

## Terms of Service (Software Service Application and Agreement)

These **Terms of Service (the "Terms") to the Software Service Application and Agreement** (altogether, the "Agreement") that you are entering into with the company as defined below ("Company") with offices at 7320 E Butherus Drive, Scottsdale, AZ 85260, is a legal document that details your rights and obligations. By accessing or otherwise interacting with our servers, Services, or Company Websites (as defined below) (together known as "Company Products"), you agree to be bound by the Terms of this Agreement (last updated February 1, 2020). If you are accessing or using Company Websites and Services (as defined below) on behalf of a business, that business agrees to the Agreement. The Company websites and related Services are offered to you conditioned upon your acceptance without modification of this Agreement. From time to time, it may be necessary for Company to update or revise certain provisions of this Agreement. By entering into this Agreement, you agree that Company may change the terms of this Agreement in its sole discretion without specific notice to you. You are solely responsible for periodically checking for changes and are bound by them if you continue to use the Company Products. If you don't agree to the changes proposed by Company, or to any terms in this Agreement, your only remedy is to cancel your use of the services offered under this Agreement. *By clicking on the "Login" button on the account login page, or, if in hard copy, by signing below, you agree to this Agreement and it becomes a legally binding contract.*

### 1. Description of Service

Company operates its Website and associated web pages, which, for purposes of this Agreement, will be referred to as the "Company Website(s)". Company offers you access to the Company Websites and other services, which provides you access to a collection of resources, including, but not limited to, iPad based point-of-sale system and related goods and services, software programs and downloadable services (the "Service"). Company does not provide any equipment as part of the Service. Company offers you access to the Service in exchange for your payment of the fees, as applicable, and your agreement to accept and comply with the terms, conditions, policies and notices stated here and as may be modified by Company from time-to-time in its sole discretion without notice to you. Notwithstanding the foregoing, Company reserves the right to reject any registration for any reason. Unless explicitly stated otherwise, any new features or products that change, augment or enhance the current Service shall be subject to this Agreement.

### 2. General Use

You promise that you will not use the Company Website or the Service in whole or in part, for any purpose that is unlawful or prohibited by this Agreement. You agree that you will not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, frame in another web page, use on any other Website, transfer, or sell any information, software, lists of users, databases or other lists, products or services provided through or obtained from the Company Website. This means, among other activities, that you agree not to engage in the practices of screen scraping, database scraping, or any other activity with the purpose of obtaining lists of users or other information. You agree that you will not use the Service in any manner that could damage, disable, overburden, or impair the Company Website or Service or interfere with any other party's use and enjoyment of the Company Website or Service. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Company Website. Except with the written permission of Company, you agree that you will not access or attempt to access password protected, secure or non-public areas of the Company Website or Service. Except as expressly provided to the contrary in this Agreement, you shall not, and shall not knowingly cause or permit any non-party, to use or reproduce the Service. You shall not, and shall not knowingly cause or permit any non-party, to disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work based upon, distribute, or time share the Service, or otherwise apply any procedure or process to the Service in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Service or any algorithm, process, procedure or other information contained in Service. Except as expressly authorized herein, you may not rent, lease, assign, sublicense, transfer, modify, alter, or time-share the Service. You agree to comply at all times with the Payment Card Industry ("PCI") Data Security Standard ("DSS") of Visa and MasterCard. You will comply with the rules and regulations of Visa, MasterCard, Discover, American Express and all other such associations and all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of your dealings with respect to the Service. Moreover, by using this Company Website and/or Services, you explicitly acknowledge your sole responsibility to remain compliant with any and all laws and regulations regarding the utilization of surcharges and/or discounts. For all issues related to merchant services and chargebacks, please contact your merchant service provider.

### 3. Charges and Billing

You will be billed directly via the Automated Clearing House ("ACH"), and you authorize Company to charge your bank account (or credit card) for all fees incurred by you in connection with your Company account and the Service you have chosen, and per the ACH Authorization Form that you have signed. In most cases, you will be charged on your designated credit card or checking account every month in a recurring format, but some charges may accumulate on your account before they are charged to your card. It is your responsibility to notify the Company immediately if your bank account information changes and to submit an updated ACH Authorization Form to the Company, or your Services may be disconnected or interrupted. All fees shall be paid in U.S. dollars. Company reserves the right to change its fees or billing methods at any time, provided, however, that such modifications shall not take effect earlier than thirty (30) days Company provides written notice via post on its Website or other reasonable notification method. Company also has the right to collect applicable taxes and impose premium surcharges for some areas of the service and these surcharges may apply immediately after you register for the Service. You hereby agree to pay your account balance on time. Amounts not paid by you may be assessed an additional 1.5% (or the highest amount allowed by law, whichever is lower) per month if your payment is more than thirty (30) days past due. That amount is also due immediately. You are responsible and liable for any fees, including attorney and collection fees, that Company may incur in its efforts to collect any remaining balances from you. You also agree that you will be billed for and will pay any outstanding balances if you cancel any Service. You should let Company know about any billing problems or discrepancies within thirty (30) days after they first appear on your account statement. If you fail to notify Company within thirty (30) days, you agree that you waive your right to dispute such problems or discrepancies.

### 4. Registration

In order for you to participate in the Service, Company will require that you provide specific information about yourself and/or your business. If you choose to participate, you agree to provide true, accurate and complete information and to refrain from impersonating or falsely representing your affiliation with any person or entity (such information being "User Data"). User Data and certain other information about you and/or your business are subject to our Privacy Policy. You agree and acknowledge that User Data from the registration process is used to send you information about Company and the Service, including, but not limited to, the use of your email address for newsletters and other necessary company communication. For more information, Company urges you to review the Company Privacy Policy that is also part of this Agreement, and incorporated by reference hereto.

## 5. Third Party Content

The Company Website contains content and information from third party providers and/or links to their Websites ("Third Party Content"). Such content is not under the control of Company and Company is not responsible for such content, including, without limitation, any link contained in such content, or any changes or updates to such content. Company is providing such Third Party Content to you only as a convenience, and the inclusion of such content does not imply endorsement by Company of such content or the affiliate. You may be subject to additional and/or different terms, conditions, and privacy policies when you use third party services, content, software, or sites. Company does reserve the right to remove content that, in Company's judgment, does not meet its standards, but Company is not responsible for any failure or delay in removing such material. Company is not and will not be responsible for (i) the terms and conditions of any transaction between you and any third party, (ii) any insufficiency of or problems with any such third party's background, insurance, credit or licensing, or (iii) the quality of services performed by any such third party or any other legal liability arising out of or related to the performance of such services. In the event that you have a dispute with any such third party, you release Company (and its affiliates, suppliers, agents and employees) from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

## 6. DISCLAIMER OF WARRANTIES

**(A) YOU EXPRESSLY UNDERSTAND AND AGREE THAT:** COMPANY SHALL NOT BE LIABLE TO YOU OR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICE, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; INACCURATE DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS), EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL COMPANY'S TOTAL LIABILITY TO YOU OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNTS PAID BY YOU UNDER THIS AGREEMENT TO A MAXIMUM OF ONE THOUSAND DOLLARS (\$1,000.00) REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE.

(B) Company will use its commercially reasonable efforts to provide and maintain the Service in an uninterrupted and error-free fashion consistent with its practices in effect as of the date of this Agreement. However, the parties acknowledge that the Service is a computer network based services that may be subject to outages, delay occurrences and providing you with inaccurate data. In such an event, Company shall use its commercially reasonable efforts to diligently and promptly remedy any and all material interruptions. Company will not be liable in any manner for any interruptions, outages, inaccurate data or other delay occurrences relating to the Service. You understand that you are solely and ultimately responsible for the accuracy and consistency of the information generated by the reporting features of the Service. Company is in no way liable for your failure to monitor the information generated by the reporting features of the Service. Company does not make any assurances to you or any third party that the information generated by the reporting features of the Service is in fact an accurate reflection of your business.

## 7. Company Software Licenses

Company provides you with a non-exclusive, non-transferable, limited license to use Company's software, which you agree to use in accordance with this Agreement. You may not sub-license, or charge others to use or access, our software without first obtaining written permission from us. All software is owned by Company and/or its suppliers and is protected to the maximum extent permitted by copyright laws and international treaty provisions. Any reproduction, modification or redistribution of the software is expressly prohibited, and may result in severe civil and criminal penalties. Company's software, its structure, sequence and organization and source code are considered trade secrets of Company and its suppliers and are protected by trade secret laws. WITHOUT LIMITED THE FOREGOING, COPYING OR REPRODUCING THE SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED. YOU MAY NOT DECOMPILE OR DISASSEMBLE, REVERSE ENGINEER OR OTHERWISE ATTEMPT TO DISCOVER ANY SOURCE CODE CONTAINED IN ANY SOFTWARE PROVIDED HEREUNDER.

## 8. Indemnification

You agree to indemnify, defend, and hold harmless Company, its employees, members, directors, managers, officers or agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by you or any employee, agent or you of you to comply with the terms of this Agreement; (ii) any warranty or representation made by you being false or misleading; (iii) any representation or warranty made by you or any employee or agent related to you to any third person other than as specifically authorized by this Agreement, (iv) negligence of you or your subcontractors, agents or employees, or (v) any alleged or actual violations by you or your subcontractors, employees or agents of any card association rules, governmental laws, regulations or rules.

## 9. Copyright and Trademark Notices

All materials on the Company Website and Service (as well as the organization and layout of the Company Website) are owned and copyrighted or licensed by Company, its affiliates or its suppliers. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials at the Company Website is permitted without the written permission of Company. Any rights not expressly granted herein are reserved. Without Company's prior permission, you agree not to display or use in any manner, any of Company trademarks, whether registered or not.

## 10. Intellectual Property

"Intellectual Property" means all of the following owned by a party: (i) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names. The rights owned by a party in its Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, Company grants no right or license to you by implication, estoppel or otherwise to any Intellectual Property Rights of Company. Each party shall retain all ownership rights, title, and interest in and to its own products and services and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein. Company (and not you) shall have the sole right, but not the obligation, to pursue copyright and patent protection, in its sole discretion, for any Intellectual Property Rights incorporated therein. You will cooperate with Company in pursuing such protection, including without limitation executing and delivering to Company such instruments as may be required to register or perfect Company's interests in any

Intellectual Property Rights and any assignments thereof. You shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from Company in connection with this Agreement.

#### **11. Modification**

Company reserves the right at anytime and from time to time to modify, discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that Company shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

#### **12. Termination and Cancellation**

You acknowledge that the Agreement has a term, and that early termination of Services shall subject you to an early cancellation fee per the Application portion. All provisions of this Agreement which may reasonably be construed as surviving such termination will survive the termination of this agreement, including, but not limited to paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

#### **13. Confidential Information**

The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the Service and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing party; (ii) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party's obligations under this section or by breach of a third party's confidentiality obligations; (iii) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party's confidentiality obligations; or (iv) is independently developed by the receiving party. As a condition to the receipt of the Confidential Information from the disclosing party, the receiving party shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (ii) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing party's express prior written consent; (iii) disclose the disclosing party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The receiving party shall promptly notify the disclosing party of any unauthorized disclosure or use of the Confidential Information. The receiving party shall cooperate and assist the disclosing party in preventing or remedying any such unauthorized use or disclosure.

#### **14. General Terms**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions. No provision of this Agreement shall be construed against any party merely because that party or counsel drafted or revised the provision in question. All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach. You may not assign this Agreement without the written consent of Company. Company may assign this Agreement in its sole discretion without the written consent of you. The section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona (irrespective of its choice of law principles). The parties hereby agree that any suit to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between the parties hereto shall be brought in federal or state court in Maricopa County, Arizona. Each party hereby agrees that such courts shall have exclusive personal jurisdiction and venue with respect to such party, and each party hereby submits to the exclusive personal jurisdiction and venue of such courts. Each party hereby agrees that such courts shall have exclusive personal jurisdiction and venue with respect to such party, and each party hereby submits to the exclusive personal jurisdiction and venue of such courts. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal. Zuza, LLC, is hereby defined as the "Company."