



# SERVICE AGREEMENT

4041 B Hadley Road  
 South Plainfield, NJ 07080  
 tel. 800.211.1256  
 fax. 732.417.4448

SELLER NAME: \_\_\_\_\_

APPLICATION DATE: \_\_\_\_\_

ACCOUNT INFORMATION		BILLING INFORMATION	
CUSTOMER COMPANY NAME		BILLING NAME (FIRST NAME, LAST NAME)	
CONTACT NAME (FIRST NAME, LAST NAME)		BILLING ADDRESS	
CONTACT ADDRESS		BILLING ADDRESS 2	
CONTACT ADDRESS 2		CITY	STATE ZIP CODE
CITY	STATE ZIP CODE	BILLING CONTACT PHONE NUMBER	BILLING CONTACT FAX NUMBER
CONTACT PHONE NUMBER	CONTACT FAX NUMBER	BILLING CONTACT E-MAIL ADDRESS (\$3 monthly statement fee will be incurred if not provided)	
CONTACT E-MAIL ADDRESS		SHIPPING INFORMATION	
ADMINISTRATIVE REPRESENTATIVE NAME (Authorized for Account Change Requests)		SHIPPING CONTACT NAME (FIRST NAME, LAST NAME)	
LAST 4 DIGITS OF SS # / FED TAX ID #		SHIPPING ADDRESS (If Different From Billing Address)	
PAYMENT INFORMATION		SHIPPING ADDRESS 2	
Payment method (Please check): <input type="checkbox"/> ACH Debit (Must attach copy of voided check) Credit Card: <input type="checkbox"/> American Express <input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> Discover		CITY	STATE ZIP CODE
Account Name		SHIPPING CONTACT PHONE NUMBER	SHIPPING CONTACT FAX NUMBER
Credit Card Number / Routing Number	Expiration Date / Bank Account Number	SHIPPING CONTACT E-MAIL ADDRESS	
PLEASE CHECK ONE			
<input type="checkbox"/> I would like to receive my monthly billing statement electronically via e-mail. (Please include e-mail address)		<input type="checkbox"/> I would like to receive my monthly billing statement via U.S. mail and I understand that I will be charged \$5 per month for my paper statement	

Payment Gateway Services						Notes:
Product Description	Quantity	Product Cost	Activation Fee	Monthly Service	Transaction Fee	
1.						
	SUBTOTAL					
2.						
	SUBTOTAL					
3.						
	SUBTOTAL					
4.						
	SUBTOTAL					
	Total:					

Your signature below indicates that you have read, understood and agree with the Terms and Conditions outlined on the next page.

AUTHORIZED CUSTOMER SIGNATURE	PRINT NAME	DATE
AUTHORIZED SELLER SIGNATURE	PRINT NAME	DATE

# 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 reverse side of this document and Service Agreement Attachment A; (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 CHARGE Anywhere.

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 Customer Service Agreement. For Credit 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) "Seller" shall refer to the entity listed in the box entitled "Seller Name" on the front side of this Agreement, (c) "Customer" shall refer to the entity listed in the box entitled "Customer Company Name" on the front side of this Service Agreement, (d) "Service(s)" shall refer to CHARGE Anywhere's credit card processing services and certain other services offered by CHARGE Anywhere in connection therewith that are listed on the front side of this Service Agreement, (e) "Hardware" shall refer to the equipment purchased from Seller or CHARGE Anywhere that is authorized by CHARGE Anywhere for use in connection with the Services and (f) "Software" shall refer to any software embedded in the Hardware and the web-based software that is made available by CHARGE Anywhere for use in connection with the Services.

## **1. SERVICES**

(a) **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.

(i) 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. 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 must be made within fifteen (15) days of the date of the 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 wireless handheld 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) \$5 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. Customer shall pay to CHARGE Anywhere, \$25.00 per wireless handheld device to reconnect services that have been terminated as provided in this Service Agreement.

## **3. NONEXCLUSIVE**

CHARGE Anywhere and Seller are 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 or Seller, as applicable, 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.

## **4. THIRD PARTY EQUIPMENT AND SERVICES**

Except as may otherwise be specifically agreed to in writing between CHARGE Anywhere and/or Seller 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 AND SELLER MAKE 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 NON-INFRINGEMENT. CHARGE Anywhere AND SELLER 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.

## **5. 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

(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.

## **6. FORCE MAJEURE**

Neither CHARGE Anywhere nor Seller shall 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.

## **7. CUSTOMER INDEMNITY/LIABILITY**

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.

## **8. DISCLAIMER OF WARRANTY**

OTHER THAN ANY WRITTEN WARRANTY PROVIDED SEPARATELY TO CUSTOMER WITH THE HARDWARE, IF ANY, CHARGE Anywhere AND SELLER MAKE, 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 AND SELLER 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.

## **9. 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 the amount paid by Customer to CHARGE Anywhere under this Service Agreement. CHARGE Anywhere AND SELLER 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 AND SELLER 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 York applicable to agreements executed and wholly performed within that State. Customer hereby consents to the personal jurisdiction of the United States District Court for the Southern District of New York, or, if that Court lacks subject matter jurisdiction, then to the personal jurisdiction of the New York Supreme Court in any county that may be an appropriate venue under such Court's rules. 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.

## **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. 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 hereto 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.

## PROCESSOR INFORMATION

INDUSTRY TYPE			
CHECK ONLY ONE			
<input type="checkbox"/> Retail	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Quick Restaurant	<input type="checkbox"/> Delivery
<input type="checkbox"/> Taxi	<input type="checkbox"/> Limousine	<input type="checkbox"/> Towing	

SELECT ONE	PROCESSOR	FIELD NAME	INSERT INFORMATION REQUIRED FOR PROCESSING	FIELD VALUE
<input type="checkbox"/>	Concord	MerchantNumber		<b>6</b> numeric
		TerminalId		<b>2</b> numeric
<input type="checkbox"/>	FDMS Nashville	MerchantId		<b>11</b> numeric
		TerminalId		<b>11</b> numeric
<input type="checkbox"/>	FDMS Omaha	MerchantNumber		<b>19</b> numeric
<input type="checkbox"/>	Global Payments	MerchantId		<b>15</b> numeric
		BankId		<b>6</b> numeric
		TerminalId		<b>0 to 4</b> numeric
<input type="checkbox"/>	NOVA	BankNumber		<b>6</b> numeric
		MerchantId		<b>16</b> numeric
		TerminalId		<b>16</b> numeric
<input type="checkbox"/>	Paymentech	ClientNumber		<b>4</b> numeric
		MerchantNumber		<b>12</b> numeric
		TerminalId		<b>3</b> numeric
<input type="checkbox"/>	Vital	AcquirerBin		<b>6</b> numeric
		MerchantNumber		<b>12</b> numeric
		StoreNumber		<b>4</b> numeric
		MerchantCategoryCode		<b>4</b> numeric
		MerchantName		<b>25</b> alphanumeric
		MerchantCity		<b>20</b> alphanumeric
		MerchantState		<b>2</b> alphanumeric
		MerchantZip		<b>9</b> numeric
		MerchantPhone		<b>15</b> alphanumeric
		SharingGroup		<b>30</b> alphanumeric
		MerchantABANumber		<b>9</b> alphanumeric
		MerchantSettlementAgentNumber		<b>4</b> alphanumeric
		AgentBankNumber		<b>6</b> numeric
		AgentChainNumber		<b>6</b> numeric
		ReimbursementAttribute		<b>1</b> alphanumeric
TerminalId		<b>4</b> numeric		

**Fax this form and completed Service Agreement to 732-417-4448**