

## CLOUD SERVICES AGREEMENT

THIS CLOUD SERVICES AGREEMENT (this “**Agreement**”) is made between HM Electronics, Inc. (“**HME**”) and any person or company (“**User**”) who completes the registration process to open and maintain an account with HME’s interactive online service known as “HME CLOUD” (the “**Service**”).

THIS AGREEMENT IS A “CLICK-WRAP” AGREEMENT. BY CLICKING THE ACCEPTANCE BUTTON, USER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF USER DOES NOT CLICK THE ACCEPTANCE BUTTON, THEN HME WILL PROMPTLY CANCEL THIS TRANSACTION AND USER MAY NOT ACCESS OR USE THE SERVICE.

### 1. General Terms

(a) *Description.* The Service allows a restaurant operator to manage settings for HME intercom systems and drive-thru speed of service timers, and access their drive-thru timer data via a standard web browser from a cloud based dashboard and reporting system hosted by HME. The Service is proprietary to HME and is protected by state and federal intellectual property laws and international intellectual property treaties. User’s access to the Service is licensed and not sold. Subject to the terms and limitations set forth in this Agreement (including, without limitation, the timely payment of any fees), HME agrees to provide User with a personal, non-transferable and non-exclusive account enabling User to access and use the Service.

(b) *Accessibility.* User agrees that from time to time the Service may be inaccessible or inoperable for any reason (including, without limitation, equipment malfunctions, periodic maintenance procedures or repairs that HME may undertake from time to time or causes beyond the control of HME or which are not reasonably foreseeable by HME). HME shall have no liability or responsibility to User if the Service is inaccessible or inoperable for any reason.

(c) *Password; Equipment.* User shall be solely responsible for any and all acts and omissions that occur under User’s account or password. User shall be solely responsible for providing, maintaining and ensuring compatibility with the Service and all hardware, software, electrical and other physical requirements for User’s use of the Service (including, without limitation, telecommunications and Internet access connections and links, web browsers or other equipment, programs and services required to access and use the Service). User is responsible for maintaining the security and confidentiality of all passwords associated with User’s account, and for all activities that occur under User’s account. If User becomes aware of any unauthorized or illegal use of any such password or account, User shall immediately notify HME.

### 2. Right to Use the Service

(a) *Use of Service.* HME grants to User a non-exclusive, non-transferrable and non-sublicenseable right to access and use the Service solely for User’s internal business purposes. User may use the Service only while User is (1) an account holder who subscribes to the Service or (2) using the Service with the express permission of an account holder who subscribes to the Service. Unless otherwise specified by HME or by another express agreement with HME to the contrary, User’s license and right to access or use the Service terminates on the earliest of (a) the

date which is the last day of the billing cycle for which the last Service prepayment for the account has been received by HME, or (b) the date on which any charge or fee, or other balance due under the account is past due and HME determines, in its discretion, to terminate the account or suspend the Service, or (c) any other date upon which HME has the right to terminate the account or suspend the Service as provided in this Agreement or any other applicable agreement or policy.

(b) *Authorization.* User represents, to the extent User uses any feature of the Service and User is not an account holder, that User has the express permission of an account holder to use that account holder's Service account. Conversely, if User is creating or registering an account on behalf of another person who will become an account holder thereby, User hereby represents, warrants, and covenants that User has the express authority to register such person, create such account and bind such account holder to this Agreement and the policies and requirements pertaining to the Service, and User hereby indemnifies HME from any loss, damage, claim or expense (including reasonable attorney's fees and expenses) arising out of or related to User's failure to actually acquire such authority or such new account holder's dispute or denial of any such authority. HME reserves the right to discontinue allowing persons who are not (or who do not become thereby) registered account holders to create, use, or access accounts or the Service, whether on an account-by-account basis or otherwise, in its sole discretion. HME may establish other reasonable account or Service registration or usage limits in its discretion. HME further reserves the right to refuse Service to any person or organization for any reason, in HME's discretion.

(c) *Limitation on Users.* Each account holder's right to use the Service is personal to the account holder and those employees or other staff of the account holder who use the Service solely on behalf of the account holder's organization. An account is limited to use for the benefit of a single organization or individual. The account holder may be either an individual or organizational entity, but neither the account holder, nor any other user, may resell, rent, or timeshare access to the account or use of the Service, or other materials available on the HME Website without the express prior written consent of HME.

(d) *Restrictions on Access and Use.* User shall not access or attempt to access the Service by any means other than the web and mobile device interfaces provided by HME, or to attempt to circumvent or disable any access or use restrictions put in place by HME. User shall use the Service only for purposes and in a manner that are permitted by applicable laws, rules and regulations. User shall not (and shall not attempt to) decompile, reverse engineer or otherwise derive or discover the source code of the software underlying the Service, or use the Service in a service bureau or other resale capacity.

### 3. **Registration**

(a) *Creating Account.* To use the Service, an account must be created, and to create an account, an account holder (or his, her or its authorized representative) must submit a complete registration form, available at <https://www.hmedtcloud.com> (the "**Registration Form**"), including current and accurate account and contact information, such as a working e-mail address and valid company name (all such information provided shall be referred to herein as "**Registration Data**"). All Registration Data must be, and must be maintained as, accurate

and current during the life of the account, and any inaccuracy therein shall be grounds for account termination. HME will evaluate the Registration Data and notify User whether User's request for an account is accepted, in its sole discretion.

(b) *Notices.* HME may distribute notices and other important information to account holders to such e-mail addresses, or by publication on the HME Website, by transmission through the Service, or by written communication sent by mail to the account holder address on record. Regardless of method, each account holder is responsible to assure that all users of the account or the Service thereunder are notified accordingly and all such users shall be deemed to have received such notice when provided to the account holder of record by reasonable means. Such notices, including any amendments to this Agreement determined by HME in its discretion, or to any policies, rules, or restrictions, shall be effective as against the account holder and all other users upon such publication or distribution.

#### 4. **Content and Data.**

(a) *Responsibility for Content Resulting From Use of the Service.* User acknowledges and agrees that all information communicated by User in connection with User's use of the Service is the responsibility of User or the person from which the information originated, and that HME has no responsibility for such content.

(b) *Input Data.* As between the parties hereto, User shall own and, other than to the limited extent provided in this Section 4(b), have sole control over any and all data transmitted to the Service by User or by other persons communicating with User via the Service (collectively, the "**Input Data**"). User hereby grants to HME a non-exclusive, royalty-free, worldwide license while this Agreement is in effect to (i) use and display the Input Data solely in conjunction with the Service and (ii) to aggregate the Input Data with similar information provided by other users of the Service for the purpose of producing industry-level reports and analyses that do not identify the User or any franchisor with which the User may have a contractual relationship. User acknowledges and agrees that as between the parties hereto, all Input Data is the responsibility of User; provided, however, that HME shall have the right (but not the obligation) in its discretion to remove from the Service any Input Data that violates this Agreement or HME's policies and procedures, or is otherwise objectionable. If the User is a franchisee of a restaurant franchisor and if the User has agreed in the Registration Form to allow the franchisor to access the Input Data, HME will cooperate with the User in facilitating the franchisor's access to the User's Input Data.

(c) *Security and Retention.* HME employs reasonable technological and operational security procedures intended to protect such data from loss, misuse, alteration, or destruction. However, User acknowledges that no security measure can guarantee against compromise, and HME does not guarantee that the servers and databases underlying the Service will not experience any such compromise. User acknowledges that servers and databases are maintained by or on behalf of HME to store the Input Data and other data processed by the Service and that HME may retain this information as long as it is necessary and relevant for HME's operations. In addition, HME may retain personal information from closed accounts to comply with the law, prevent fraud, collect any fees owed, resolve disputes, troubleshoot problems, assist with any investigation, enforce this Agreement and take other actions permitted by law.

(d) *Privacy.* This Agreement constitutes a statement of HME's privacy policies that are applicable to the Service. HME's external Website privacy policy does not apply to a User's access to or use of the Service. Subject to the foregoing, HME uses secured servers for conducting online transactions. Steps have also been taken to safeguard the integrity of data and protection of personal information including but not limited to the employment of firewalls, encryption, and authenticated access to internal databases where needed. All personal information is transmitted and protected by encryption technology using Secured Socket Layer (SSL) protocol. If security monitoring reveals possible evidence of criminal activity, information pertaining to such activity will be provided to law enforcement officials.

## 5. **Fees**

(a) *Payment.* User shall pay HME for the Service any then-applicable subscription charges or other fees (the "**Fees**"). Fees will be billed monthly in advance. The Fees will be prorated for the first month if the User initiates the Service after the first day of the month. HME expressly reserves the right to change the Fees at any time upon notice to User. The Fees shall be due and payable at the time indicated by HME. The Fees are non-refundable unless the User prepay for a period of use instead of paying monthly. In any such case, unused prepaid amounts will be reimbursed.

(b) *Collection and Taxes.* All Fees, taxes and other charges shall be billed to User's credit card or PayPal account in United States Dollars. User shall be responsible for and shall pay HME all currency conversion charges, sales, use, value-added, personal property or other tax, duty or levy of any kind (including, without limitation, interest and penalties thereon) imposed now or later by any governmental entity. In the event User fails to pay any amount when due and payable, HME may immediately suspend or terminate this Agreement and User's access to the Service.

## 6. **User Representations**

User represents and warrants to HME that: (a) User is a person over the age of eighteen (18) or a legally existing entity and has the power and authority to enter into and perform User's obligations under this Agreement; (b) all information User has provided and will provide to HME is truthful, accurate and complete; (c) User authorizes charges to its credit card or PayPal account for payment of Fees and other charges; and (d) User will comply with all terms and conditions of this Agreement (including, without limitation, "**Prohibited Uses**" under Section 7).

## 7. **Prohibited Uses**

User agrees not to engage in unacceptable use of the Service, which includes, without limitation, use of the Service to: (a) disseminate, store or transmit unsolicited messages, chain letters or unsolicited commercial email; (b) disseminate or transmit material that to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (c) disseminate, store or transmit files, graphics, software or other material without the permission or right to do so or that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person; (d) create a false identity or to otherwise attempt to mislead any person as to the identity or origin of

any communication; (e) export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses or exemptions; (f) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Service or any other computer network; (g) disseminate, store or transmit viruses, Trojan horses or any other malicious code or program; or (h) engage in any other activity deemed by HME to be in conflict with the spirit or intent of this Agreement.

## **8. Termination**

(a) *By User.* User may terminate this Agreement (and cancel the Service) at any time upon 30 days prior written notice to HME. User will not owe any Fees for periods subsequent to the effective date of such notice.

(b) *By HME.* HME may terminate this Agreement (and User's access to the Service) at any time, for any reason or for no reason.

(c) *Effects of Termination.* Upon the expiration or termination of this Agreement, HME will disable User's online access to the Service and will destroy the Input Data of User then in HME's possession. Termination of this Agreement will not relieve either party of its obligation to comply with any terms of this Agreement that call for performance prior or subsequent to the termination date of the Service, including User's obligation to pay for access to the Service for periods prior to the termination date.

## **9. Proprietary Rights**

The contents of the Service are copyrighted by HME. All rights are reserved. No part of the Service or the services, products and information on the Service may be reproduced or transmitted by User in any form or by any means without HME's express written permission except that User may use any reports containing Input Data provided by the Service for its internal business purposes. HME shall retain and exclusively own all right, title and interest in and to its trademarks, copyrights or other intellectual property rights contained in the Service.

## **10. Disclaimer of Warranties**

THE SERVICE IS PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. USE OF THE SERVICE IS AT USER'S SOLE RISK. HME DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES HME MAKE ANY REPRESENTATION OR WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICE. HME MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE) IN RELATION TO THE SERVICE OR THIS AGREEMENT. THIS PARAGRAPH IS INTENDED TO BE APPLICABLE TO THE MAXIMUM EXTENT ALLOWED BY LAW.

## **11. Risk of Loss; Limitation of Liability**

(a) *Risk of Loss.* User accepts all risk of loss or damage to User's computer systems or other devices, or loss of data, that results from or in connection with User's use of the Service.

(b) *Limitation of Liability.* UNDER NO CIRCUMSTANCES SHALL HME BE LIABLE TO USER OR ANY OTHER PERSON FOR ANY LOST PROFITS, LOST DATA, LOSS OF BUSINESS, GOODWILL OR REPUTATION OR FOR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THE SERVICE OR THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, USER'S USE OR INABILITY TO USE THE SERVICE), WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL HME'S TOTAL LIABILITY TO USER OR ANY OTHER PERSON FOR ANY DIRECT DAMAGES ARISING FROM OR RELATING TO A BREACH BY HME OF THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY USER TO HME UNDER THIS AGREEMENT. THIS SECTION 11(b) IS INTENDED TO BE APPLICABLE TO THE MAXIMUM EXTENT ALLOWED BY LAW. USER ACKNOWLEDGES AND AGREES THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE ESSENTIAL ELEMENTS OF THE BARGAIN AND THAT IN THE ABSENCE OF SUCH LIMITATIONS, THE FINANCIAL AND OTHER TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

## 12. **Indemnification**

User agrees to indemnify and hold harmless HME and its shareholders, directors, officers, employees and agents for, from and against any action, cause, claim, damage, debt, demand or liability (including, without limitation, reasonable attorneys' fees and expenses and court costs) resulting from, arising out of or relating to User's breach of this Agreement or User's use of the Service. This Section 12 is intended to be applicable to the maximum extent allowed by law.

## 13. **Miscellaneous**

(a) *Independent Contractors.* The parties are independent contractors. Neither party, by virtue of this Agreement or otherwise, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

(b) *Notices.* Any notice made by either party under this Agreement shall be delivered via e-mail. User shall deliver all notices to HME at [cloudsupport@hme.com](mailto:cloudsupport@hme.com). HME shall deliver all notices to User to the e-mail address provided for User's account or any other e-mail address that User provides to HME.

(c) *Survival.* In the event of any termination of this Agreement, any accrued obligation under this Agreement (including, without limitation, unpaid Fees) and Sections 9, 10, 11, 12 and 13 shall survive indefinitely.

(d) *Governing Law; Venue; Severability.* The Service is controlled, operated and administered by HME from HME's offices in San Diego County, California, United States of America. As such, this Agreement shall be governed by the laws of the State of California without giving effect to its conflicts of law principles. User agrees that any action or proceeding instituted by User resulting from, arising out of, relating to or in connection with use of the

Service or this Agreement shall be tried and litigated exclusively in the state and federal courts located in San Diego County, California, United States of America within one (1) year after the claim or cause of action arises upon which such claim or proceeding is based. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, then such provision shall be enforced to the maximum extent permissible by law so as to effect the intent of this Agreement and the remainder of this Agreement shall continue in full force and effect.

(e) *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement between User and HME in connection with User's access to and use of the Service and shall not be deemed amended, modified or waived under any circumstance, except that HME may add to or modify this Agreement at any time by notice to User or by providing disclosure to User through the Service, and User's access to or use of the Service after the date of such notice or disclosure shall be deemed to constitute acceptance of such addition or modification.

(f) *Execution.* This Agreement is a "click-wrap" agreement. This Agreement shall be deemed executed and delivered by both parties upon User clicking the acceptance button for this Agreement.