

KitchenDash

End User License Agreement

THIS END USER LICENSE AGREEMENT ("**AGREEMENT**") IS A BINDING AGREEMENT BETWEEN YOU ("**END USER**" OR "**YOU**") AND WEBSTAIRANT STORE, INC. AND/OR ITS AFFILIATES ("**COMPANY**" OR "**US**" OR "**WE**"). THIS AGREEMENT GOVERNS YOUR USE OF THE KITCHENDASH SOFTWARE APPLICATION AND ITS ASSOCIATED SERVICES (INCLUDING ALL RELATED DOCUMENTATION, THE "**APPLICATION**"). THE APPLICATION IS LICENSED, NOT SOLD, TO YOU.

BY CLICKING THE "AGREE" BUTTON, DOWNLOADING, INSTALLING AND/OR SETTING UP THE APPLICATION, OR OTHERWISE USING THE APPLICATION, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE 18 YEARS OF AGE OR OLDER; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, SET UP OR USE THE APPLICATION, AND DELETE IT FROM YOUR DEVICE.

This Agreement and our Policies (as defined in Section 4), along with any written ordering document issued to you by us that identifies the Application licensed to you (the "**Ordering Document**") and any Company documentation expressly referenced herein, constitutes the entire contract between you and Company with respect to the subject matter of this Agreement, and supersedes all prior agreements and understandings between you and Company, whether written or oral. The terms of your purchase order or other ordering document are expressly rejected by both you and Company, and Company's failure to object to such terms shall not be construed as a waiver of this Agreement nor an acceptance of such terms. If any provision of an Ordering Document directly conflicts with, or expressly supersedes, any term within the main body of this Agreement, then the provision of the Ordering Document shall govern solely for the Application described therein.

1. License Grant; Payment. The intended use of the Application is to provide you temporary use for connecting, operating, and managing certain networked Company-labeled appliances on the internet of things and for business asset management (such appliances referred to in this Agreement as the "**KD Appliances**"), including the installation, maintenance, and repair of the KD Appliances (collectively, the "**Intended Use**"). There are two versions of the Application available to you, dependent upon your status as a Company "Plus" member: (a) KitchenDash Basic (the "**Basic Application**"), which includes the following features: "smart alert," limited data history, single location, email notifications, and (b) KitchenDash Premium (the "**Premium Application**"), which includes the same features as Basic, except that it also includes extended data history and multi-location capability.

Subject to the terms of this Agreement, Company grants you a limited, non-exclusive, and nontransferable license to the applicable Application for the Intended Use during the Term (as defined in Section 9) to:

(a) download, install, and use the Application for your use on a single device owned or otherwise controlled by you ("**Device**") strictly in accordance with the Application's documentation; and

(b) access, stream, download, and use on such Device the Content and Services (as defined in Section 5) made available in or otherwise accessible through the Application, strictly in accordance with this Agreement applicable to such Content and Services as set forth in Section 5.

Your use of the Premium Application is subject to the terms and conditions of this Agreement: (a) while you are an existing "Plus" customer of Company, or (b) for one (1) year following your purchase of your first KD Appliance ("First Appliance Premium Year"). In all other instances, the use of your KD Appliance is subject to the terms and conditions of this Agreement and only includes the Basic Application. You may switch to the Premium Application by becoming a "Plus" customer at any time, or at least before the First Appliance Premium Year expires.

You will make all payments as required under this Agreement and/or otherwise identified on the Ordering Document in accordance with its terms, or upon becoming a "Plus" customer. All amounts are payable in U.S. Dollars, are nonrefundable, and are not subject to any deduction or set-off. All fees are exclusive of all taxes, duties, shipping fees, and similar amounts, all of which are your responsibility (excluding taxes based on our income).

2. License Restrictions. You shall only use the Application for the Intended Use during the Term and shall not:

(a) copy the Application, except as expressly permitted by this license;

(b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Application;

(c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;

(d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Application, including any copy thereof;

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Application, or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time;

(f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Application;

(g) use the Application in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including any power generation systems; aircraft navigation or communication systems, air traffic control systems, or any other transport management systems; safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire, or other safety response systems; and military or aerospace applications, weapons systems, or environments; or

(h) use the Application to: (i) send spam or otherwise duplicative or unsolicited messages in violation of other applicable laws; (ii) send or store infringing, obscene, threatening libelous, or otherwise unlawful or tortuous material, including material harmful to children or which violates a third party's personal, intellectual, property, or privacy rights; (iii) crawl, scrape, or otherwise covertly obtain content from the Application, any of its users, or us; (iv) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (v) interfere with or disrupt the integrity or performance of the Application or the data contained therein; or (iv) attempt to gain unauthorized access to, disrupt, or overwhelm the Application or its related systems or networks or any systems.

3. Reservation of Rights; Intellectual Property Ownership. You acknowledge and agree that the Application is provided under license, and not sold, to you. You do not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Company and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the Application, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

Without limiting the generality of the foregoing, Company (and, where applicable, its licensors) shall exclusively own all right, title, and interest, including all related intellectual property rights, including but not limited to all copyrights, patents, trademarks, trade secrets, or other technology, in and to the Application and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by you or any other party relating to the Application. Furthermore, you acknowledge that you will not in any way, directly or indirectly, do or cause to be done any act or thing contesting or which would reasonably be known to impair or tend to impair any part of Company (and, where applicable, Company's licensors') right, title, and interest in connection with Company's intellectual property rights in the Application. You shall not represent that you have any ownership in Company's intellectual property rights in the Application. You agree that you will not, directly or indirectly, attack the validity of Company's ownership of intellectual property rights in the Application both during the term of this Agreement and thereafter.

4. Ownership of Data; Your Account; Collection and Use of Your Information. The Application allows you to transmit and store a variety of information for connecting to, operating, and managing your KD Appliance(s) (collectively, "**Customer Materials**") on Company's servers or servers to which Company has obtained access. Company does not claim

any ownership of Customer Materials. To the extent you acquire any rights to any Customer Materials, you grant Company a non-exclusive, perpetual, worldwide, royalty-free license to store, host, display, modify, transmit, or otherwise use Customer Materials for the purpose of providing you with the Application's services. This license remains in effect even after you cease use of the Application and for as long as and to the extent which Customer Materials reside on Company's servers. You acknowledge and agree that due to the inherent nature of electronically stored data, Company makes no representation or warranty that Customer Materials will ever be fully removed from every location in which they are stored or archived by the Application. Furthermore, we will not be liable for any lost, corrupted, or destroyed Customer Materials.

Furthermore, you must create a user account to use the Application. Any information entered to create a user account and any information about your activity while using the Application may be transmitted to Company, including its affiliate, Clark Associates, Inc. ("Clark"). The Application may also transmit to information concerning the performance of the Application and the operating system and the Device on which it is used. You agree that Company and its affiliates, including but not limited to Clark, may use the collected information for any purpose related to any use of the Application by you or on your Device, including but not limited to improving the performance of the Application or the KD Appliances, or developing updates and verifying your compliance with this Agreement and enforcing Company's intellectual property rights.

You understand and agree you are responsible for any use of your licensed copy of the Application by any third parties. Any use of your copy of the Application, regardless of the specific user, will be treated as your use of the Application, and any resulting violations of this Agreement, including those that entitle us to collect damages or initiate legal action will be treated as though they were caused by you. You shall abide by all applicable local, state, national, and foreign statutes, treaties, and regulations in connection with your use of the Application, including those related to data privacy, international communications, and the transmission of technical or personal data. You shall notify Company immediately of any unauthorized use of the Application or any other known or suspected breach of security associated with the Application.

Without limiting the generality of the foregoing, you acknowledge that when you download, install, or use the Application, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Device and about your use of the Application and the KD Appliance(s). You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Application or certain of its features or functionality. All information we collect through or in connection with this Application is subject to our [Privacy Policy](#), [Terms of Use](#), and such other policies of the Company as may be applicable from time to time (collectively, the "**Policies**"). By downloading, installing, using, and providing information to or through this Application, you consent to all actions taken by us with respect to your information in compliance with the Policies.

5. Content and Services. The Application may provide you with access to Company's website located at <https://www.webrestaurantstore.com/> (the "**Website**") and products

and services accessible thereon, and certain features, functionality, and content accessible on or through the Application may be hosted on the Website (collectively, "**Content and Services**"). Your access to and use of such Content and Services are governed by the Policies (including, the [Privacy Policy](#) and the [Terms of Use](#)), which are incorporated herein by this reference. Your access to and use of such Content and Services may require you to acknowledge your acceptance of such Terms of Use and Privacy Policy and/or to register with the Website, and your failure to do so may restrict you from accessing or using certain of the Application's features and functionality. Any violation by you of such Policies will also be deemed a violation of this Agreement.

6. Geographic Restrictions. The Content and Services are based in the Commonwealth of Pennsylvania in the United States and provided for access and use only by persons located in the United States, including the District of Columbia. You acknowledge that you may not be able to access all or some of the Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Content and Services from outside the United States, you are responsible for compliance with local laws.

7. Device requirements; Updates; Support; Internet Delays. You are responsible for providing all hardware and software necessary to download, install, and operate the Application on your Device. You acknowledge that by using the functions of the Application (including the notification functions) the Application will transmit data to and from your Device and may cause you to incur charges from your wireless carrier, internet service provider, or another third party. We are not responsible for any such charges.

Company may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality, including those features that may distinguish between the Premium Application and the Basic Application. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Device settings, when your Device is connected to the internet either:

- (a) the Application will automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

Without limiting the generality of the foregoing, Company will provide you with Updates, ongoing support and maintenance services in accordance with its support and

maintenance policy relating to your KD Appliance(s), which is not expected to continue beyond 5 years from the date of purchase of the KD Appliance. Please note that Company is not obligated to provide Updates, support or maintenance of the Application beyond this 5-year term nor in connection with any discontinued Application beyond its discontinuance. If you have ordered professional services from Company with respect to support or maintenance not otherwise covered by this Section, and Company agrees to provide such services, such services will be subject to a relevant statement of work. The parties agree and understand that no “work for hire” or software development services shall ever be provided or contemplated under any statement of work or this Agreement.

You understand and agree that the Application may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Company is not responsible for any delays, delivery failures, or other damages resulting from such problems.

8. Third-Party Materials; Third-Party Services; Access to Third-Party Websites. The Application may display, include, or make available third-party content (including data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services, including through third-party advertising ("**Third-Party Materials**"). You acknowledge and agree that Company is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Company does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions. Regardless of whether the Third Party Materials refer specifically to the Application or Company, it shall not imply and does not constitute our sponsorship endorsement, approval, or responsibility, for the content on, or the use of, such Third-Party Materials. Any interaction between you and any Third-Party Materials shall be governed by both this Agreement and the policies, terms and conditions, or other agreements which govern the Third-Party Materials. You hereby agree that you shall not use the Application in any way which violates the policies, terms and conditions, or other agreements imposed on you by a third-party service provider with respect to Third-Party Materials. You understand that if you choose to use the Application to interface with Third-Party Materials, including accessing the Application through an account affiliated with the Third-Party Materials, the content you provide through Third-Party Materials may be accessible to others who use the Application, and the content you provide through the Application may be accessible to others who use the Third-Party Materials. You are solely responsible for the privacy and other information sharing settings you select with third-party service providers, and we shall not be responsible for your sharing of any information, data, or content through the Application or any third-party services to which it connects.

9. Term and Termination.

(a) The term of Agreement commences when you download the Application and will continue in effect until such time as may be prescribed by the Ordering Document or terminated by you or Company as set forth in this Section 9.

(b) You may terminate this Agreement by deleting the Application and all copies thereof from your Device.

(c) Company may terminate this Agreement at any time without notice if it ceases to support the Application, which Company may do in its sole discretion in accordance with Section 7 above. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

(d) Upon termination:

(i) all rights granted to you under this Agreement will also terminate; and

(ii) you must cease all use of the Application and delete all copies of the Application from your Device and account.

(e) Termination will not limit any of Company's rights or remedies at law or in equity. Furthermore, and unless otherwise set forth in the Ordering Document or required under applicable law, you will not be entitled to a refund for license fees paid in advance of termination.

10. Disclaimer of Warranties. THE APPLICATION IS PROVIDED TO END USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

11. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF

ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APPLICATION OR THE CONTENT AND SERVICES FOR:

(a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING FOOD SPOILAGE, LOSS OF DATA, REVENUE, SALES, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE).

(b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APPLICATION.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

12. Indemnification. You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the Application or your breach of this Agreement, including but not limited to the content you submit or make available through this Application.

13. Export Regulation. The Application may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Application to, or make the Application accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Application available outside the US.

14. US Government Rights. The Application is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Application as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

15. Amendments; Severability. We may modify this Agreement from time to time. When we change the Agreement, you will be notified either through the Application or will have to download or install a new version of the Application and accept any agreement, terms, or conditions associated therewith. Your continued use of the Application after being notified of any changes constitutes your assent to the changes and the terms and conditions of the revised Agreement. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect; provided, however, that if any fundamental term or provision of this Agreement, is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable.

16. Class Action Waiver. YOU AND COMPANY AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If the parties dispute is resolved through arbitration, the arbitrator may not consolidate your claims with another user.

17. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Application shall be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Pennsylvania in each case located in Lancaster County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

18. Limitation of Time to File Claims. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE APPLICATION MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OTHERWISE SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

19. Independent parties. Nothing in this Agreement will be construed to create an employment relationship, partnership, or joint venture between you and Company. You and Company are not agents of each other or have authority to bind, represent, or speak for each other or their respective divisions, subsidiaries, or affiliates.

20. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.

21. Contact. Should you have any questions concerning this Agreement, you may contact Company at kitchendash-feedback@webstaurantstore.com.