**BLAZEBITE SERVICES ORDER FORM**

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| --- | --- |
| Customer:  | Contact:  |
| Address: | Phone:  |
|   | E-Mail:  |
| **Services**: During the Service Term, Customer will receive a nonexclusive, non-assignable, royalty free, worldwide right to access and use the BlazeBite Services solely for your internal business operations subject to the terms of this Agreement.  |
| **Services Fees**: * 12% of all sales ordered through BlazeBite application plus all Stripe Credit Card fees (2.9% and $0.30 per transaction)
 | **Initial Service Term**: One Year  |
| **Implementation Services**: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work (“SOW”) attached as Exhibit A hereto (“Implementation Services”), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.**Implementation Fee (Choose One)**: $850 - includes 7 inch tablet, stand, Bluetooth printer $900 - includes 10 inch tablet, stand, Bluetooth printer**Additional Equipment (Optional):** Can opt to purchase additional equipment at a reduced fee of $50 per unit |
| **Pilot Use**: The Services are provided “AS IS” and no warranty obligations of Company will apply, and Customer may terminate this Agreement and all of its rights hereunder by providing Company written notice thereof no less than 10 days prior to the end of the Pilot Period; otherwise, this Agreement shall continue in effect for the Initial Service Term (subject to earlier termination as provided in the Agreement). **Pilot Period: 1 (one) month****Pilot Use Fee: $850/$900 (fully refundable if canceled within 30 days, all equipment must be returned). All BlazeBite service and credit card fees are non-refundable.**  |

SAAS SERVICES AGREEMENT

This SaaS Services Agreement (“Agreement”) is entered into on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2023 (the “Effective Date”) between [Company] with a place of business at Avayla Solutions, LLC, DBA BlazeBite (“Company”), and the Customer listed above (“Customer”). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

**[Company]: Avayla Solutions LLC, [Customer]:**

 **DBA: BlazeBite**

Signature: Signature:

Name: Name:

Title: Title:

TERMS AND CONDITIONS

### SAAS SERVICES AND SUPPORT

#### Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services. As part of the registration process, Customer will identify an administrative user name and password for Customer’s Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

#### Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with Company’s standard practice.

### RESTRICTIONS AND RESPONSIBILITIES

#### Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

#### Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.227‑7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

#### Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company’s standard published policies then in effect (the “Policy”) and all applicable laws and regulations. [Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Services. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

#### Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, printers, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining and updating prices in the Restaurant Portal and the Company will not be responsible for lost sales or price discrepancies. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

#### Customer is responsible for determining and setting the retail price for each Item to be made available for sale via BlazeBite (the “Retail Price”). As the Merchant of Record, Customer is the “retailer” or “seller” of all Items and is solely responsible for the collection and remittance of all applicable Sales Taxes and other fees. The term “Sales Tax” includes any sales, sellers use, transaction privilege, privilege, general excise, gross receipts, Item taxes and similar transaction taxes. For the sake of clarity, the Retail Price for each Item excludes Sales Tax or any other fees. Customer is solely responsible for determining all applicable Sales Tax and other fees and identifying and informing Blazebite of the appropriate Sales Tax and other fee amount for BlazeBite to charge Users on Customer’s behalf for Items available on the BlazeBite app. Further, Customer expressly authorizes BlazeBite, at Customer’s direction, to collect such Sales Taxes and other fees on Customer’s behalf.

#### Customer acknowledges and agrees that BlazeBite takes no title to any Item at any time. Notwithstanding, Customer shall be responsible for any reimbursement costs related to User refunds for Substandard Items or other related issues within Customer’s control (including any costs associated with retrieving any such Substandard Items or otherwise unsatisfactory Item(s), if applicable)), including by way of example, missing or incomplete Items, Items not cooked thoroughly, and Items not prepared in accordance with Customer’s internal standards. BlazeBite may, in its sole discretion, deduct reimbursement costs from the payment BlazeBite remits to Customer.

#### Customer and its employees are solely responsible to verify all alcohol orders are of legal age and agree to not hold Company responsible for any violations.

#### If BlazeBite supplies a tablet or other mobile device (“Device”) to Customer to use in connection with the availability of Items via the BlazeBite app, Customer agrees that: (i) Device(s) may only be used for the purpose of accepting orders via the BlazeBite App, and (ii) Device(s) may not be transferred, loaned, sold or otherwise provided in any manner to any third party. Devices(s) will at all times remain the property of BlazeBite, and upon expiration or termination of the Agreement, or the extended absence of all of Customer’s location(s) from the BlazeBite App for longer than forty-five (45) days, Customer will return all applicable Device(s) to BlazeBite within ten (10) days. If Customer receives a wireless data plan for the Device, BlazeBite may require a weekly reimbursement Customer for the costs associated with the wireless data plan of each applicable Device. Customer agrees that the loss or theft of a Device, the failure to timely return a Device, or any damage to a Device outside of normal wear and tear, may result in a fee (“Damage Fee”). Customer agrees that BlazeBite may deduct the reimbursement or Damage Fee from the Item Revenue prior to remittance of such Item Revenue to Customer.

#### For the sale of Items, unless otherwise selected by Customer, Customer agrees to allow Users to provide gratuities through the Blazebite. BlazeBite shall remit to Customer the full value of any gratuities provided by Users. It is the sole responsibility of the Customer to comply with all applicable laws (including tax, gratuity, social security and employment laws where applicable) regarding the distribution of any gratuities.

#### Visiting the Sites or sending emails to BlazeBite constitutes electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically, via email and on the Sites, satisfy any legal requirement that such communications be in writing.

### CONFIDENTIALITY; PROPRIETARY RIGHTS

#### Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services (“Customer Data”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

#### Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

#### [Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning User Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.] No rights or licenses are granted except as expressly set forth herein.

### PAYMENT OF FEES

#### Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the “Fees”). All Fees under this agreement will be paid in U.S. Dollars. BlazeBite will deduct the Fee from the payment BlazeBite collects on Customer’s behalf.  BlazeBite reserves the right to suspend Customer’s ability to make Items available for purchase by Users through the BlazeBite app if Customer’s account is in arrears. If you are paid for an Item, you are responsible for the Fee. If Customer’s use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then‑current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department.

#### Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company’s net income.

For each Item sold by Customer via Blazebite, Customer will pay BlazeBite as follows: the Retail Price of all Items that Customer sells via the BlazeBite (including any Sales Tax collected on Customer’s behalf) multiplied by the applicable fee percentage for the Sales Channel used to sell each such Item (“Fee”). The Fee does not include any applicable taxes or other fees. BlazeBite will remit to Customer the total Retail Price collected for all Items Customer sells via BlazeBite (including any Sales Tax and other fees collected on its behalf) less: (a) the applicable retained Fee; and (b) any refunds given to Users (such final remitted amount being “Item Revenue”). All Item Revenue that is duly owed to Customer will be remitted within fourteen (14) business days of the sale of the Item. Subject to the foregoing, BlazeBite will typically make such payment on a weekly basis. If required by applicable law or regulation, BlazeBite may adjust the Fee. Such adjustment may apply only to certain Items such as Alcohol Items.

### TERM AND TERMINATION

#### Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

#### In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

### WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the services in a manner which minimizes errors and interruptions in the services and shall perform the implementation services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by company or by third-party providers, or because of other causes beyond company’s reasonable control, but company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, company does not warrant that the services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the services. Except as expressly set forth in this section, the services and implementation services are provided “as is” and company disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.

### LIMITATION OF LIABILITY

Notwithstanding anything to the contrary, except for bodily injury of a person, company and its suppliers (including but not limited to all equipment and technology suppliers), officers, affiliates, representatives, contractors and employees shall not be responsible or liable with respect to any subject matter of this agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory: (a) for error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business; (b) for any indirect, exemplary, incidental, special or consequential damages; (c) for any matter beyond company’s reasonable control; or (d) for any amounts that, together with amounts associated with all other claims, exceed the fees paid by customer to company for the services under this agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not company has been advised of the possibility of such damages.

### MISCELLANEOUS

1. You agree to indemnify, defend and hold harmless BlazeBite, its officers, directors, employees, agents and third parties, for any losses, costs, liabilities and expenses (including reasonable attorney’s fees) relating to or arising out of your use of or inability to use the app or services, any user postings made by you, your violation of any terms of this Agreement or your violation of any rights of a third party, or your violation of any applicable laws, rules or regulations. BlazeBite reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with BlazeBite in asserting any available defenses.
2. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company’s prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys’ fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Ohio without regard to its conflict of laws provisions. The parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request.
3. In the event the parties are not able to resolve any dispute between them arising out of or concerning these Terms and Conditions, or any provisions hereof, whether in contract, tort, or otherwise at law or in equity for damages or any other relief, then such dispute shall be resolved only by final and binding arbitration pursuant to the Federal Arbitration Act, conducted by a single neutral arbitrator and administered by the American Arbitration Association, or a similar arbitration service selected by the parties, in a location mutually agreed upon by the parties. The arbitrator’s award shall be final, and judgement may be entered upon it in any court having jurisdiction. In the event that any legal or equitable action, proceeding or arbitration arises out of or concerns these Term and Conditions, the prevailing party shall be entitled to recover is costs and reasonable attorney’s fees. The parties agree to arbitrate all disputes and claims in regards to these Terms and Conditions or any disputes arising as a result of these Terms and Conditions, whether directly or indirectly, including Tort claims that are a result of these Terms and Conditions. The parties agree that the Federal Arbitration Act governs the interpretation and enforcement of this provision. The entire dispute, including the scope and enforceability of this arbitration provision shall be determined by the Arbitrator. This arbitration provision shall survive the termination of these Terms and Conditions.
4. Any arbitration under these Terms and Conditions will take place on an individual basis; class arbitrations and class/representative/collective actions are not permitted. The parties agree that a party may bring claims against the other only in each’s individual capacity, and not as a plaintiff or class member in any putative class, collective and/or representative proceeding, such as in the form of a private attorney general action against the other. Further, unless both you and BlazeBite agree otherwise, the arbitrator may not consolidate more than one person’s claims and may not otherwise preside over any form of a representative or class proceeding.
5. The information, software, products, and services included in or available through the site may include inaccuracies or typographical errors. Changes are periodically added to the information herein. BlazeBite and/or its suppliers may make improvements and/or changes in the app at any time.
6. BlazeBite and/or its suppliers make no representations about the suitability, reliability, availability, timeliness, and accuracy of the information, software, products, services and related graphics contained on the app for any purpose. To the maximum extent permitted by the applicable law, all such information, software, products, services and related graphics are provided “as is” without warranty or condition of any kind. BlazeBite and/or its suppliers hereby disclaim all warranties and conditions with regard to this information, software, products, services and related graphics, including all implied warranties or conditions of merchantability, fitness for a particular purpose, title and non-infringement.
7. To the maximum extent permitted by applicable law, in no event shall BlazeBite and/or its suppliers be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the app, with the delay or inability to use the app or related services, the provision of or failure to provide services, or for any information, software, products, services and related graphics obtained through the app, or otherwise arising out of the use of the app, whether based on contract, tort, negligence, strict liability or otherwise, even if BlazeBite or any of its suppliers has been advised of the possibility of damages. Because some states/jurisdictions do not allow the exclusion or limitations of liability for consequential or incidental damages, the above limitation may not apply to you. If you are dissatisfied with any portion of the app, or with any of these terms of use, your sole and exclusive remedy is to discontinue using the app.

**EXHIBIT A**

**Statement of Work**

Software & Services Provided:

- The setup and use of BlazeBite application in Venue/Restaurant

- Customer portal setup and login access to Customer Portal

- Portal will be used to change menus, prices, location setup(i.e. seats/tables), etc.

- One-time setup of restaurant menus, specials, prices, and table tents(if applicable)

- Sales results (from BlazeBite application) in the form of report or dashboard (includes sales, tips, ratings/feedback from end users)

- Troubleshooting and training of staff on the use of application, tablet, and customer portal

Hardware/Services Provided:

- Android Tablet (x1)

- Printer (x1)

- Tablet Stand (x1)

**Implementation Fee (Choose One)**

\_\_\_\_\_\_ $850 - includes 7 inch tablet, stand, Bluetooth printer

\_\_\_\_\_\_ $900 - includes 10 inch tablet, stand, Bluetooth printer

Additional Equipment (Optional):

\_\_\_\_\_\_ $800 - includes 7 inch tablet, stand, Bluetooth printer

\_\_\_\_\_\_ $850 - includes 10 inch tablet, stand, Bluetooth printer