

CirrusPOS

Terms of Service and Merchant Agreement

Effective Date: August 28, 2019

THROUGH MERCHANT'S ("MERCHANT" OR "YOU") EXECUTION OF AN ORDER FORM THAT INCORPORATES THIS MERCHANT AGREEMENT (THE "AGREEMENT") OR BY USING ANY SERVICES, SOFTWARE OR HARDWARE PROVIDED OR OTHERWISE MADE AVAILABLE BY CIRRUSPOS, LLC. ("CIRRUSPOS" "WE" OR "COMPANY"), MERCHANT THEREBY AGREES TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. IN THE EVENT THAT MERCHANT DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, MERCHANT MAY NOT USE ANY OF THE CIRRUSPOS SERVICES, SOFTWARE OR HARDWARE. WE MAY CHANGE THESE TERMS AT ANY TIME. THE COMPANY WILL ALERT YOU TO AN UPDATE IN THE TERMS BY POSTING NOTICE OF THE UPDATE ON WWW.CIRRUSPOS.COM FOR A PERIOD OF TIME DEEMED REASONABLE IN OUR DISCRETION. CAPITALIZED TERMS USED HEREIN SHALL HAVE THE MEANING ASCRIBED TO THEM IN SECTION 14 TITLED DEFINITIONS.

Merchant and CirrusPOS hereby agree as follows:

- 1. Scope of Merchant Agreement.** The Agreement shall apply to and govern Merchant's access to and use of the Services, Hardware, and Professional Services ordered by Merchant under an Order. The Services include, but may not be limited to, (a) mobile and web applications for use by Merchant's Employees to place orders and process payments by customers; (b) CirrusPOS processing of payments and remitting payment of Net Sales Proceeds to Merchant's bank account; (c) providing Merchant with certain reporting on its sales and activities; and (d) working with Merchant with respect to any customer inquiries related to payments or placing orders, in each case under Merchant's CirrusPOS Account.
- 2. Using CirrusPOS**
 - A.** CirrusPOS is a Point of Sale Service, which provides the necessary hardware and software allowing Merchants to track customer orders, process payments, and handle all other systems and features necessary on the customer service and purchasing fronts of our Merchant's businesses.
 - B.** We have established certain procedures and guidelines designed to make the use of CirrusPOS a great experience for Merchants and their customers alike. We shall respect and protect Merchants who abide by these procedures and guidelines. Failure to abide by such terms may result in termination of your access to CirrusPOS and Services offered, and the reporting of abuse to appropriate law enforcement authorities. By using this Service, you agree to the following rules:
 - a) You are at least 18 years of age.
 - b) You are legally permitted to use the Services offered by CirrusPOS.
 - c) You shall follow any and all laws, rules, and regulations when using the Services offered by CirrusPOS.

- d) All information that you provide to CirrusPOS upon enrolling in the Services offered shall be accurate, complete, and truthful.
 - e) You are not located in, under the control of, a national or resident of, or attempting to access the Service from any country which the United States has (a) embargoed goods, (b) identified as a "Specially Designated National," or (c) placed on the Commerce Department's Table of Deny Orders.
 - f) You shall not use the Services offered to assist in stalking, harassing, intimidating, or harming any other person or business.
 - g) You shall not use the Services offered to assist you (or anyone else) in partaking in any illegal activities.
 - h) You as a Cirrus POS Merchant will use the Services only for its management and operation of its own business, and not for any business, services or offerings of third-parties. Without limiting the generality of the foregoing, Merchant shall not act as a payment intermediary or aggregator on behalf of any third-party. This means that Merchant is strictly prohibited from using the Services to handle, process or transmit funds for any third-party.
 - i) You shall not index, crawl, decompile, scrape, or reverse engineer any part of the website, any mobile applications or any other platform or currently Service offered, or offered in the future, by CirrusPOS.
 - j) You will not interfere with, attempt to interfere with, or assist anyone else in interfering with or disrupting CirrusPOS' security or network.
- C.** Merchant will comply with the following requirements in connection with its use of the Services: (a) with respect to each customer who requests the delivery of transaction receipts via text message or email, such customer must personally enter his or her personal information in the appropriate space displayed on the applicable device; Merchant and/or Employees are NOT permitted to add or modify any personal information of customers (including but not limited to phone number and email address) on behalf of a customer; (b) with respect to each customer who desires to receive marketing material, enroll in a loyalty program, or receive other communications from Merchant via the Services, such customer must indicate such consent via the CirrusPOS Application; Merchant and/or Employees are NOT permitted to add or modify a customer's consent indication on his or her behalf; (c) Merchant and/or Employees may not send unsolicited commercial emails ("UCE") in violation of the CAN-SPAM Act (2003) or otherwise send any commercial messages in violation of Applicable Law and Rules, including without limitation the Telephone Consumer Protection Act of 1991 ("TCPA"), and may only send marketing materials or other communications through the Services to customers who have provided their contact information via the CirrusPOS App in accordance with this section.
- D.** CirrusPOS shall not be held liable or responsible for any losses, expenses, damages, or costs you or any third-party incur through using any Services offered, and you agree to defend and hold harmless CirrusPOS for any such losses.
- E.** We can terminate or restrict your use of the Service at any time and for any reason. In the event that you engage in Services offered by CirrusPOS, we may terminate such Services

and block your access to the platform, any mobile applications or any other platform at any time. This policy is in place to keep CirrusPOS and the Services we offer, effective, professional, and efficient for all parties involved.

- F. We reserve the right to discontinue or modify CirrusPOS or the Services offered at any time. In our discretion, we may or may not provide advanced notice if this happens.

3. Usage Rights.

- A. Subject to Merchant's compliance with the terms and conditions hereunder, upon execution of an Order, CirrusPOS grants to Merchant a limited, non-transferable, non-sub-licensable, non-exclusive, license during the term of this Agreement, to permit Employees to access and use the Services solely and exclusively for Merchant's designated and approved business purposes. The Services are licensed, not sold, and Merchant hereby acknowledges and understands that it does not acquire any license to use the Services in excess of the scope and duration of the license to the Services as specified hereunder.
- B. Merchant shall be (i) solely responsible for maintaining the security and control of its premises, equipment (including Hardware), and username(s) and access passwords to its CirrusPOS Account; and (ii) solely responsible and fully liable for any and all activity of its Employees and Customers which occur under its CirrusPOS Account, whether authorized by Merchant or not. Merchant hereby agrees to immediately notify CirrusPOS in the event that it becomes aware of any unauthorized activity or use under its CirrusPOS Account, and will cooperate with CirrusPOS to prevent any further unauthorized use or misappropriation thereof.
- C. As part of the Services, CirrusPOS may provide access to various CirrusPOS Applications. When Employees download or use any CirrusPOS App, Merchant must ensure its Employees have read and fully agree to the terms hereunder.

- 4. Installation and Setup.** If Merchant requires and orders any Professional Services under an Order placed with CirrusPOS, shortly after the effective date of this Agreement Merchant shall provide CirrusPOS with any information, resources and assistance which may be required by CirrusPOS to enable the installation and setup of any Hardware or Software of the Services for Merchant's purposes as described on the Order and, if applicable, to provide training to certain Employees. Any dates specified in an Order are intended as estimates only, and are contingent upon Merchant's timely compliance with its obligations as they relate to such installation and setup. In the event of any default or breach on the part of CirrusPOS under this Agreement, which has resulted from Merchant's failure to timely perform its obligations hereunder and/or as delegated in any Order, then CirrusPOS shall be entitled to relief from any and all liability with respect to such failure and may, in its sole discretion, terminate the Agreement and any relating Orders, or any part thereof, upon three (3) business day's written notice to Merchant of such termination.

5. Information Requested Upon Enrollment.

- A. Upon enrolling or registering for Services offered by CirrusPOS, Merchants will be required to provide certain requested information to CirrusPOS, in order to ensure optimal performance and efficiency of the Services offered. Such information will be requested on the Order, or on any other such correspondence provided to Merchant by CirrusPOS, and may include, but shall not be limited to, the following:
 - a) Your full name (individual applicant);

- b) Your date of birth;
- c) Your country of residence;
- d) Payment information;
- e) Your Company's general contact and location information;
- f) Your Company's general financial information (such as budget);
- g) Your Company's marketing goals; and
- h) Other similar information necessary as it relates to the Services.

6. Merchant Information.

- A.** In order to effectively facilitate or improve the Services we offer, we may need to use certain information you submit to CirrusPOS (collectively, the "Merchant Information"). The protection of our Merchant's personal and company information, and that of the customers thereof, is of the utmost important to us. While we may use Merchant Information to learn about our Merchant's businesses and to help us facilitate and improve the Services, we will only share such information as detailed in these Terms and in our Privacy Policy. We are very serious about Merchant Information protections, and will never use your sensitive information in any other way.
- B.** You or we may update, delete, or modify your Merchant Information at any time. It is your responsibility to ensure that you keep your Merchant Information up-to-date in our system. In order to update your Merchant Information in the event of any changes, please submit your update request via email to: contact@cirruspos.com

7. Payments for Services.

- A.** Merchant shall pay to CirrusPOS, any and all Fees as set forth in each Order, and if applicable, in the lease agreement. All Fees cannot be cancelled, nor are they refundable, except as otherwise provided for herein. Merchant shall pay all Fees in U.S. Dollars or in such other currency as agreed to in a signed, written agreement.
- B.** The Merchant's subscription fees to access and use the Services shall remain unchanged during the initial term of this Agreement. CirrusPOS reserves the right to: (i) change, on a pass-through basis, any third-party fees at any point during the Term; and (ii) change any other fees upon thirty (30) days' prior written notice. Merchants continued use of the Services subsequent to any change in fees shall be deemed an acceptance thereof, unless Merchant closes its CirrusPOS Account prior to the effective date of such change, and ceases all access to and use thereof. If Merchant does not accept any such fee change or any part thereof, then Merchant may terminate this Agreement by providing CirrusPOS written notice prior to the effective date of such fee change.
- C.** In the event that during any given calendar year, Merchant receives (a) more than \$20,000 in net card payments and (b) more than 200 payments, CirrusPOS may report annually to the Internal Revenue Service pursuant to any requisite applicable laws or regulations, information such as the Merchant's name, address, Tax Identification Number (such as a

Social Security Number (SSN), or Employer Identification Number (EIN)), the total dollar amount of the Payments Merchant receives in a calendar year, and the total dollar amount of the Payments Merchant receive for each month in the applicable calendar year.

8. Processing of Payments.

- A.** The Merchant hereby authorizes CirrusPOS to hold, receive and disburse funds on its behalf and to access the Bank Account (as defined in the Order) to effectuate payment to CirrusPOS of any Fees, and for Merchant to receive any Net Sales Proceeds. Merchant's authorization hereunder thereby grants CirrusPOS permission to generate a paper draft or an electronic funds transfer to process each Payment transaction authorized by Merchant. Merchant's authorization under this section shall remain in full force and effect throughout the duration of the Term.
- B.** CirrusPOS works with a variety of card issuers. CirrusPOS may elect to support additional card issuers at its discretion. CirrusPOS will only process cards which receive an authorization from the applicable processing network or card issuer.
- C.** In the event that the Merchant has not provided goods or services consistent with this Agreement with respect to a particular transaction(s), CirrusPOS will have the right to refuse to pay any Net Sales Proceeds to Merchant and/or to pay a refund to any customer from the Bank Account. CirrusPOS reserves the right to adjust the Net Sales Proceeds due for any period to compensate CirrusPOS for any chargebacks, calculation errors, Merchant employee fraudulent use, and any refunds paid to customers, whether or not related to the period on which such adjustment is made, or to offset against such Net Sales Proceeds any other claim CirrusPOS may have arising hereunder.
- D.** After the Merchant's Bank Account information has been verified, CirrusPOS will automatically deposit the Net Sales Proceeds collected to Merchant's Bank Account via direct deposit. This deposit will normally appear in the Bank Account within 1-2 business days after payment settlement is initiated. It is Merchant's sole responsibility to initiate settlement of its payments in a timely manner through the Services. Merchant's failure to settle payments in a timely manner may result in higher processing rates charged by the card processing networks and CirrusPOS reserves the right to reclaim such charges and fees from Merchant.
- E.** In the event that CirrusPOS must conduct an investigation or resolve any pending dispute related to Merchant's Bank Account, CirrusPOS may defer payout or restrict access to Merchant's funds for the entire time it takes for CirrusPOS to complete its investigation or resolve the dispute. CirrusPOS also may defer payout or restrict access to Merchant funds as required by applicable law or regulations, or pursuant to a court order, or if otherwise requested by law enforcement or government entity. Such deferment shall not result in any liability to CirrusPOS, and CirrusPOS hereby expressly disclaims any causes of action brought forth by Merchant or any third-party for damages, lost profits, or other costs or losses resulting from such deferment of, or restricted access to Merchant's funds. Merchant shall assist CirrusPOS when requested, at Merchant's expense, to investigate any of Merchant's transactions processed through the Services. To that end, Merchant shall permit CirrusPOS to share information about a chargeback with customer, customer's financial institution and Merchant's financial institution in order to investigate and/or mediate a chargeback.
- F.** For any transaction which results in a chargeback, CirrusPOS may withhold the full chargeback amount. CirrusPOS may deduct the amount of any chargeback and any associated fees, fines, or penalties listed in each Order or assessed by any third-party, from either Merchant's CirrusPOS Account or Bank Account (including without limitation any Reserve), or any proceeds due to Merchant or other payment instrument registered with

CirrusPOS. If Merchant has pending chargebacks, CirrusPOS may delay payouts from Merchant's CirrusPOS Account.

- G.** Merchant hereby expressly agrees, warrants, and represents that it shall not incur excessive chargebacks. If CirrusPOS determines that Merchant is incurring excessive chargebacks, CirrusPOS may, in its discretion, establish controls or conditions governing Merchant's CirrusPOS Account, including without limitation, by (a) establishing new processing fees, (b) creating a Reserve, and (c) delaying payouts to Merchant.
- H.** The card processing networks require that both Merchant and CirrusPOS comply with any and all applicable laws and regulations. Significant portions of such rules are made available to the public at usa.visa.com and www.mastercard.com. At any time, CirrusPOS may modify this Agreement to comply with, and as a result of, amendments to such applicable laws and regulations. Applicable laws and regulations may prohibit or impose conditions on Merchant assessing a surcharge for the use of a certain card in connection with any transaction. Customers shall agree to pay all such surcharges.

9. Security and Safety.

- A.** Your security and safety are extremely important to us. While we have put many precautions in place to ensure the safety of your information and browsing devices while using our Services, please do not assume that your information and devices are fully secured in all actions you take on the internet. We do not control the destinations or actions of any third-party links which may be listed on our platform or applications, and therefore shall not be held liable or responsible for any loss or damages incurred or sustained as a result of using any third-party links therein. Please use common sense and appropriate tools and filters to make sure you feel safe and secure in visiting any third-party websites, or using any third-party services offered therein.
- B.** In the event that you believe that another user of our Services is violating these Terms or creating an unsafe situation for CirrusPOS, any other Merchant thereof, or any other third-party through the use of the CirrusPOS Services, please let us know immediately. You can contact us by email at contact@cirruspos.com, or directly on www.CirrusPOS.com.

10. Intellectual Property and Data.

- A.** We ask that you respect the intellectual property of CirrusPOS. All materials available through the CirrusPOS Services and website, including (but not limited to) the name CirrusPOS and our logos, images, text, illustrations, audio and video files are protected by copyrights, trademarks, service marks, or other rights which are owned by or licensed to our Company. You agree not to copy, reproduce, duplicate, display, or otherwise distribute these materials without our written permission. CirrusPOS owns or has license to all rights, title, interest, copyright and other worldwide Intellectual Property Rights in and to the Hardware, Services (including all derivatives or improvements thereof), and Professional Services provided under this Agreement and any Order. Merchant may voluntarily submit feedback and suggestions to CirrusPOS at any time. Merchant hereby irrevocably assigns all right, title, interest and other worldwide Intellectual Property Rights in and to the feedback to CirrusPOS, LLC, and acknowledges that CirrusPOS is free to use, disclose, reproduce and otherwise exploit any and all Feedback provided by Merchant or any Employee relating to the Services in CirrusPOS' sole discretion, entirely without obligation or restriction of any kind. Any rights not expressly granted herein are reserved by CirrusPOS.

- B.** Merchant shall own all Merchant Data. Merchant hereby grants to CirrusPOS a non-exclusive, royalty-free, fully paid up, and worldwide license to use, copy, modify (including the right to create derivative works of), display and transmit Merchant Data solely in connection with performing the Services. Merchant is solely responsible for the accuracy, quality, content and legality (including compliance with all applicable laws and regulations) of Merchant Data, the means by which Merchant Data is acquired, and any transfer of Merchant Data outside of the Services by Merchant or any third-party authorized by Merchant. Merchant represents, warrants and covenants that it has all rights necessary to upload the Merchant Data to the Services and to otherwise have such Merchant Data used or shared, as applicable, by CirrusPOS in relation to the Services. Merchant will not upload or store any data or materials containing any such information in violation of this section.
- C.** Merchant hereby grants CirrusPOS a nonexclusive right and license to use and display Merchant's Marks on its website and marketing collateral identifying Merchant as a customer of CirrusPOS. CirrusPOS obtains no rights in the Merchant Marks except for the limited right described in this section, and Merchant retains all right, title and interest in and to the Merchant Marks. All use of the Merchant Marks by CirrusPOS will inure to Merchant.
- D.** Merchant is required to respect the intellectual property rights of others. You agree not to use CirrusPOS' Services to transmit any intellectual property that you are not authorized to transmit.

11. LIMITATION OF LIABILITY DAMAGES.

CIRRUSPOS IS A PLATFORM FOR POINT OF SALE SERVICES. WE DO NOT PROVIDE OR ENDORSE ANY ACTIVITIES PARTAKEN BY USERS OF THE CIRRUSPOS SERVICES.

THEREFORE:

- A. IN NO EVENT WILL CIRRUSPOS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR RELATING TO THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTIONS IN SERVICE, LOSS OR CORRUPTION OF DATA OR PROGRAMS, OR PROCUREMENT OF SUBSTITUTE SERVICES, EVEN IF CIRRUSPOS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- B. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL CIRRUSPOS BE LIABLE FOR ANY DAMAGES OR LOSSES, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, COMPENSATORY, CONSEQUENTIAL, AND/OR INCIDENTAL, ARISING OUT OF OR RELATING TO MERCHANT'S USE OF THE SERVICES, OR THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE USE OF THE SERVICES. THIS INCLUDES ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM: (I) INABILITY TO ACCESS THE SERVICES FOR ANY REASON, OR (II) MALFUNCTIONS IN THE SERVICES OR ANY ERRORS OF ACCOUNTING OR OTHER, WHICH MAY RESULT FROM THE USE OF THE SERVICES.**

- C. THE SERVICES OF CIRRUSPOS ARE PROVIDED WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, ACCURACY, QUALITY, OR SAFETY.**

12. Additional Terms.

- A.** You agree to indemnify, defend, and hold harmless CirrusPOS, its affiliates, partners, members, owners, officers, and directors from and against any and all claims, damages, or liabilities related to (i) your breach of these Terms, (ii) your use of the CirrusPOS Services or (iii) your inability to access the Services or any funds as a result of the use of the CirrusPOS Services offered.
- B.** These Terms shall be governed and construed in accordance with the laws of the State of Florida without regard for the conflict of law provisions. Any dispute arising hereunder, or related to the terms hereof, shall be brought exclusively in the state or federal courts located in Florida.
- C.** CirrusPOS uses or may use certain features of the device on which Merchant or customers access the Services from. You agree that CirrusPOS may access these features, and further agree that you may be charged by your phone, Internet, or data provider for the use of these Services. You acknowledge that you will be fully responsible for any charges incurred through your use of the CirrusPOS Services.
- D.** CirrusPOS may provide you with administrative notices regarding CirrusPOS or the Services via email. You hereby expressly consent to receive such emails. You may remove yourself from our email list by following the "unsubscribe" instructions in the email correspondence you receive from us.
- E.** These Terms and our Privacy Policy, now incorporated herein, in conjunction with any Services Agreement entered into by and between yourself and CirrusPOS and any attachments thereto, represent the full, final, and complete agreement between you and CirrusPOS regarding your use of the CirrusPOS Services.
- F.** If any provision of these Terms is held to be invalid or unenforceable, the remainder of these Terms shall continue in full force and effect to the maximum extent legally permissible.
- G.** The delay or failure of either party hereunder to exercise or enforce any right or provision of these Terms, shall in no way constitute a waiver of such rights.
- H.** If you do not understand any of the Terms listed above, or if you have any questions or comments about such Terms, we encourage you to please contact us via email at: contact@cirruspos.com

13. Notice To California Residents.

- A.** Under California Civil Codes, California residents are entitled to additional specific consumer rights information. To file a complaint regarding the Services or to receive further information regarding use of the Services, including to cancel your Services,

please email us at contact@cirruspos.com. You may also contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 400 R Street, Suite 1080, Sacramento, California 95814, or by telephone at 916.445.1254 or 800.952.5210.

14. Definitions.

- A.** “Employees” means Merchant’s employees, agents and contractors who are authorized to use the Services.
- B.** “Hardware” means any terminal, tablet, kitchen display screen (“KDS”), switch, router, card, cable, wall mount, printer or other item of physical hardware, as made available by CirrusPOS, and purchased under an Order.
- C.** “Merchant Data” means any files, graphics, images, text, emails, data or other information submitted by Merchant in the course of using the Hardware and Services and/or collected by CirrusPOS, Inc., including without limitation Merchant’s name, address, contact information, Employee information, products, loyalty programs, logos, promotional information, advertisements, transaction details and other information or material submitted by Merchant to CirrusPOS through the Services, excluding Customer Data.
- D.** “Net Sales Proceeds” means funds remitted by CirrusPOS to Merchant resulting from Customer Payments, less all applicable Fees due and owing relative to the applicable transaction.
- E.** “Order” means any CirrusPOS ordering document (including any online order) specifying the Services, Hardware and Professional Services purchased and/or licensed hereunder, as mutually agreed to and accepted by CirrusPOS.
- F.** “Professional Services” means any implementation services and/or training provided by CirrusPOS to Merchant pursuant to an Order.
- G.** “Services” means CirrusPOS’ website, Software, the CirrusPOS App, customer support, and the Payment Processing services described under Section 8 (Processing of Payments) of this Agreement.
- H.** “Software” means CirrusPOS’ point-of-sale restaurant, hospitality and retail management system made available to Merchant via the CirrusPOS App, including both online and offline components, products, services, features, content, and updates related thereto.