

# Terms of Service

*Last Updated: 04/27/2016*

This Lavu Terms of Service Agreement (“Agreement”) is a legal agreement between you (“you,” “your”) and Lavu, Inc. (“Lavu,” “we,” “our” or “us”) governing Lavu’s iOS applications (each an “App”), the website located at lavu.com and other services, including software and/or hardware related services or rights of use, (collectively, the “Services”) and hardware products, devices, or equipment (“Products”) we may provide or offer. To receive or use the Products or Services, you must accept all of the terms of this Agreement. If you do not agree with these terms and do not want to be bound by this Agreement, you may not use, access, or order the Products or Services.

THIS IS A LEGAL AGREEMENT. BY PLACING AN ORDER FOR THE PRODUCTS OR SERVICES OR BY ACCESSING, USING THE PRODUCTS OR SERVICES, OR DOWNLOADING AN APP, YOU ARE ACCEPTING AND AGREEING TO THIS AGREEMENT ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT IN CONNECTION WITH THE ACCESS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THIS AGREEMENT ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO ENTER INTO THIS AGREEMENT.

**THIS AGREEMENT INCLUDES A CLASS ACTION WAIVER AND A WAIVER OF JURY TRIALS, AND REQUIRES BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES.**

**THIS AGREEMENT LIMITS THE REMEDIES THAT MAY BE AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

**IF YOU SUBSCRIBE TO THE SERVICES FOR A TERM (THE “INITIAL TERM”), THEN THIS AGREEMENT WILL BE AUTOMATICALLY RENEWED FOR ADDITIONAL PERIODS OF THE SAME DURATION AS THE INITIAL TERM AT LAVU’S THEN-CURRENT FEES FOR SUCH SERVICES UNLESS YOU OPT OUT OF THE AUTO-RENEWAL IN ACCORDANCE WITH SECTION 9.6 BELOW.**

## **Definitions**

- “iOS” means Apple’s “iOS” operating system used on the iPad, iPod and iPhone.
- “Lavu Control Panel” means the control panel used to change settings and options for your Lavu Account.
- “Lavu Account” means an account that is created that allows you to access the Services provided by Lavu.
- “Fees” means the fees paid for your continued use of the Services or Products based on the subscription you select at the time you create your Lavu Account.
- “Software License” means a license purchased to allow you to use the Services.

- “Credit Card Gateway” means a third party service that a merchant may choose to sign up with that handles the processing of credit card transactions.
- “Account Activity” means the payments made to the Lavu Account within the last 30 days; orders recorded by the Services in the last 30 days; and/or clock punches recorded by the Services in the last 30 days.
- “Intellectual Property Rights” means all trademark, trade dress and service mark rights, patent rights, mask work right, copyright rights, rights of publicity, goodwill, moral rights, trade secret rights and other intellectual property rights as they may currently exist or exist in the future, and all applications thereof and registrations, renewals and extensions thereof, under the laws of any jurisdiction.
- “Dispute” means a dispute or claim between arising out of or relating to the Products or Services or these Terms.
- “User Content” means any content uploaded or changed by you, including but not limited to, text, photos, and other information.
- “User Data” means any data created or modified from your use of the Services including but not limited to financial data, transaction data, order data, credit card signatures, and logs.
- “Offline Credit Card Transactions” means the situation when encrypted credit card transaction information that is stored locally on an iOS device when the proper network connection is unavailable. An attempt to facilitate the transaction can be made when the connection is restored.

## Headings

The section headings contained in this Agreement are for reference purposes only and shall not in any way be used to construe meaning, intent or affect the interpretation of this Agreement.

# Lavu Accounts

To utilize our Services you will need to create a Lavu Account. During registration you will be asked for both personal information and information regarding your business. The information that you submit to create your Lavu Account must be complete and accurate. You must also keep the business and personal information in your Lavu Account up to date.

If you open a Lavu Account for a company, organization or other entity, you represent and warrant that you are an authorized representative of the company, organization or other entity with the authority to bind the entity to this Agreement, and that you agree to this Agreement on the entity's behalf.

We reserve the right to terminate any Lavu Account that fails to comply with the account registration requirements or that we find to contain information that is untrue, inaccurate, or incomplete.

We reserve the right to terminate your Lavu Account, revoke your Software License and delete all data associated with the Lavu Account if there has been no Account Activity in your Lavu Account for a period of 180 days.

You are responsible for all activities that occur under your Lavu Account. You agree to immediately notify Lavu of any unauthorized use, or suspected unauthorized use of your Lavu Account or any other breach of security.

# Software Services

The Services may include software applications and web-based software. You must install any and all software application and web-based software updates to continue using the Services. From time to time older hardware or computer programs may no longer be compatible with the latest software applications and

web-based software updates. It is your responsibility to upgrade any hardware or computer programs as needed to continue using the services.

# Products

**In General.** All Products offered by Lavu are subject to availability, and we reserve the right to impose quantity limits on any order, to reject all or part of an order and to discontinue offering certain Products without prior notice. Prices for the Products are subject to change at any time, but changes will not affect any order for Products you have already placed. **Products may be purchased or leased as indicated in your order.**

**Title.** Title for Products purchased from Lavu passes to the purchaser at the time of delivery by Lavu to the freight carrier and you will be responsible for any Product loss or damage that occurs when the Product is in transit to you. Lavu or the applicable third party financing/rental company approved by Lavu (“**Financing Partner**”) retain title to any Products you lease or rent from us or the applicable Financing Partner. Our delivery charges and methods are as described on our website from time to time.

**Returns and Refunds.** You may contact us at [rma@lavu.com](mailto:rma@lavu.com) to request return of Products you purchased from Lavu at any time within thirty (30) days of the order date. If Lavu determines that you are eligible to return such Products, Lavu will provide a return materials authorization (RMA) to you via email. Lavu will refund you the amount you paid for the returned Products (less applicable handling charges) provided that Lavu receives such Products, including all

Products items if the Products was purchased as part of bundle, freight prepaid by you in new or unused condition, in its original packaging, within ten (10) days of the date the RMA was emailed to you. Risk of loss of the returned Products remains with you until received by Lavu. You will bear the cost of freight and insurance of any returned Product. Except as otherwise stated in these terms, Lavu is under no obligation to refund any amounts you previously paid to Lavu for the Products.

**Leased or Financed Products.** The leased or financed Products shall at all times remain the property of Lavu or our Financing Partner (the “**Product Owner**”). The Product Owner retains and you hereby grant to Lavu and the Product Owner, as applicable, a security interest in and to the leased Products. You agree to execute any and all documents and filings to perfect the same. You agree not to permit any third party (other than the Product Owner) to obtain any security interest, lien or other encumbrance on such leased or financed Products. You will promptly return, at your expense, such leased or financed Products to Lavu’s or the Product Owner’s designated address when the lease expires or this Agreement terminates. You bear all risk of loss or damage to the leased or financed Products. You will pay for the cost of replacing leased or financed Products if you do not return the leased or financed Product in good working order (normal wear and tear excepted) when the applicable rental, lease or subscription period expires or this Agreement terminates.

**Product Services.** Certain Products may be subject to Lavu’s maintenance, support, repair or replacement services (including NDR defined below) as

indicated in your order with Lavu. Any parts or replacement Products provided to you hereunder shall not extend the original warranty period and may consist of new, refurbished or functionally-equivalent product. Lavu's maintenance, support, repair or replacement services (including NDR) will not be provided with respect to: (i) to Products that have been altered or modified by anyone who is not a representative of Lavu,(ii) damage caused by abuse, misuse, fire, earthquake or other external causes, (iii) Products that have been lost or stolen, or (iv) cosmetic damage, including but not limited to, scratches and dents, that do not otherwise affect the functionality of the Product.

**Next Day Replacement Service (“NDR”).** If you subscribe to our next day replacement Service (“NDR”) with respect to any Product, Product replacement orders received by Lavu (i) on Monday - Friday before 5PM Eastern Time will be processed and shipped by Lavu to you on the same business day for next business day delivery (next day Saturday shipments are subject to availability in your areas),and (ii) on Saturdays and Sundays will be processed and shipped by Lavu to you on Monday (or the next business day), in most cases and subject to the availability of next day freight in your location. The foregoing processing and shipping times are estimates and exclude holidays and delays outside of Lavu's reasonable control (e.g., unusual storms or natural disasters, Product shortages or unavailability, etc.). You must comply with Lavu's generally applicable policies and procedures regarding NDR Service orders and must return any replaced Products in accordance with the Returns and Refunds Section above.

# Mobile Devices and Third Party Carriers

Use of your Lavu Account requires compatible mobile devices and an internet connection that meets certain speed requirements, which you are responsible for providing. You are solely responsible for any fees, including Internet connection or mobile fees, that you incur when accessing the Services. You are responsible for determining the compatibility of the Services with other products and services you use. Lavu is not liable for any required or necessary agreements with the mobile device provider or internet provider and does not warrant that the Services will be compatible. Any mobile device that has been illegally altered or modified in any way is not a compatible device. You understand and accept that use of such a device is prohibited, a violation of the terms of this Agreement, and could result in the termination of your Lavu Account.

## Unauthorized or Illegal Use

If it is determined that your Lavu Account has been used for illegal or criminal purposes you acknowledge and authorize Lavu to share any information about you, your Lavu Account, and any other data to the appropriate law enforcement agencies.

You are responsible for verifying that the Products and Services and the functionality of the Products and Services comply with all applicable laws,



including but not limited to local, state, and federal laws, that may govern your use of the Products or Services or features contained within the Products or Services. You agree that you will not use the Products or Services or certain features contained within the Products and Services, if it is not legal to do so in your location. Your use of the Products and Services and the features contained therein constitute your representation that such use and features do not violate any applicable laws. You agree to wholly indemnify and hold harmless Lavu in any lawsuit arising out of your use of the Products or Services or the features of the Products or Services in the event such use or features violate any applicable laws, and you agree not to pursue any damages or remedies against Lavu arising of the same. You are solely responsible for your use of the Products and Services and the features therein, and you agree that such use by you is a waiver of any claims you may have against Lavu in the event such use, the Products, or Services, or the features of the Products or Services violate any applicable laws.

## Accepting Credit Card Payments

Lavu does not directly handle processing of credit card transactions. Our Services simply facilitates transacting credit cards through integrated third party Credit Card Gateway and Processing partners. By transacting credit cards through our Services you must agree to the terms and conditions set by the Credit Card Gateway and Processor being used.

1. You are responsible for verifying that your credit card batch is settled and that all amounts are correct on a daily basis. It is your responsibility to notify Lavu immediately, if you notice a problem with authorizations, tip amounts, transacting payments, processing, batching, or the settlement amount. Your failure to notify Lavu of an error in authorizations, tip amounts, transacting payments, processing, batching, or the settlement amount within seven (7) days of the date of a discrepancy, shall constitute a waiver of liability to Lavu.
2. Lavu is not liable for any damages if the error was caused by you, misuse of the Services, or the Credit Card Gateway or Processor.
3. Lavu may offer a feature that facilitates transacting Offline Credit Card Transactions with the Services. If you choose to utilize this feature you agree that Lavu is not liable for any damages or losses from the use of this feature. The use of this feature is at your own risk. To the maximum extent permitted by applicable law, this feature is provided on an “As Is” and “As Available” basis without any guarantee or warranty of any kind.

## Taxes

Lavu’s Fees do not include Taxes, unless expressly indicated otherwise by Lavu on an invoice. If any Products or Services, or payments for any Products or Services, under this Agreement are subject to Tax in any jurisdiction and you have not remitted the applicable Tax to Lavu, you will be responsible for the payment of such Tax and any related penalties or interest to the relevant tax authority. You will indemnify Lavu and its affiliates for any liability or expense Lavu or its affiliates may incur in connection with such Taxes, including penalties or interest. Upon our request, you will provide Lavu with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all

applicable Taxes. For purposes of this section, “Tax” or “Taxes” shall mean any and all sales, use, property, value added, or other transactional taxes, duties, levies or other amounts. Taxes do not include Lavu’s income taxes in the United States of America. You agree to make all payments of Fees to Lavu free and clear of, and without reduction for, any withholding taxes. All amounts payable to Lavu will be grossed-up to the extent there is any legally required withholding so that Lavu receives from you in United States Dollars the amount Lavu contemplated. Any Taxes imposed on payments of Fees to Lavu will be your sole responsibility, and you will provide Lavu with official receipts issued by the appropriate taxing authority, or such other evidence as we may reasonably request, to establish that such Taxes have been paid by you.

## Fees

In order to access or use the Services and receive and/or use the Products you agree to pay all Fees to Lavu in accordance with our then-current Fees found at: <https://www.lavu.com/restaurant-pos-pricing> or as otherwise agreed in writing by Lavu in an order with you. Except as set forth in this Agreement, **all Fees are non-refundable**. We reserve the right to change the Fees for any subsequent subscription period upon notice to you<sup>[\_1]</sup>. If you do not consent to the increase in the Fees, you will need to cancel your subscription.

If you qualify for and obtain financing from one of our Financing Partners under our Financing Program, you will not have to pay us directly for the applicable Fees that were covered by the Financing Program during the designated term or

rental or subscription period in your order with Lavu. However, you will have to pay the Financing Partner in accordance with your separate agreement(s) with the Financing Partner, and the Financing Partner will have to pay us in accordance with our agreement with them. Your obligation to pay the Financing Partner is independent from these Terms of Service and survives any termination or expiration of these Terms of Service. Financing Partners are independent of Lavu. Lavu is not responsible for such Financing Partners and Financing Partners are not responsible for Lavu.

By providing a credit card or other payment method, you represent and warrant that you are authorized to use the designated payment method and that you authorize us (or our third-party payment processor) to immediately charge your payment method for all fees and charges due and payable to Lavu hereunder and that no additional notice or consent is required. If the payment method you provide cannot be verified, is invalid or is otherwise not acceptable, your use of the Services may be suspended or terminated. In the event you want to change or update payment information associated with your Lavu Account, you can do so at any time by logging into your Lavu Account and editing your payment information.

Your subscription with Lavu will continue indefinitely until terminated in accordance with this Agreement. **After your initial subscription period, and again after any subsequent subscription period, your subscription will automatically commence on the first day following the end of such period (each a “Renewal Commencement Date”) and continue for an additional**

**equivalent period, at Lavu's then-current price for such subscription. You agree that your subscription will be subject to this automatic renewal feature unless you cancel your subscription at any time prior to the Renewal Commencement Date by contacting Customer Care at 855-767-5288.** If you do not wish your subscription to renew automatically, or if you want to change or cancel your subscription, please contact Customer Care at 855-767-5288. **You may not cancel your subscription prior to the end of your then-current subscription term.** If you cancel your subscription, you may use your subscription until the end of your then-current subscription term; your subscription will not be renewed after your then-current term expires. However, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. By subscribing, you authorize us (or our third-party payment processor) to immediately charge your payment method at the beginning of your initial subscription period, and again at the beginning of any subsequent subscription period.

You acknowledge and agree that Lavu will charge all applicable fees and charges due to the payment card or other form of non-invoice payment method that you provided to Lavu upon order placement and prior to shipment of any Products.

Lavu may use third party service providers for payment services (e.g., credit card transaction processing, merchant settlement, and related services). Where applicable, you agree to be bound by such third-party payment processors' terms and conditions in connection with such services. You hereby consent to provide

and authorize Lavu and any third-party payment processor to share any information and payment instructions you provide to the extent required to complete the payment transactions in accordance with this Agreement, including personal, financial, credit card payment, and transaction information.

Lavu offers a fourteen (14) day free trial that starts when you create a Lavu Account for certain Services. After the trial period has expired, you will be required to provide your credit card or payment method and you will be charged any Fees applicable to your selected subscription. We have no obligation to notify you when your free trial ends, and we reserve the right to modify or terminate free trials at any time, without notice and in our sole discretion.

## Customer Service

Lavu reserves the right to include and utilize tools, capabilities and methods in our software and applications to allow remote access to the devices or computers that contain the software or application or the computer network to which the devices or computers are connected. We may use this remote access functionality to log in to the devices or computers to monitor, modify, alter or otherwise manipulate the data on the remote device for the purpose of providing technical support and ensuring that the Services function as intended.

## Notices

By accepting this Agreement you acknowledge and accept that Lavu will post disclosures and notices required by law and any other information deemed pertinent by electronic means to include on any Lavu maintained website, via email, or in your Lavu Account. For contractual purposes, you (1) consent to receive communications from Lavu in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Lavu provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights. These notices will be considered received after 24 hours of posting on a Lavu-maintained website, to your Lavu Account, or notice via email and continued use of the Services.

Where Lavu requires that you provide an e-mail address, you are responsible for providing Lavu with your most current e-mail address. In the event that the last e-mail address you provided to Lavu is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by this Agreement, Lavu's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Lavu at the following address: 116 Central Ave #200, Albuquerque, NM 87102. Such notice shall be deemed given when received by Lavu by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

## Your Content

You understand that you are able to upload or customize User Content and do so willingly without any obligation. You also agree that any User Content uploaded or customized is your own or you have explicit permission from the owner of the content to use it in connection with the Service. You hereby grant, and you represent and warrant that you have the right to grant, to us a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable license to license, reproduce, distribute, modify, adapt, publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use your User Content (in whole or in part) for the purposes of including your User Content in the Services and operating, providing and promoting the Services.

1. We reserve the right to edit, modify or delete User Content at our discretion.
2. We may use any User Content for advertising or any other purposes.
3. We take no responsibility and are not liable for any loss or damage to User Content.
4. We reserve the right to edit, modify or delete User Data at our discretion.
5. We take no responsibility and are not liable for any loss or damage to User Data.

## Copyright and Trademark Infringement

Lavu respects and honors trademark and copyright rights of others and we ask that you do the same. Any valid notices of copyright or trademark infringement to



Lavu may be responded to with termination of Services of any Lavu Account who violates the copyrights and trademarks of others.

## Security

Lavu utilizes policies, procedures, and technical measures to protect your personal information from accidental loss or malicious acquisition, use, alteration, or access. Lavu cannot guarantee that unauthorized personnel will never be able to access your information by circumventing or breaking the measures in place to prevent such activity. Your acknowledgement of this Agreement represents your understanding that you provide your personal information at your own risk.

## Term; Termination

This Agreement commences on the date when you first use the Services and continues for the subscription term you select from our then current offerings (e.g., monthly, annual), unless terminated earlier in accordance with this Agreement. The subscription term will automatically renew in accordance with this Agreement.

Lavu may permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Services without any notice and liability for any reason, including if in Lavu's sole determination you violate any provision of this Agreement.

Upon termination of this Agreement for any reason, you must immediately stop using the Services and your license to use the Services provided under this Agreement shall end. Upon your termination of this Agreement, Lavu will provide you with thirty (30) days to allow you to extract your User Content and User Data that Lavu has stored on its servers as of the termination date. Subject to the foregoing sentence and applicable law and card association rule requirements, Lavu will delete User Content and User Data stored on Lavu's servers upon your termination of this Agreement, and Lavu will not be liable to you or any third party for termination of access to the Services or deletion of your User Content and User Data.

## License; Restrictions

Subject to this Agreement, we grant you a non-transferable, non-exclusive, revocable, limited license to use and access, solely for your own personal, noncommercial use (a) the App on any compatible device that you own or control, and (b) the other aspects of Services. Furthermore, with respect to any App accessed through or downloaded from the Google Play Store or Apple App Store (each an "App Store" and references to the App Store include the corporate entity and its subsidiaries making the App Store available to you), you agree to comply with all applicable third party terms of the App Store (the "Usage Rules") when using the App. To the extent the terms of this Agreement provide for usage rules that are less restrictive than or otherwise in conflict with the Usage Rules, the more restrictive term applies.

The rights granted to you in this Agreement are subject to the following restrictions: (i) you agree not to license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services or any leased or rented Products; (ii) you agree not to modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services or Products, except to the extent such restriction is prohibited by law; (iii) you agree not to access the Services in order to build a similar or competitive service; (iv) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means; (v) you agree not to upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer or communication network, computer, handheld mobile device, data, the Services or any other system, device or property of Lavu's; (vi) you agree not to interfere with, disrupt, or attempt to gain unauthorized access to, the servers or networks connected to the Services or violate the regulations, policies, or procedures of such networks; (vii) you agree not to access (or attempt to access) any of the Services by means other than through the interface that is provided by Lavu; and (viii) you agree not to remove, obscure or alter any proprietary rights notices (including copyrights and trademark notices) which may be contained in or displayed in connection with the Services or Products. Any future release, update, or other addition to functionality of the Services shall be subject to this Agreement.

You acknowledge and agree that the availability of the App and the Services is dependent on the App Store from which you received the App license. You and Lavu acknowledge that this Agreement is between you and Lavu and not with the App Store and that Lavu, and not the App Store, is responsible for the App and the content thereof. Lavu is responsible for providing any maintenance and support services with respect to the App and the App Store has no obligation whatsoever to furnish any maintenance and support services with respect to the App. Lavu is solely responsible for any product warranties, whether express or

implied by law, to the extent not effectively disclaimed. In the event of any failure of the App to conform to any applicable warranty, you may notify the App Store, and the App Store may refund the purchase price for the App to you; and to the maximum extent permitted by applicable law, the App Stores will not have any other warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Lavu's sole responsibility. You and Lavu acknowledge that Lavu, and not the App Store, is responsible for addressing any claims relating to the App or your possession and/or use of that App, including, but not limited to: 1) product liability claims; 2) any claim that the App fails to conform to any applicable legal or regulatory requirement; and 3) claims arising under consumer protection or similar legislation. You and Lavu acknowledge that, in the event of any third party claim that the App infringes or your possession and use of that App that third party's intellectual property rights, Lavu, and not the App Store, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. You represent and warrant that i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You agree to comply with, and your license to use the App is conditioned upon your compliance with, all applicable third party terms of agreement (e.g., the App Store's terms and policies and the Usage Rules) when using the App. Lavu and you acknowledge and agree that the App Stores and their subsidiaries, are third party Lavu of is Agreement, and that, upon your acceptance of the terms and conditions of this Agreement, the App Stores will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

# Ownership of Services

The Services are licensed and not sold. Lavu reserves all rights not expressly granted to you in this Agreement. This Agreement does not grant you any rights to Lavu's service marks or trademarks, or any other intellectual property rights.

The Services are protected by intellectual property laws, including but not limited to trademark, patent, trade secret and copyright laws. Lavu owns all Intellectual Property Rights in the Services. There are no implied licenses granted under this Agreement.

Any ideas, suggestions or comments submitted, including but not limited to ideas for new products or ways to improve the Services, is gratuitous and at your own risk and that we have no obligations (including without limitation obligations of confidentiality) with respect to such feedback. You agree that we may use the feedback in any way and that you waive any right to any compensation or other benefit from our use of the idea.

# Indemnity

You will indemnify, defend, and hold us, our officers, executives, and employees harmless from and against any and all claims, losses, damages, claims, judgments, penalties, interest, tax assessments, and expense arising from any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: a) any actual or alleged breach of

your representations, warranties, or obligations set forth in this Agreement; b) your use of, or inability to use the Products or Services; c) your violation of any law, rule or regulation of the United States or any other country; d) any person's or entity's access and/or use of the Services or Products with your unique username or password; e) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights.

## Export

You may not use, export, import, or transfer the Services or Products except as authorized by U.S. law, the laws of the jurisdiction in which you obtained or use the Services or Products and any other applicable laws. In particular, but without limitation, the Services and Products may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Services or Products you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You acknowledge and agree that products, services or technology provided by Lavu are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Lavu products, services or

technology, either directly or indirectly, to any country in violation of such laws and regulations.

## Representation and Warranties

You represent and warrant to Lavu that: a) you are eighteen (18) years of age or older; b) you are eligible to register and use these Services and have the power, ability, and right to enter into a perform under this Agreement; c) the name used to create the Lavu Account is your name or the name of your business under which you will utilize the Services; d) you will not, directly or indirectly, use the Services for fraudulent activity or to interfere with these Services; e) your use of the Services and Products will comply with this Agreement.

## No Warranties

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, To the maximum extent permitted by applicable law, YOUR USE OF THE PRODUCTS AND Services IS AT YOUR SOLE RISK AND THE PRODUCTS AND Services AND ANY CONTENT, PRODUCTS, SERVICES OR INFORMATION PROVIDED BY the PRODUCTS, Services is provided on an “As Is” and “As Available” basis, WITH ALL FAULTS AND without any guarantee or warranty of any kind, STATUTORY, expressed or implied, including without limitation THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT, all of which ARE EXPRESSLY disclaimed. No oral or written information or advice from Lavu will create a

warranty not expressly stated herein. Without limiting the foregoing, Lavu does not warrant that the PRODUCTS OR Services ARE reliable, correct, or accurate; that the PRODUCTS OR Services ARE virus free or contain no harmful components or code; that the PRODUCTS OR Services will be available at any given time or location, secure, or uninterrupted; that the PRODUCTS OR serviceS will meet your requirements; or that any defects or errors will be corrected. Any downloaded content through the use of the PRODUCTS OR Services is at your own risk and you are solely responsible for any damage or loss of information that results from such downloads. if permitted in Lavu's agreements with third party suppliers, lavu will flow down to you any warranties applicable to the PRODUCTS OR Services provided by such third party suppliers.

LAVU DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH OR IN CONNECTION WITH THE PRODUCTS OR Services (INCLUDING, BUT NOT LIMITED TO, THIRD PARTY PRODUCTS AND SERVICES CONNECTED THROUGH THE SERVICES OR FINANCING PRODUCTS OR SERVICES) OR ANY HYPERLINKED WEBSITE OR SERVICE, AND LAVU WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY.

## Processing and Calculation Errors



You agree that Lavu is not responsible for any monetary losses or damage that you may suffer while using the Services OR PRODUCTS. It is your responsibility to verify that calculations made by the Services AND PRODUCTS are correct and, if applicable, include the appropriate taxes, gratuities, and other fees.

## Limitation of Liability

To the maximum extent permitted by applicable law, under no circumstances is Lavu liable for any direct, indirect, punitive, incidental, special, consequential, or exemplary damages, including without limitation damages for lost profits, goodwill, use, data, or other intangible losses, that result from the use of, inability to use, or unavailability of the PRODUCTS OR Services. Under no circumstances will Lavu be liable for any damage or loss resulting from hacking, tampering, or otherwise illegally tampering or using the PRODUCTS OR Services or your Lavu account, or the information contained therein. To the maximum extent permitted by applicable law, Lavu assumes no responsibility or liability for any (I) Any unauthorized access to or use of our secure servers and/or any and all personal information stored therein; (II) any interruption or termination of communication to or from the PRODUCTS OR Services; (III) any bugs, viruses, worms, trojan horses, or the like that may be transmitted to or through the PRODUCTS OR Services; (IV) any errors or missing information in any content or data or for any loss or damage incurred as a result of the use of any content or data posted, emailed, transferred, transmitted, or otherwise made available through the PRODUCTS OR Services; (V) User Content or the

defamatory, offensive, or illegal conduct of any third-party. This limitation of liability section applies regardless of whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Lavu has been advised of the possibility of such damages. ACCESS TO, AND USE OF, THE PRODUCTS AND Services IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, LAVU'S LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF (A) THE FEES PAID BY YOU to lavu IN THE PRECEDING TWELVE (12) MONTHS AND (B) FIFTY U.S. DOLLARS (U.S. \$50.00). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. If You ARE NOT PAYING LAVU DIRECTLY FOR A PRODUCT OR SERVICE BECAUSE YOU ARE FINANCING THROUGH OUR FINANCING PARTNER AS DESCRIBED IN THESE TERMS OF SERVICE OR OUR ORDER WITH YOU, THEN CLAUSE (A) ABOVE WILL BE THE AMOUNT YOU WOULD HAVE PAID LAVU HAD YOU NOT FINANCED THROUGH OUR FINANCING PARTNER AND PAID US DIRECTLY. YOU AGREE THAT NEITHER OUR SUPPLIERS, FINANCING PARTNERS, NOR OUR LICENSORS WILL HAVE ANY LIABILITY OF ANY KIND (WHETHER DIRECT OR INDIRECT) ARISING FROM OR RELATING TO THIS AGREEMENT.

IF YOU BECOME DISSATISFIED IN ANY WAY WITH THE PRODUCTS OR Services OR THIS AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP YOUR USE OF THE PRODUCTS OR Services. HOWEVER, THIS WILL NOT LIMIT YOUR OBLIGATION TO PAY AMOUNTS DUE OR PREVIOUSLY FINANCED OR ENTITLE YOU TO ANY REFUND.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN LAVU AND YOU AND IN SUCH JURISDICTIONS, THE LIABILITY OF LAVU IS LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH STATE LAW.

## Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you without Lavu's prior written consent, but may be assigned by Lavu without restriction and without your consent. Any assignment or transfer in violation of the foregoing will be null and void.

## Disputes & Arbitration

In the event that a Dispute arises, you agree that you will contact Lavu Support to give us the opportunity to resolve the Dispute. Either party may request arbitration if your Dispute cannot be resolved within 60 days after presenting the Dispute to the other party. All Disputes that cannot be resolved informally (excluding claims for injunctive or other equitable relief as set forth below) shall be resolved by binding arbitration on an individual basis under the terms of this Section. This Section applies to you and Lavu, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as

all authorized or unauthorized users or beneficiaries of Products or Services provided under this Agreement.

The arbitration of any Dispute shall be initiated through the American Arbitration Association and conducted in accordance with the then current and applicable rules of the American Arbitration Association as modified by this Agreement. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearing. The arbitrator may not award relief in excess of or contrary to what this agreement provides, order consolidation or arbitration on a class wide or representative basis, award punitive or consequential damages or any other damages aside from the prevailing party's actual damages, or order injunctive or declaratory relief, except that the arbitrator may award on an individual basis damages required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. Any judgment on the award rendered by the arbitrator may be entered in any court of competent

jurisdiction. Any arbitration shall be confidential, and neither you, nor Lavu nor the arbitrator may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement or appeal of the arbitration award. If any portion of this Section is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the American Arbitration Association.

Notwithstanding the foregoing, Lavu may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights in any court of competent jurisdiction.

ALL DISPUTES MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Section. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Lavu in any state or federal court in a suit to vacate or enforce an

arbitration award or otherwise, YOU AND LAVU WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

In any circumstances where the this Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Bernalillo County, New Mexico, for such purpose.

## Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, consistent with the Federal Arbitration Act, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

## Time to Initiate a Dispute

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AND LAVU AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

## Right to Amend

Lavu reserves the right to alter or add to the terms of this Agreement at any time, and to delete, discontinue, change, or impose conditions at our sole discretion on

any feature or function of the Services with or without notice that we determine to be reasonable in the circumstances, including such notice on our website at [lavu.com](http://lavu.com) or any other affiliated website maintained by us for the purposes of providing services in terms of this Agreement. Any use of the Services after our publication of any changes shall constitute your acceptance of this Agreement as modified.

## Third Party Products and Services

Lavu may be integrated with third-party products and services, including Products sold or leased by Lavu (“Third Party Products and Services”). If you choose to use any of these Third Party Products, you agree that Lavu may exchange information and control data regarding you and your products, including your personal information, in order to enable the interface you have authorized. Once this information is shared with the particular Third Party Product and Service, its use will be governed by the third party's privacy policy and not by Lavu’s Privacy Policy. You acknowledge that Third Party Products and Services that you connect to your Lavu Account or interface with the Products or Services are not Lavu products and services and you acknowledge and agree that Lavu does not control, and that this Agreement does not apply to, any Third Party Products and Services. Use of any Third Party Products and Services is governed by separate terms and conditions provided by the operator(s) of the applicable Third Party Products and Services. You acknowledge and agree that Lavu makes no representation or warranty about the safety of any Third Party Products or Services. Accordingly, Lavu is not responsible for your use of any Third Party Product or Service or any personal injury, death, property damage (including, without limitation, to your home), or other harm or losses arising from or relating to your use of any Third Party Products or Services. You should contact the third party with any questions about their Third Party Products and Services.

The Services may contain links to third-party websites and applications and advertisements for third parties (collectively, “Third-Party Websites, Applications & Ads”). When you click on a link to a third-party website, application or ad, we will not warn you that you have left the Services and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Websites, Applications & Ads are not under the control of Lavu and Lavu is not responsible for any Third-Party Websites, Applications & Ads. Lavu provides these Third-Party Websites, Applications & Ads only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Websites, Applications & Ads, or their products or services. You use all links in Third-Party Websites, Applications & Ads at your own risk. When you leave our Services, this Agreement no longer governs. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Websites, Applications and Ads, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third-party.

## Miscellaneous

**Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.



Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.

Force Majeure. Lavu shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

Questions, Complaints, Claims. If you have any questions, complaints or claims with respect to this Agreement or the Services, please contact us at: Lavu, Inc. 116 Central Ave SW #200, Albuquerque, NM 87102 (855)767-5288. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

## Survival

All provisions of this Agreement which by their nature should survive, shall survive termination of this Agreement, including without limitation, ownership

provisions, warranty disclaimers, limitation of liability and the arbitration agreement.

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[1]Note to Lavu: please confirm you give notice of fee increases prior to charging users the new fee