

# End User License Agreement

*Viatouch Media Inc. – VICKI Security Halo*

*Clover Apps, including Rotating Media, Ask VICKI Assistant about Clover Products and Pricing , Fraud Prevention, SOS Notifications, Transaction Analytics, and Clover Halobox App (collectively, the “Software”)*

THIS SOFTWARE END USER LICENSE AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR, IF PURCHASED OR OTHERWISE ACQUIRED BY OR FOR AN ENTITY, AN ENTITY) AND VIATOUCH MEDIA, INC. (“VIATOUCH”) READ IT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. IT PROVIDES A LICENSE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY SELECTING THE “I ACCEPT” BUTTON OR UNZIPPING, COPYING THE CONTENTS TO A SERVER OR ADDING CONTENTS TO A NUGET FEED AND USING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN DO NOT INSTALL, COPY OR USE THE SOFTWARE.

## Grant of License

Subject to your continuous compliance with this Agreement and payment of the applicable subscription fees, ViaTouch grants to you a non-exclusive and non-transferable license to use, solely by and through those individuals authorized to use the Software pursuant to the license granted under this Agreement (“Authorized Users”), the Software and corresponding documentation, associated media, printed materials, and online or electronic documentation, and all updates or upgrades of the above that are provided to you (collectively the “Product”) in the manner described below. The license granted hereunder is solely for the benefit of you and a number of Authorized Users identified on the applicable order you placed and ViaTouch accepted for the Software. You may not provide access to the Product to non-licensed persons. The number of users of the Software shall not exceed the number of Authorized Users licensed identified in the applicable order.

## Ownership

- (a) ViaTouch and its suppliers and partners retain all right, title, and interest, including all copyright and intellectual property rights, in and to, the Product, its maintenance releases, upgrades, and improvements, and all copies thereof. All rights not specifically granted in this Agreement, including federal and international copyrights, are reserved by ViaTouch, its suppliers and its partners. The only licenses granted hereunder are those expressly stated in this Agreement, and there are no implied licenses granted hereunder. ViaTouch retains the ownership of each copy of the Product and any subsequent copies of the Product.

- (b) All names, words, phrases, logos, symbols, designs, images, trade dress or a combination of the foregoing, contained in the Product are trademarks or registered trademarks of ViaTouch in the United States and/or other countries. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Product. This Agreement does not authorize you to use ViaTouch's or its licensors' names or any of their respective trademarks.

## **Terms and Conditions of Use**

Except as otherwise provided herein, in no instance may you:

- (a) transfer, distribute, rent, sub-license, or lease the Product, or use the Product in any way to the detriment of ViaTouch or in contravention of this Agreement;
- (b) exceed the number of Authorized Users permitted for the Software;
- (c) alter, modify, merge, translate or adapt the Product, or portions thereof including, but not limited to, reverse engineering, translation, decompiling, disassembling, or creating derivative works;
- (d) make copies of the Product, or portions thereof;
- (e) remove any proprietary or copyright notices or labels on the Product; or
- (f) export or use the Product in violation of any laws, rules or regulations, including, without limitation, United States export laws and regulations.

## **Software Description, Service and Service Term**

The Software provides business insights for managers and business owners: The Software provides merchants with a way to incorporate NLP, Security and Analytics complimentary to Clover Units.

The features and functionality of the Software may be modified from time to time by ViaTouch in its discretion.

The Software is offered both as a free and on a pre-paid subscription basis. For the pre-paid subscription, you shall submit each request or purchase order for each subscription to ViaTouch's designed website or to ViaTouch directly (each an "Order"). Your initial subscription to use the Product will begin on the day the license key is sent by ViaTouch. Provided that you comply with the obligations under this Agreement and makes full payment of the fees, ViaTouch will either extend the then-current license key or issue another license key for each subsequent 1-month period after the end of the previous 1-month period.

Payment to ViaTouch for each Order shall be made in U.S. dollars. All fees are payable in advance in the manner set forth in the Order and are non-refundable. Any renewal of the Software subscription shall not be effective until the fees for such renewal have been paid in full.

## **Termination for Cause**

This Agreement may be terminated by you at any time by uninstalling the Software. Your termination of this Agreement shall be effective as of the end of the current billing period in which you uninstall the Software.

ViaTouch may terminate this Agreement and/or suspend the provision of the services immediately for: illegal, fraudulent, excessive or improper use of the Product; if any portion of an invoice not reasonably disputed in good faith as herein provided remains unpaid when due; or for breach, not subject to cure.

Your right to use the Product will terminate immediately if you use or attempt to use the Product in a way that is contrary to this Agreement, the determination of which will be in ViaTouch's sole discretion.

Upon termination or expiration of this Agreement and the Software Subscription:

- i. You will be prevented from accessing and using any or all functionality of the Product;
- ii. You will not have access or the ability to use or access any updates, improvements, new features, or any other changes to the Product;
- iii. All technical support shall cease; and
- iv. You may lose access to all data stored in or via the Product.

Upon termination or expiration of this Agreement and the Software subscription, you must immediately cease use of the Product, uninstall it from the appliance, computer or device on which it is installed and destroy all copies of the Product, all of its component parts, documentation, and disks, and confirm to ViaTouch's reasonable satisfaction that you have taken the foregoing actions.

## **Confidentiality, Registration and Passwords.**

You agree to maintain the confidentiality of any and all of your login credentials. You are responsible for all actions taken with your login credentials and stored information. If you permit another person to have access to your login credentials, we will treat this as if you have authorized such use and you will be liable for all actions taken by those persons. You are wholly responsible for the use of your login credentials as provided in this Agreement.

## **Service Limitations**

1. ViaTouch may alter which devices and browsers are approved as compatible with the Software in its discretion from time-to-time.
2. Viatouch may perform maintenance on the Software from time to time which may result in service interruptions, delays, or errors. ViaTouch will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Software and obtain information needed to identify and fix any errors.

## **Limitations of Liability**

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL VIATOUCH OR ITS SUPPLIERS, PARTNERS, LICENSORS, OR RESELLERS BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUE, DATA OR INFORMATION LOSS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT OR DOCUMENTATION, INCLUDING, INCURRED BY YOU OR ANY THIRD PARTY, IN THE PERFORMANCE OF THIS AGREEMENT, OR RELATED TO THE PRODUCTS, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT THAT DAMAGES FOR BREACH OF CONFIDENTIALITY OR PATENT, COPYRIGHT OR TRADE SECRET INFRINGEMENT ARE DEEMED TO BE CONSEQUENTIAL IN NATURE. NOTWITHSTANDING ANY DAMAGES YOU MIGHT INCUR FOR ANY REASON WHATSOEVER, VIATOUCH AND ANY OF ITS SUPPLIERS TO YOU SHALL NOT BE LIABLE FOR ANY REASON OR UPON ANY CAUSE OF ACTION OR CLAIM WHATSOEVER. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, CLAIMS FOR FAILURE TO EXERCISE DUE CARE IN THE PERFORMANCE OF SERVICES HEREUNDER AND OTHER TORTS. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES, EXCLUSIONS AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY THE UNIFORM COMMERCIAL CODE AND/OR OTHER APPLICABLE LAWS. THE PRICES FOR PRODUCTS HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT. THIS EXCLUSION ALSO INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST YOU. ANY ACTION BY A PARTY MUST BE BROUGHT WITHIN THE EARLIER OF TWO (2) YEARS AFTER SUCH PARTY OBTAINS KNOWLEDGE OF THE FACTS LEADING TO SUCH ACTION AND THE APPLICABLE STATUTE OF LIMITATIONS.

## **Disclaimer Of Warranties**

- (a) THE PRODUCT, INCLUDING THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO YOU “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, VIATOUCH, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS, PARTNERS, AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE PRODUCT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON- INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, VIATOUCH PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.
- (b) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE OR DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THEN IN SUCH AN EVENT ALL SUCH WARRANTIES ARE DEEMED TO BE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF YOUR INSTALLATION OF THE SOFTWARE.

ViaTouch shall have no liability or responsibility if the Software has been altered in any way, or for any failure that arises out of use of the Software with any hardware, software, platform, operating system or any combination of the foregoing, other than a hardware configuration, platform or operating system recommended in accordance with the Software’s documentation.

## **Basis of the Bargain**

The Warranty Disclaimer and Limitation of Liability set forth herein are fundamental elements of the basis of the agreement between ViaTouch and you. ViaTouch would not be able to provide the Software on an economic basis without such limitations. Such Warranty Disclaimer and Limitation of Liability inure to the benefit of ViaTouch’s licensors, successors and assigns.

## **General Provisions**

- (a) Reservation of Rights. ViaTouch retains all rights not expressly granted herein. Nothing in this Agreement constitutes a waiver of ViaTouch’s rights under United States copyright law.

- (b) Severability. If any part of this Agreement is found to be invalid or unenforceable by any law, rule, order or regulation of any government, or by the final determination of any state or federal court, that part of this Agreement shall be amended to achieve as nearly as possible the same economic effect as the original provision and the remaining provisions of this Agreement shall remain in full force and effect.
- (c) Entire Agreement. No provisions in your purchase orders, license agreements or in any other business forms employed by you shall add to or supersede the terms and conditions of this Agreement, which shall exclusively govern the relationship of the parties. This Agreement, together with the schedules attached hereto, constitute and contain the complete agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior correspondence, agreements, representations, statements, negotiations and undertakings between the parties relating to the subject matter hereof. Amendments to this Agreement must be in writing, specifying such amendment, signed by duly authorized representatives of both parties.
- (d) Governing Law. The laws of the state of New York shall govern the construction and enforceability of this Agreement without regard to its conflict of laws principles. The parties agree that any action arising under or relating to this Agreement or the Products shall lie within the exclusive jurisdiction of any State or Federal court located in the County of Suffolk, State of New York. Licensee consents to the exercise of jurisdiction by any State or Federal court located in the County of Suffolk, State of New York and agrees that process may be served on Licensee in any such action by mailing it to Licensee at the address set forth in the applicable order. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. If either party is compelled to seek judicial enforcement of its rights under this Agreement, the prevailing party in any such action shall be entitled to recover its costs incurred in such action, including reasonable attorneys' fees.
- (d) No Waiver. No waiver by either party of any default shall operate as a waiver of any other default or of a similar default on a future occasion. No waiver of any term or condition shall be effective unless in writing and signed by the party against whom enforcement of the waiver is sought. Neither party shall be responsible for any failure to perform any obligation hereunder (except a failure to pay) due to causes beyond its reasonable control.
- (e) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the order form or to such other address as may be designated by a party from time to time in accordance with this Section and the applicable order.
- (f) Assignment. You shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without ViaTouch's prior written

consent, which consent may be given or withheld in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving you (regardless of whether you are a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which ViaTouch's prior written consent is required. No delegation or other transfer will relieve you of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 19(f) is void. ViaTouch may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without your consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

- (g) Successors and Assigns. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (h) Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

## **Additional Clover Terms**

Reasonable advance notice will be provided to current subscribers of an app before Viatouch ceases making services available through app, takes down an app, or removes it from current distribution due to:

- (a) an allegation or actual infringement of any intellectual property right or right of publicity or privacy of any third party;
- (b) an allegation or actual defamation;
- (c) an allegation or determination that an app does not comply with applicable law;
- (d) ViaTouch ceasing to do business; or
- (e) ViaTouch filing a petition in bankruptcy, dissolving or otherwise failing or unable to pay debts as they become due.

An app may be removed at any time from the "App Market" if it is determined that the app:

- (a) may infringe or otherwise violate the intellectual property rights or any other rights of any third party;
- (b) violates any applicable law, regulation, card association rule, or is subject to an injunction;

- (c) violates the Clover App Market Developer Program Policies, which can be viewed by visiting the following links: [https://getvicki.com/static/media/privacy\\_policy.150dd4ed.pdf](https://getvicki.com/static/media/privacy_policy.150dd4ed.pdf) and [https://getvicki.com/static/media/licensing\\_and\\_agreement.150dd4ed.pdf](https://getvicki.com/static/media/licensing_and_agreement.150dd4ed.pdf)
- (d) is being distributed in a manner that is in breach of the Clover Developer Terms;
- (e) may create liability for Clover; or
- (f) may contain a virus, malware or spyware, or may have an adverse impact on Clover's systems.

A subscriber may cancel their subscription at any time before the end of the applicable billing cycle, and upon cancellation, the subscriber will:

- (a) Not receive a refund for the billing period during which the subscriber cancels its subscription; and
- (b) be able to access its subscription and receive issues and updates of the relevant subscription until the subscription termination date.

If you desire a refund of any subscription fees, you must request such refund directly from ViaTouch. Clover and its affiliates do not have any responsibility or liability to a subscriber of an app in any way with respect to the subscriber's use of an app.

## Other

Merchant specific data pulled from Clover API is displayed in user interface in tabular form or visualized as graph. And that data can also be accessible from user interface in the form of exported via CSV data files, image files graphs via the Viatouch Media Client Dashboard, which grants merchants' access to the security settings, halo box details, transaction analytics, media and VICKI Assistant setup. For the avoidance of doubt, the Clover API is Clover's Cloud REST Services that allow Viatouch to access merchant information including merchant product information, and consumer transaction details including what they purchased, and what kind of payment type a consumer used (eg. EMV, NFC, MSR).

All responsibility for extracted data from user interface lies on the user who extracted the data. It becomes such person's responsibility on how they manage exported data. The same applies to automatic emailing reports.

## Contact Us

If you have any questions or concerns regarding these Terms or our Apps, contact us at [support@viatouchmedia.com](mailto:support@viatouchmedia.com) or 1-866-942-0804.

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