



## CLOUD SERVICES AGREEMENT

**THIS CLOUD SERVICES AGREEMENT** (this “**Agreement**”) is made between HM Electronics, Inc. (“**HME**”) and any person or company (the “**Account Owner**”) who maintains 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, ACCOUNT OWNER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND (AND AGREES AND CONSENTS THAT ITS AUTHORIZED USERS WILL BE BOUND) BY ALL OF THE TERMS OF THIS AGREEMENT. IF ACCOUNT OWNER DOES NOT CLICK THE ACCEPTANCE BUTTON, THEN HME WILL PROMPTLY CANCEL THIS TRANSACTION AND ACCOUNT OWNER MAY NOT (NOR PERMIT OTHERS TO) ACCESS OR USE THE SERVICE.

### 1. General Terms.

(a) *Description.* The Service allows an Authorized User (as defined in Section 2(a)(ii) below) to manage settings for HME intercom systems and drive-thru speed of service timers, as well as access data and other features from a 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. The Service is only provided as a right to access and use; the Service is 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 Account Owner with a non-transferable and non-exclusive account enabling Account Owner and Authorized Users to access and use the Service.

(b) *Accessibility.* Account Owner 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). Except as provided in a separate written agreement, HME shall have no liability or responsibility to Account Owner (or any Authorized User) if the Service is inaccessible or inoperable for any reason.

(c) *Password; Equipment.* Account Owner shall be solely responsible for any and all acts and omissions that occur under Account Owner’s account or passwords. Account Owner shall be solely responsible for providing, maintaining and ensuring compatibility with the Service and all hardware, software, electrical and other physical requirements for Account Owner’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). Account Owner is responsible for maintaining the security and confidentiality of all passwords associated with Account Owner’s account, and for all activities that occur under Account Owner’s account. If Account Owner becomes aware of any unauthorized or illegal use of any such password or account, Account Owner shall immediately notify HME.

### 2. Right to Use the Service.

(a) *Use of Service.*

(i) *Account Owner.* HME grants to Account Owner a non-exclusive, non-transferrable and non-sublicensable right to access and use the Service solely for Account Owner’s internal operations management. Account Owner may use the Service only while Account Owner is an account holder who subscribes to the Service. Unless otherwise specified by HME or by another express agreement with HME to the contrary, Account Owner’s license and right to access or use the Service terminates on the earliest of (1) 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 its authorized dealers or distributors), or (2) 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 (3) 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.

(ii) *Authorized Users.* Account Owner may authorize persons to access and use the Service under Account Owner's account by registering each such person as an "**Authorized User**" at the HME CLOUD page portal. As part of the registration process, the Account Owner and each Authorized User must confirm that the Account Owner has (1) discussed with the Authorized User the requirements for and limitations on use of the Service as set forth in this Agreement, (2) advised the Authorized User to review HME's Privacy Statement and User Content Guidelines as set out in Sections 4(d) and 4(e) before completing the registration process, and (3) informed the Authorized User that he/she is subject to the same rules and restrictions on the use of the Service as the Account Owner. The Account Owner shall have the right to revoke an Authorized User's right to access and use the Service by delivering written notice of such revocation to HME.

(b) *Authorization.* Account Owner represents, to the extent an Authorized User uses any feature of the Service and the Authorized User is not an account holder, the Authorized User has the express permission to use the Account Owner's Service account. Conversely, if Account Owner is creating or registering an account on behalf of another person who will become an account holder thereby, Account Owner hereby represents, warrants, and covenants that Account Owner 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 Account Owner hereby indemnifies HME from any loss, damage, claim or expense (including reasonable attorney's fees and expenses) arising out of or related to Account Owner'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 Account Owners.* Each Account Owner's right to use the Service is personal to the Account Owner and those Authorized Users who use the Service solely as authorized by the Account Owner. An account is limited to use for the benefit of a single organization or individual. The Account Owner may be either an individual or organizational entity, but neither the Account Owner, nor any Authorized User, or 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.* Account Owner 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. Account Owner shall use the Service only for purposes and in a manner that are permitted by applicable laws, rules and regulations. Account Owner shall not (and shall not attempt to) (1) decompile, reverse engineer or otherwise derive or discover the source code of the software underlying the Service except to the extent such actions cannot be prohibited by applicable local law, or (2) 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 Owner (or his, her or its authorized representative) must affirm that it (i) has reviewed HME's Privacy Statement (see Section 4(d) below), (ii) agrees to the terms and conditions of this Agreement, and (iii) has provided 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 Materials**").

All Registration Materials 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. If the Account Owner is a franchisee of a restaurant franchisor, access to the data in its account will be given to the Account Owner's franchisor unless the Account Owner in the Registration Materials withholds consent to such access. In all situations not mentioned in the preceding sentence, the Account Owner must indicate in the Registration Materials whether it consents to allow others to access data in its account. HME will evaluate the Account Owner's affirmations and Registration Materials and notify Account Owner whether Account Owner's request for an account is accepted, in its sole discretion.

(b) *Notices.* HME may distribute notices and other important information to Account Owners and Authorized Users 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 Owner's address on record. Regardless of method, each Account Owner is responsible to assure that all Authorized Users of the account or the Service thereunder are notified accordingly and all such Authorized Users shall be deemed to have received such notice when provided to the Account Owner of record by reasonable means. Such notices, including any amendments to this Agreement, or to any policies, rules, or restrictions, all as determined by HME in its sole discretion, shall be effective as against the Account Owner and all Authorized Users upon such publication or distribution.

#### 4. Content and Data.

(a) *Content from Account Owner.* Account Owner acknowledges and agrees that all information communicated by Account Owner in connection with Account Owner's use of the Service is the responsibility of Account Owner or the person from which the information originated, and that HME has no responsibility for such content. Account Owner shall develop and implement acceptable use and content policies, procedures, or guidelines governing Authorized Users' use of the Service, which shall comply with applicable laws, be effectively communicated to Authorized Users, and enforced as reasonably necessary.

(b) *Data Rights.* As between the parties hereto, Account Owner shall own and, other than to the limited extent provided in Section 3(a) and this Section 4(b), have sole control over any and all data transmitted to the Service by Account Owner and its Authorized Users via the Service (collectively, the "**Input Data**"). Account Owner agrees and understands that Input Data may be visible to other HME customers and their employees or end users who also use their own instance of the Service to the extent Account Owner or Authorized Users choose to send, share, or otherwise transmit Input Data to other HME customers or end users. Account Owner acknowledges and agrees that as between the parties hereto, all Input Data is the responsibility of Account Owner; provided, however, that HME shall have the right (but not the obligation) in its sole discretion to remove from the Service any Input Data that violates this Agreement, HME's policies and procedures, or is otherwise objectionable. If the Account Owner is a franchisee of a restaurant franchisor and if the Account Owner has not withheld its consent to allow the franchisor to access the Input Data, then HME will permit the franchisor to access the Account Owner's Input Data through the Service, subject to HME's data security protocols, on the same basis and to the same extent as the Account Owner accesses the Input Data. Account Owner hereby grants to HME an irrevocable, non-exclusive, royalty-free, worldwide license to: (i) use and display the Input Data within the Service; (ii) use the Input Data for purposes of creating aggregated data or other information to be used in or for any purposes as determined by HME in its sole discretion, except that the Input Data will be anonymized by HME before HME displays, shares or otherwise provides such aggregated data or other information to someone other than the Account Owner, Authorized Users or any franchisor whose access to the Input Data has not been withheld by the Account Owner; and (iii) use the Input Data for purposes of improving the quality of HME services, offerings, products or promotional materials. As between the parties hereto, HME shall own and have sole control over any and all data transmitted to or from the Service other than the Input Data and any and all aggregated data or other information created, in whole or in part, from the Input Data.

(c) *Security and Retention.* HME employs reasonable technological and operational security

procedures intended to protect data within the Service from loss, misuse, alteration, or destruction. However, Account Owner 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. Account Owner acknowledges that servers and databases are maintained by or on behalf of HME to store the data within the Service and agrees that, subject to any written agreement to the contrary with the Account Owner that expressly cites this Section 4(c), HME may retain such data as long as determined by HME in its sole discretion. 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.* Each Party is solely responsible for its respective obligations under applicable data protection legislation. This Agreement constitutes a statement of HME's privacy policies that are applicable to the Service, which is further supplemented by HME's Privacy Statement (which can be found at [www.hme.com/privacy](http://www.hme.com/privacy)). Account Owner shall collect or provide all necessary notices, consents, authorizations, or other disclosures to its Authorized Users as required by data protection legislation. 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, to the extent technically feasible. If security monitoring reveals possible evidence of criminal activity, HME may provide personal information pertaining to such activity to law enforcement officials.

(e) *Acceptable Content and Moderation.* Account Owner agrees that it will notify all Authorized Users of HME's Acceptable Content Guidelines (available at the HME CLOUD page portal) and affirm Authorized Users' acknowledgement to be bound to such guidelines, including but not limited to that no Account Owner, Authorized User, or any other person using an Account Owner or Authorized User's account shall use the Service to create, upload, or transmit any content that:

- (i) uses threatening, insulting, harassing, sexually suggestive, or provocative language;
- (ii) incites or encourages hatred or violence on the basis of race, political views, religion, gender, nationality, or sexuality, or other personal characteristics;
- (iii) incites or encourages violence or hatred against individuals or groups;
- (iv) contains indecent, obscene, or pornographic material;
- (v) impersonates another person or leads others to believe that the sender is someone else;
- (vi) encourages or solicits the performance of any illegal activity;
- (vii) infringes a third party's intellectual property right(s); or
- (viii) invades another person's privacy or otherwise violates their legal rights.

Account Owner agrees that HME does not control and is not responsible for any content input by any Account Owners or Authorized Users. Account Owner is solely responsible for moderating and monitoring all content and communications by its Authorized Users to the fullest extent permitted by law and shall clearly and conspicuously notify all Authorized Users that it moderates and monitors all content and communications on and sent through the Service. Account Owner shall indemnify HME in accordance with Section 12 for 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 a violation of this Section 4(e) or an Authorized User's misuse of the Service.

## 5. Fees.

(a) *Payment.* Account Owner shall pay HME (or its authorized dealer or distributor) for the Service and all then-applicable subscription charges or other fees (the "Fees"). Fees will be billed monthly or annually in advance. If a new location is added to an existing account, the first annual billing for the new

location will end on the date that the annual billing for the existing account ends and the Fees for such new location will be prorated to reflect the portion of the billing period of the existing account for which the new location has had the Service in effect. HME expressly reserves the right to change the Fees at any time upon notice to Account Owner. The Fees shall be due and payable at the time indicated by HME. The Fees are non-refundable unless the Account Owner prepays for a period of use instead of paying monthly or annually. In any such case, unused prepaid amounts will be reimbursed following termination of this Agreement.

(b) *Collection and Taxes.* All Fees, taxes and other charges shall be billed to Account Owner's credit card, PayPal or other similar payment processing service account in United States Dollars or the currency of the country in which the Account Owner is located, as set forth in the Registration Materials. Account Owner shall be responsible for and shall pay HME (or its authorized dealer or distributor) 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 Account Owner fails to pay any amount when due and payable, HME may immediately suspend or terminate this Agreement and Account Owner's access to the Service.

6. Account Owner Representations. Account Owner represents and warrants to HME that: (a) Account Owner 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 Account Owner's obligations under this Agreement; (b) all information Account Owner has provided and will provide to HME is truthful, accurate and complete; (c) Account Owner authorizes charges to its credit card, PayPal or other similar payment processing service account for payment of Fees and other charges; and (d) Account Owner, and Account Owner's Authorized Users, will comply with all terms and conditions of this Agreement (including, without limitation, "**Prohibited Uses**" under Section 7 below).

7. Prohibited Uses. Account Owner shall not, and will take appropriate measures to ensure that each of its Authorized Users does not, 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 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 Account Owner.* Account Owner may terminate this Agreement (and cancel the Service) at any time upon 30 days prior written notice to HME. Account Owner will not owe any Fees for periods subsequent to the effective date of such termination.

(b) *By HME.* HME may terminate this Agreement (and Account Owner'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 Account Owner's access to the Service. The expiration or 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 Account Owner's obligation to pay for

access to the Service for periods prior to the termination date) or that by their nature are intended to survive the expiration or termination of this Agreement.

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 data on the Service may be reproduced or transmitted by Account Owner in any form or by any means without HME's express written permission, except that Account Owner may use any data accessed through the Services and reports provided by the Service or any data derived therefrom solely for its internal operations management. The Account Owner shall not use or enable any other party to use such data or reports for the purpose of conducting or enabling the conduct of a business that duplicates or competes with the Service or monetizes such data or reports. 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 ACCOUNT OWNER'S AND AUTHORIZED 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 REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, 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.* Account Owner accepts all risk of loss or damage to Account Owner's computer systems or other devices, or loss of data, that results from or in connection with Account Owner's use of the Service.

(b) *Limitation of Liability.* UNDER NO CIRCUMSTANCES SHALL HME BE LIABLE TO ACCOUNT OWNER, ANY AUTHORIZED USER OR ANY OTHER PERSON FOR ANY LOST PROFITS, LOST DATA, LOSS OF BUSINESS OR REVENUE, 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, ACCOUNT OWNER'S AND AUTHORIZED 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 ACCOUNT OWNER, ANY AUTHORIZED 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 ACCOUNT OWNER TO HME UNDER THIS AGREEMENT. THIS SECTION 11(b) IS INTENDED TO BE APPLICABLE TO THE MAXIMUM EXTENT ALLOWED BY LAW AND NOTHING IN THIS SECTION 11(b) SHALL EXCLUDE OR LIMIT HME'S LIABILITY FOR ANY LIABILITY WHICH CANNOT BY APPLICABLE LAW BE LIMITED OR EXCLUDED. ACCOUNT OWNER 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. Account Owner agrees to indemnify and hold harmless HME and its shareholders, directors, officers, employees and agents, 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 Account Owner's or its Authorized User's breach of this Agreement or Account Owner's or its Authorized 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) *Waiver.* If HME fails to insist that Account Owner perform any of its obligations under this Agreement, or if HME does not enforce its rights against Account Owner, or if HME delays in doing so, that will not mean that HME has waived its rights against Account Owner and will not mean that Account Owner does not have to comply with those obligations. If HME does waive a default by Account Owner, HME will only do so in writing, and that will not mean that HME will automatically waive any later default by Account Owner.

(c) *Severance.* Each of the conditions of this Agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

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

(e) *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.

(f) *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. Account Owner agrees that any action or proceeding instituted by Account Owner 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.

(g) *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement between Account Owner and HME in connection with Account Owner'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 Account Owner or by providing disclosure to Account Owner through the Service, and Account Owner'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.

## NOTICE OF AMENDMENT

This document is notice of an amendment to the HM Electronics, Inc. (“**HME**”) Cloud Services Agreement (“**Agreement**”) that you, the Account Owner, have entered into with HME. This notice is provided in accordance with Section 13(g) of the Agreement.

### **Terms of the Amendment.**

1. If the Account Owner has entered into a Data Access Agreement with a third-party to authorize such third-party to access certain Account Owner data, HME will permit the third-party to access such data through the Service on the same basis and to the same extent as the Account Owner accesses the data. Access to the data will be subject to HME’s data security protocols.
2. The third-party will be subject to the same limitations on use of the data as those that apply to the Account Owner.
3. The amendment set forth in this notice supersedes any inconsistent provisions in the Agreement.

HM Electronics, Inc.  
March 1, 2024