

Terms and Conditions of the Service Agreement

This is a legal contract. By signing this form, I warrant, represent, and agree that: (1) I have received, carefully read, agree to and understand the terms and conditions of this Service Agreement, including those provided on the first page of this document; (2) I am at least 18 years old and I am authorized to sign for and bind any account named above; (3) all statements made above are true and correct, and have been made by me in order to induce CHARGE Anywhere LLC ("CHARGE Anywhere") to grant credit to me, or my business, with knowledge that CHARGE Anywhere will rely thereon; (4) I expressly authorize CHARGE Anywhere to investigate, re-examine, and report business payment and credit history at any time and exchange such information with others in connection with this application; and (5) this agreement is accepted and agreed to.

Customer or CHARGE Anywhere may terminate this Service Agreement upon not less than thirty (30) days prior written notice to the other party. For ACH Debit Payers: Customer authorizes CHARGE Anywhere LLC to present Automated Clearing House credits/debits to and from the account listed, for the purposes set forth in this Service Agreement. For Credit, Debit, Prepaid Card Payers: Customer agrees to pay according to the card issuer agreement. This authorization is valid until revoked in writing.

For the purposes of this Service Agreement, (a) "CHARGE Anywhere" shall refer to CHARGE Anywhere LLC, (b) "Customer" shall refer to the entity listed and entitled "Company Name" on the first page of this Service Agreement, (c) "Service(s)" shall refer to CHARGE Anywhere's Services and certain other services offered by CHARGE Anywhere in connection therewith that are listed on the first page of this Service Agreement, (d) "Hardware" shall refer to the equipment purchased from CHARGE Anywhere that is authorized by CHARGE Anywhere for use in connection with the Services and (e) "Software" shall refer to any software imbedded in the Hardware and the web-based software that is made available by CHARGE Anywhere for use in connection with the Services.

1. SERVICES

(i) **Use of the Services.** If Customer's use of Services is in violation of the following requirements, then CHARGE Anywhere shall have the right, without notice to Customer, to terminate this Service Agreement and cease providing the Services. Services must be used in compliance with the Federal Communications Commission and other federal, state and local laws, rules and regulations.

(ii) Unauthorized or otherwise illegal credit card charges may not be transmitted via services.

(iii) Services may not be resold or otherwise provided to third parties.

(b) **Modifications to the Services.** CHARGE Anywhere reserves the right in its discretion and without notice to Customer, from time to time, to make changes in the Services, Hardware, Software, any of its other products or its business operations. CHARGE Anywhere shall have the right, in its discretion, to terminate Customer's access to, and use of Services, as and when necessary, to permit other customers to use the radio frequency, or frequencies, on which its services are being provided.

(c) **Availability of Service.** Customer acknowledges that Services are subject to transmission limitations caused by

conditions such as Customer's operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, Services may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of CHARGE Anywhere's facilities and Services.

2. HARDWARE.

The Hardware purchased by You directly from CHARGE Anywhere includes a non-transferrable warranty on behalf of CHARGE Anywhere's third-party suppliers as designated in the applicable Sales Order that Hardware will materially conform to its documentation and that Hardware will be free from material defects in workmanship upon the date of purchase and continue for 30 days ("Equipment Warranty Period").

POS System Bundle Orders include up to 1 hour of on-site installation with a technician to set up and install your POS system provided by Charge Anywhere, if extra time is required to complete the installation it will be charged to You at a rate of \$250 per hour, with a minimum of 1 hour. The technician will not make electrical or internet installation, nor provide cabling/wiring as these services must be provided by You and available at the time of the on-site installation.

(a) **Time Limit:** You must contact Customer Support within 30 days of receiving your product. No returns or exchanges are allowed after this period.

(b) **Authorization:** You must obtain a Return Material Authorization number (RMA #) before shipping items back. Unauthorized returns will be rejected.

(c) **Exclusions:** Returns and exchanges are strictly prohibited for discontinued, on-sale, or made-to-order (custom-decorated) items unless they arrive damaged or defective.

(d) Condition: Items must be complete and include all original components, such as cables or adapters.

(e) Restocking: Authorized returns are subject to a 20% restocking charge unless the items arrive damaged or defective.

Returns and RMA Procedures: The procedures and instructions can be found at:

<https://chargeanywhere.com/terms-and-conditions/>.

3. PAYMENT

(a) Charges. Customer agrees to pay CHARGE Anywhere in full and when due, the amounts set forth on the front side of or attachments to this Service Agreement.

(b) Taxes. All applicable excise, value added, utility, sales or use taxes and any applicable surcharges, assessments or government fees shall be billed to Customer and shall be paid by Customer, or, in lieu thereof, Customer will provide CHARGE Anywhere with a tax exemption certificate acceptable to the applicable taxing authorities.

(c) Payments. Except amounts due and payable upon execution of this Service Agreement, charges shall be invoiced monthly. Payment is due upon receipt of invoice. When a billing cycle covers less than or more than a full month, CHARGE Anywhere may make reasonable adjustments and pro-rata. If Customer signed a credit card billing authorization and provided CHARGE Anywhere with a credit card number, then Customer expressly authorizes CHARGE Anywhere to charge any or all amounts owed to it by Customer to that credit card number and to demand immediate payment from the credit card's issuer. To the extent permitted by law, Customer must pay a fee (presently \$25.00, but subject to change by CHARGE Anywhere) for any of Customer's checks returned for any reason. In the event Customer's device is lost or stolen, Customer shall nonetheless be liable for all charges attributable to such device until such time as CHARGE Anywhere is notified of the loss or theft. This Service Agreement shall not terminate due to any such notice.

(d) Late Payments, Billing Dispute. If CHARGE Anywhere does not receive Customer's payment on or before the due date, to the extent allowable by law, Customer will pay to CHARGE Anywhere a late payment fee equal to the greater of (i) \$35 or (ii) 1.5% on all due and unpaid amounts to be paid to CHARGE Anywhere. Acceptance of late or partial payments and/or late payment fees shall not waive any of CHARGE Anywhere's rights to collect the full amount due under this Service Agreement. Customer waives any objection it may have with respect to any invoice, charge or fee if Customer fails to provide CHARGE Anywhere with written notice of such objection within fifteen (15) days of receipt of invoice.

4. NONEXCLUSIVE

CHARGE Anywhere is free at any time to market and sell Services, Hardware and Software and any other services, hardware or software to third parties and upon such prices, terms and conditions as CHARGE Anywhere, in its sole discretion deems appropriate. Customer is free to obtain services similar to and/or competitive with the Services, hardware similar to and/or competitive with the Hardware and software similar to and/or competitive with the Software, from third parties upon such prices, terms and conditions as Customer in its sole discretion deems appropriate.

5. THIRD PARTY EQUIPMENT AND SERVICES

Except as may otherwise be specifically agreed to in writing between CHARGE Anywhere and Customer, Customer shall be solely responsible for the selection, implementation, and performance of any and all third party equipment, software and services used by Customer in connection with the Services, Hardware or Software. CHARGE Anywhere MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD PARTY EQUIPMENT, SOFTWARE AND SERVICES AND WITHOUT LIMITING THE FOREGOING, DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. CHARGE Anywhere SHALL HAVE NO LIABILITY FOR THE FAILURE OR UNAVAILABILITY OF ANY SUCH THIRD PARTY EQUIPMENT, SOFTWARE OR SERVICES. CUSTOMER SHOULD DIRECTLY CONTACT THE THIRD PARTY CONCERNING ALL ISSUES THAT ARISE OUT OF THE USE OF SUCH THIRD PARTY EQUIPMENT, SOFTWARE AND SERVICES.

6. TERMINATION

(a) Customer or CHARGE Anywhere may terminate this Service Agreement upon not less than thirty (30) days prior written notice to CHARGE Anywhere with or without cause; provided that CHARGE Anywhere's rights to terminate the license to, and Customer's use of, the Software in accordance with the End User License Agreement ("EULA") shall not be limited by this notice requirement.

(b) In the event that CHARGE Anywhere is prevented from providing any portion or all of the Services pursuant to this Service Agreement, by any law, regulation, requirement or ruling, or if a notice from a government agency or department indicates CHARGE Anywhere is not permitted to provide any portion or all of the Services, CHARGE Anywhere may immediately cease providing the Services without any liability whatsoever to Customer. Nothing herein shall be

construed to require CHARGE Anywhere, and CHARGE Anywhere is not required to seek a waiver of any law, rule, regulation, or restriction, or seek judicial review or appeal of any court order.

(c) If Customer commits or permits an Event of Default, then CHARGE Anywhere may, in addition to all other rights and remedies provided by this Service Agreement or by law or equity, terminate this Service Agreement. "Events of Default" shall include, but shall not be limited to, (i) failure to perform a material term or condition of this Service Agreement unless such failure is corrected within fifteen (15) days of notice from CHARGE Anywhere advising Customer of the failure, (ii) Customer's failure to pay any sums due and payable as and when required and such failure continuing for a period of ten (10) days after notice from CHARGE Anywhere advising Customer of the failure to pay, (iii) Customer's insolvency or failure to pay debts as they come due and (iv) Customer's becoming subject to any proceeding under the Bankruptcy Act or similar laws.

(d) Notwithstanding any termination of this Service Agreement, Customer shall be liable and shall immediately pay to CHARGE Anywhere all charges due, or which would have become due under this Service Agreement.

7. FORCE MAJEURE

CHARGE Anywhere shall not be liable to Customer for any failure, termination or interruption of the Services or any delay or failure in performance hereunder due to fires, strikes, civil disturbances, threatened strikes, stoppage of work, embargoes, requirements imposed by governmental or judicial regulations, rules or orders, civil or military authorities, acts of God (including, by way of example, weather conditions), omissions of common carriers, the public enemy, acts of terrorism or other causes which are beyond the control of the party unable to perform.

8. CUSTOMER INDEMNITY/LIABILITY

To the extent permitted by the Constitution and laws of the State of New Jersey, Customer shall defend, indemnify and hold harmless, CHARGE Anywhere, its parents, successors, affiliates and agents from any claims, damages, losses, or expenses incurred by CHARGE Anywhere in connection with all claims, suits, judgments, and causes of action (i) for infringement of patents or other proprietary rights arising from combining with or using any device, system or service in connection with Hardware or Services or (ii) for libel, slander, defamation or infringement or violation of copyright or other proprietary right with respect to material transmitted by Customer via Services.

9. DISCLAIMER OF WARRANTY

OTHER THAN ANY WRITTEN WARRANTY PROVIDED

SEPARATELY TO CUSTOMER WITH THE HARDWARE, IF ANY, CHARGE Anywhere MAKES, AND CUSTOMER RECEIVES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF NON-INFRINGEMENT, WITH RESPECT TO THE SERVICES, SOFTWARE OR HARDWARE. CHARGE Anywhere SHALL HAVE NO LIABILITY TO CUSTOMER FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR MISAPPROPRIATION OF TRADE SECRETS WITH RESPECT TO THE SOFTWARE OR HARDWARE. CUSTOMER'S SOLE RECOURSE IN THE EVENT OF ANY CLAIM OF PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR MISAPPROPRIATION OF TRADE SECRETS WITH RESPECT TO SOFTWARE OR HARDWARE SHALL BE SOLELY AGAINST THE MANUFACTURER OF SUCH SOFTWARE OR HARDWARE.

10. LIMITATION OF LIABILITY

(a) **Hardware, Services and Software.** Customer's sole remedies for loss or damage caused by partial or total nonperformance of any Hardware or Software, or for delay or nonperformance of any Services under this Service Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, shall be Customer's direct damages, if any, and shall not in any event exceed, in the aggregate for all claims under this Service Agreement and the EULA, the amount paid by Customer to CHARGE Anywhere under this Service Agreement. CHARGE Anywhere SHALL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER OR ANY THIRD PARTY CLAIMING BY OR THROUGH CUSTOMER FOR THE ACCURACY, TIMELINESS OR CONTINUED AVAILABILITY OF THE SERVICES.

(b) **Disclaimer.** AS A MATERIAL PART OF THE CONSIDERATION PAID BY CUSTOMER FOR THE SERVICES, SOFTWARE AND HARDWARE, CUSTOMER AGREES THAT CHARGE Anywhere SHALL IN NO EVENT BE LIABLE FOR AND CUSTOMER HEREBY WAIVES ITS RIGHT TO CLAIM ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, BUSINESS OR REVENUES, LOSS OF THE USE OF SERVICES, SOFTWARE OR HARDWARE, OR ANY ASSOCIATED PRODUCTS, LOSS OF DATA, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT SERVICES, DOWNTIME COSTS

OR CLAIMS OF CUSTOMER OR CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES) DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS SERVICE

AGREEMENT, THE SERVICES OR THE HARDWARE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN.

11. NO THIRD PARTY BENEFICIARIES

Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the parties hereto and not for any other person.

12. WAIVERS OF DEFAULT

Waiver by any party of any default by another party shall not be deemed a continuing waiver of such default or a waiver of any other default.

13. GOVERNING LAW

This Service Agreement shall be construed in accordance with the laws of the State of New Jersey applicable to agreements executed and wholly performed within that State. Customer hereby consents to the personal jurisdiction of the federal courts of the United States or the courts of the State of New Jersey, in each case located in Newark and Essex County. Customer agrees that in any action brought by CHARGE Anywhere in either such Court, Customer shall not challenge such action for lack of in personam jurisdiction or venue.

14. ASSIGNMENT AND DELEGATION

CHARGE Anywhere may assign this Service Agreement and any of its rights and obligations hereunder without notice to or consent of Customer. Customer shall not assign this Service Agreement or any of its rights or obligations hereunder, except that Customer may assign this Service Agreement to an acquirer of Customer's business in connection with a merger or the sale of all or substantially all of Customer's assets to such acquirer. CHARGE Anywhere may perform all of the Services to be performed under this Service Agreement directly or may have some or all of the Services performed by its subsidiaries, affiliates or

subcontractors.

15. AMENDMENTS

Any modification(s) to this Service Agreement to be effective must be in writing in the form of an amendment to this Service Agreement and signed by both parties.

16. ENTIRE AGREEMENT

This Service Agreement contains the entire agreement between CHARGE Anywhere and Customer and there are merged hereinto all prior representations, promises, and conditions in connection with the subject matter hereof. Any representations, promises, or conditions not incorporated herein shall not be binding upon either party and this Service Agreement supersedes and is in lieu of all existing agreements or arrangements between the parties with respect to the subject matter hereof.

17. ORDER OF PRECEDENCE

Customer's use of the Software is also governed by the CHARGE Anywhere End User License Agreement (the "EULA"). In the event of any conflict or inconsistency between this Service Agreement and the EULA, this Service Agreement shall control with respect to commercial terms (including payment, pricing, term, termination, limitation of liability, assignment, governing law and venue), and the EULA shall control with respect to the terms governing the licensing and permitted use of the Software. The integration clause in Section 16 (Entire Agreement) is subject to this Section and shall not be construed to supersede the EULA with respect to the licensing and permitted use of the Software.

18. LIMITATION OF ACTIONS

Any cause of action or claim Customer may have arising out of or relating to this Service Agreement must be commenced within one (1) year after the cause of action accrues; otherwise, such cause of action or claim is permanently barred. This Section is intended to be consistent with, and shall be read together with, the corresponding limitation of actions provision in the EULA.