



## SERVICE AGREEMENT TERMS AND CONDITIONS

**TERMS OF SERVICE**, including the Service Agreement(s) and any applicable Service Order Attachments, which by this reference are incorporated herein ("**Agreement**"), are a binding agreement between Square Clover, Inc. ("SCI"), a North Carolina corporation with its primary office at 400 Clanton Rd, Suite K, Charlotte, NC 28217, and the legal entity identified in the Service Agreement ("Client").

**1. General Terms and Conditions.** All prospective work, products and services requested by Client shall be subject to approval by SCI, and SCI reserves the right in its good faith discretion to decline to provide service to the Client.

**2. Relationship.** Neither Party shall have the authority to bind the other by contract or otherwise make any representations or guarantees on behalf of the other. Both Parties acknowledge and agree that the relationship arising from this Agreement is one of independent contractor, and does not constitute an agency, joint venture, partnership, employee relationship or franchise.

**3. Term.** The term of this Agreement shall be found on the Service Agreement. Upon expiration of the initial or any renewal term, this Agreement will automatically renew for successive twelve-month terms unless terminated (a) by either party upon sixty (60) days written notice prior to the end of the then current term.

**4. Termination.** SCI, at its option and in addition to any other remedy or relief allowed by law, may terminate this Agreement immediately upon written notice to Client upon the occurrence of any of the following:

- a. Client is convicted of, or pleads no contest to, any felony or other crime that might adversely affect the reputation or goodwill of SCI or its affiliates, as determined by SCI.
- b. Client engages in any fraudulent activities.
- c. Client makes an assignment for the benefit of creditors, or has an Order for Relief under Title 11 of the United States Code entered against Client by the Court of the United States; or a trustee or receiver of a substantial part of Client assets is appointed by any Court.
- d. Client violates any administrative procedures or guidelines established by SCI for all Client services provided under this Agreement.
- e. Client fails to comply with any material term of this Agreement and such breach is not cured as provided for in this Agreement.
- f. Client violates Section 5: Assignment.
- g. Without regard to any other provisions of this Agreement or rights hereunder, the Parties agree that it shall be a material default under this Agreement if Client fails to pay SCI in accordance with the terms of this Agreement. Upon default under this Section, SCI shall be entitled to all rights and remedies under applicable law.

**5. Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the other's express written consent, except that either party may assign this Agreement to the surviving party in a merger of that party into another entity or in an acquisition of all or substantially all its assets. No assignment becomes effective unless and until the assignee agrees in writing to be bound by all the assigning party's obligations in this Agreement. Except to the extent forbidden in Section 4, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

**6. Notices.** Notices required under this Agreement must be submitted in writing to the parties' addresses shown below. The notice is effective on the earlier of 3 days after sending the notice by registered mail return receipt requested, or the actual date of receipt as established by proof of delivery.

SCI: Square Clover, Inc  
400 Clanton Rd, Ste K  
Charlotte, NC 28217  
Attn: Legal Dept.

**7. Early Termination Charge.** If Client terminates this agreement, in whole or in part, prior to the end of the then current term, in addition to any other damages or liability of Client resulting from such termination, Client must pay a lump sum Early Termination charge as follows:

- h. 100% of all remaining months of Agreement; and;
- i. 100% of any invoices or charges that have been paid by SCI on Client's behalf; and;
- j. A pro-rata amount of any waived set-up or installation charges based upon the number of months remaining in the initial term of the Service.

**8. Dispute Resolution.** If a dispute arises under or related to this Agreement, the parties agree to first try to resolve the dispute in good faith, with the help of a mutually agreed-upon mediator in Mecklenburg County, North Carolina. The parties shall share any costs and fees other than attorney fees associated with the mediation equally. If it proves impossible to arrive at a mutually satisfactory solution through mediation (or to agree on a mediator at all), the parties agree to submit the dispute to an arbitrator in Mecklenburg County, North Carolina. The arbitrator shall be selected pursuant to American Arbitration Association rules, and must either be a licensed attorney or judge (active or retired). Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. In the event either party commences any arbitration or court action, upon final resolution of the matters in controversy, the prevailing party in such action shall be entitled to recover its out-of-pocket expenses, court costs and reasonable attorney's fees incurred. Nothing herein shall prevent any party from applying to any state or federal court for injunctive relief.

**9. Billing Disputes.** In the event a Client fails to make full payment of all amounts due by the due date, Client shall also pay a late fee in the amount of the lesser of (i) one and one-half percent per month, or (ii) the maximum lawful monthly rate under applicable state law, of the unpaid balance which amount shall accrue from the due date until paid ("Late Fee"). Upon Client disputing any charges, Client shall: (i) pay all

undisputed charges by the due date; (ii) present by the due date a written statement of amounts disputed in good faith in reasonable detail with supporting documentation; and, (iii) negotiate in good faith to resolve any bona fide dispute within sixty (60) calendar days. Disputed charges resolved in favor of SCI, along with any applicable Late Fee, will be due and payable on the following month's billing cycle. Disputed charges resolved in favor of Client will be credited to Client on the following month's billing cycle and no Late Fees shall apply.

**10. Suspension and Termination of Service.** In the event charges due pursuant to the Client billings are not paid in full, for any reason whatsoever, SCI shall have the right to suspend all or any portion of the Services to such Client until such time as such Client has paid in full all undisputed charges, including any applicable Late Fees, and/or reconnection fees. Following such payment, SCI shall reinstate Services to such Client. SCI shall document monthly charges due by Client in an invoice to Client, which may be electronically delivered to Client. Client shall be fully responsible for payment to SCI for the full amount of invoice including without limitation any fraudulent or unauthorized use by Client, any federal, state, county, local or other governmental taxes, fees or duties now or hereafter imposed on the sale or use of the Services.

**11. Payment Security and Credit.** Client acknowledges and agrees that SCI may reasonably require additional security and/or payment terms under this Agreement prior to the commencement of Services hereunder or during the term hereunder, and Client agrees to comply with such request. Client agrees to provide and/or execute any additional collateral security documents as may be reasonably required by SCI, if there is a material change in circumstances of Client's actual or anticipated usage hereunder or Client's financial condition during any time that Client uses the Service. SCI may establish a credit limit for the procurement of the Services by Client and such credit limit may change from time to time. SCI will not automatically notify Client of any such change but will supply such information to Client upon Client's request.

**12. Rate Adjustments and Material Changes.** SCI may adjust its rates and charges, or impose additional rates or surcharges, to Client to recover amounts SCI is required by governmental, quasi-governmental or other regulatory authorities to collect on their behalf or to pay to others in support of statutory or regulatory programs, plus allocable amounts related to the administrative costs incurred by SCI associated with these charges or programs. SCI may also perform periodic reviews of the Client's accounts and services and reserves the right to adjust Client's rates and charges upon 30 days written notice in the event of significant changes in the underlying costs to SCI for the Services provided to Client. Furthermore, SCI reserves the right to eliminate any Service offerings and/or modify any charges for Service offerings upon written notice to Client.

**13. Governing Law.** This Agreement and all questions as to its interpretation, performance, and enforcement and the rights and remedies of the parties hereunder shall be determined in accordance with the laws of the State of North Carolina without regard to its choice of law principals. If any part of this Agreement is held by any court or administrative agency to be prohibited by any law, regulation or rule applicable to this Agreement, the rights and obligations of the parties shall be construed and enforced to the greatest extent allowed by law, or if such part is totally unenforceable, as if this Agreement did not contain that particular part. The parties mutually agree that any suit arising out of or relating to this Agreement shall be filed in and adjudicated by a court only in Mecklenburg County, North Carolina. For the purposes of construing any term of this Agreement, it will be deemed to be a mutually drafted document and no term shall be construed for or against either party based upon the identity of the drafter of that provision.

**14. LIMITATION OF LIABILITY.** EXCEPT AS PROVIDED OTHERWISE IN THIS AGREEMENT, SCI'S LIABILITY ARISING OUT

OF MISTAKES, ACCIDENTS, OMISSIONS, INTERRUPTIONS, ERRORS, DELAYS OR DEFECTS IN THE ORDERING, PROCESSING, PROVISIONING, INSTALLATION OR TRANSMISSION OF ANY SERVICES SHALL IN NO EVENT EXCEED THE AMOUNT OF THE APPLICABLE CREDITS IN ACCORDANCE WITH ITS CREDIT POLICIES THEN IN EFFECT. IN NO EVENT SHALL SCI BE LIABLE TO CLIENT OR ANY OTHER PERSON, FIRM OR ENTITY IN ANY OTHER RESPECT, FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF FORESEEABLE, ARISING OUT OF ANY MISTAKE, ACCIDENT, ERROR, OMISSION, INTERRUPTION, DELAY OR DEFECT IN THE ORDERING, PROCESSING, PROVISIONING, INSTALLATION OR TRANSMISSION OF ANY SERVICES OR THE OBLIGATIONS OF SCI PURSUANT TO THIS AGREEMENT AND ANY ATTACHMENTS HERETO.

**15. WARRANTY.** SCI MAKES NO WARRANTY WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF THE SERVICES OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY SCI ARE HEREBY EXCLUDED AND DISCLAIMED. FOR THE PURPOSE OF THIS SECTION, THE TERM "SCI" AND "CLIENT" SHALL BE DEEMED TO INCLUDE SCI, CLIENT, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, OFFICERS, DIRECTORS AND AFFILIATES.

**16. Integration & Amendment.** This Agreement and any related amendments, attachments or service orders shall supersede all previous agreements, whether written or oral, and shall constitute the entire agreement between the parties as to the matters contained herein and all transactions between the parties shall be governed in writing and signed by the parties. Any and all prior offers, contracts, agreements, representations and understandings made to or with Client by SCI or any affiliate or predecessors-in-interest with respect to the subject matter under this Agreement, whether oral or written, shall be superseded by this Agreement. Any amendment to this Agreement shall not be valid unless such amendment is made in writing and signed by both parties.

**17. Property & Personal Injury Indemnity.** Each party will indemnify and defend the other party, its directors, officers, employees, agents and their successors from and against all third party claims for damages, losses, or liabilities, including attorneys' fees, arising directly from performance of this Agreement and relating to personal injury, death, or damage to personal property that is alleged to have resulted from the negligent or willful acts or omissions of the indemnifying party or its subcontractors, directors, officers, employees, or agents. Client will further indemnify and defend SCI from and against all third party claims for damages arising from or related to the use or misuse of the Services by Client.

**18. Force Majeure.** Neither party will be responsible for any delay, interruption, or other failure to perform under this Agreement due to acts beyond its control including, without limitation: Acts of God (e.g., natural disasters, lightning); wars, riots, terrorist activities, and civil commotions; inability to obtain equipment from third party suppliers; cable cuts by third-parties, Service Provided activities, and other acts of third-parties; explosions and fires; embargoes, strikes, and labor disputes; and laws, orders, rules, regulations, directives, or actions of any government authority. The Party claiming relief under this Section shall notify the other in writing of the existence of the force majeure event relied on and shall be excused on a day-by-day basis to the

extent of such delay, interruption or interference until the cessation or termination of said force majeure event.

**19. Non-Disclosure and Records Retention.** Both parties agree to maintain at their principal place of business for three (3) years from the date of their preparation, complete and accurate records of their business conducted pursuant to this Agreement. SCI will keep all Client information confidential except to the extent necessary to perform the work authorized by the Client under this Agreement, or as otherwise required by law. SCI shall have the right to conduct periodic audits of any relevant Client data or documentation as is reasonably necessary to confirm compliance with this Agreement. All information which Client shall acquire during the term of this Agreement concerning the business affairs of SCI shall be held by Client in trust to SCI, its successors and assignees, and Client shall have an absolute duty to maintain in confidence such knowledge or information and prevent disclosure to others. Client agrees that all such information concerning the business affairs of SCI constitutes trade secrets of SCI. All such information and material shall remain the sole property of SCI

and Client shall return such property, without keeping copies, within ten (10) days of the termination or expiration of this Agreement for whatever reason. Client further agrees that any violation or threatened violation of any provision of this paragraph shall cause immediate and irreparable harm to SCI and, in such event, an injunction restraining Client from violation may be entered against it in addition to any other remedy available to SCI.

**20. WAIVER.** The terms, covenants, representations and warranties of this Agreement may be waived only by a written instrument executed by the Party waiving compliance. The failure of either Party at any time to require performance of any provision hereof shall, in no manner, affect the right at a later date to enforce the same. No waiver by either Party of any breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such breach or the breach of any other term, covenant, representation or warranty of this Agreement.