, (ii) interference with our System, or (iii) a violation of the Agreement. You will cooperate with us in any fraud investigation and use any fraud prevention measures we identify. Your failure to cooperate may result in the suspension or termination of your VT Services.
- 39.3.5 You must operate and maintain the VT in accordance with the terms of the Agreement, the Virtual Terminal User Guide and any other requirements as we notify you from time to time.
- 39.3.6 Cards accepted by you under any agreement other than your Merchant Agreement may be used with our VT only with our prior written consent. You acknowledge that we have no responsibility to reimburse you for the cost of goods, services, accommodation or other facilities supplied against presentation of such Cards.
- 39.3.7 We may at any time inspect, test, remove, replace, alter, amend or update the VT (other than Transaction Data stored within the VT), and inspect any Electronic Link and make copies of any VT Transaction Data, wherever stored.

39.4 No Warranty

- 39.4.1 The VT Services are provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, save for those statutory and implied warranties that cannot be excluded.
- 39.4.2 Any statements made in any packaging, manuals or other documents, or by any of our employees or representatives, are provided for information purposes only and not as warranties by us.
- 39.4.3 VT Services are only available within the coverage area of our System, which is subject to change. You acknowledge that service may be temporarily unavailable for scheduled or unscheduled maintenance, equipment modifications or upgrades, and for other reasons within and without our direct control.
- 39.4.4 Although security measures are employed, we cannot guarantee the security of data transmission or storage, or that viruses, worms, trojan horses, or other code that manifests contaminating or destructive properties will be detected or remediated by the service.
- 39.5 In addition to the effects set out at section 29 above, clause 39.4 shall survive termination of your Merchant Agreement.

39.6 Suspension of VT Services

- 39.6.1 Without prejudice to any other rights, we will be entitled to suspend the VT Services if:
- (a) you have failed to pay the VT Charges or other sums payable by you within 30 days of the due date;
 - (b) we suspect that you are involved in fraudulent activity;
 - (c) we reasonably believe that your Website, script or other application is the cause of interruptions to our ability to service other customers;
 - (d) there is a force majeure event; or
 - (e) you are in breach of the Acceptable Use Policy.
- 39.6.2 The period of suspension shall be at our discretion and we will inform you in writing of the reason for suspension (other than in the case of a suspension under clause 39.6.1(b)). You may be given an opportunity to remedy the problem.

39.7 Acceptable Use Policy

- 39.7.1 This Acceptable Use Policy forms part of the Agreement between Clover and you relating to the provision by us of VT Services and it is subject to review in our sole discretion from time to time by us. Please read and follow this Acceptable Use Policy carefully.
- 39.7.2 Prohibited Activities For the benefit of all merchants, as a condition of the VT Services, we prohibit the following:
- (a) **Intellectual Property Infringement.** You may not use the VT Services to store, transmit or receive any material that infringes on any Intellectual Property Rights of any person.
 - (b) **Objectionable Material.** You may not use the VT Services to store, post, transmit, or disseminate material or information that is unlawful, harmful, threatening, abusive, harassing, libellous, defamatory, hateful, obscene, indecent, or otherwise objectionable or which encourages or participates in conduct that would constitute a criminal offence, gives rise to a civil liability, or otherwise violates any Applicable Laws.
 - (c) **Fraudulent Activity.** You may not use the VT Services to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as pyramid schemes, Ponzi schemes, or chain letters. You may not use techniques to hide or obscure the source of any e-mail or other communication.
 - (d) **Impersonation.** You may not use the VT Services to impersonate any person, falsely state or misrepresent your affiliation with any person, or create a false identity for the purpose of misleading others. Without limiting the foregoing, you may not use invalid or forged headers, invalid or non-existent domain names or other means of deceptive addressing.
 - (e) **Software Viruses.** You may not use the VT Services to upload files or transmit any material that contains viruses, worms, trojan horses, time bombs, cancelbots, corrupted files, or other code that manifests contaminating or destructive properties.

- (f) **Collecting Information.** You may not use the VT Services to store or collect, or attempt to store or collect, personal information about third parties without their prior knowledge and consent.
- (g) **Use of Your Account by Others.** You may not, through action or inaction, allow others to use the VT Services for illegal or improper activities or for any purpose or in any manner prohibited by this Acceptable Use Policy. You may not permit your System, through action or inaction, to be configured in such a way that gives a third party the capability to use the VT Services in an illegal or improper manner or for any purpose or in any manner prohibited by this Acceptable Use Policy.
- (h) **Reselling.** You may not directly or indirectly reproduce duplicate, copy, sell, provision, resell, rent, lend, pledge, transfer, distribute or exploit any portion of the VT Services without our prior written consent.
- (i) **Security Precautions.** You are solely responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for accuracy of data input and output, and for maintaining a means external to the VT Services for the reconstruction of any lost data.
- (j) **Violations of Acceptable Use Policy.** In the event that you violate this Acceptable Use Policy, we may, without limitation, restrict your access to our System or immediately terminate or suspend your VT Services in accordance with clause 39.6.
- (k) **Monitoring the Service.** We have the right to monitor or restrict any use of the VT Services that we believe violates this Acceptable Use Policy, any part of your Merchant Agreement or Applicable Laws. You are solely responsible for all content that you transmit or receive utilising the VT Services, and are responsible for abuse of your account by others. To protect our merchant customers and our System, we may block and allow traffic types as we see fit at any time.
- (l) **Reporting Violations.** We request that any Person who becomes aware of a violation of this Acceptable Use Policy report the information to us. If available, please provide the IP address used to commit the alleged violation and the date and time of the alleged violation. We may take any appropriate action as we deem fit, including, but not limited to, one or more of the following: issue a warning; suspend the Merchant's Account; terminate the Merchant's Account; bring appropriate legal action to enjoin violations and/or to collect damages, if any, caused by violations.
- (m) **Notices and Procedure for Making Claims of Copyright Infringement.** If you believe that your copyright or trademark has been used by one of our merchants without permission, such that the use may constitute infringement of your Intellectual Property Rights, you must send a notice in accordance with section 25.