

## END USER LICENSE AGREEMENT

**IMPORTANT - - READ CAREFULLY:** Your Use (as defined herein) of the Restaurant Manager™ POS Software (the “Software”) provided or made available to you (“you”) by Restaurant Manager, LLC f/k/a Action Systems, Inc (“RM”) or its Reseller (as defined herein) is subject to your compliance in all respects with all terms and conditions of this End User License Agreement (“EULA”). The limited license to Use the Software granted to you by this EULA is granted pursuant to the Reseller Agreement between RM and Reseller (the “Reseller Agreement”), and the license granted to you by this EULA shall be limited and controlled in all respects by this Agreement.

This EULA constitutes and expresses the entire agreement and understanding between you and RM and Reseller with respect to your Use of the Software and supersedes all previous communications, representations, or agreements, whether written or oral, with respect to the subject matter hereof. Specifically, this EULA shall prevail over any license terms for the Software contained in any agreement between you and Reseller or any other person or entity, including EULA's that may have governed your use of earlier versions of the software.

By installing, copying, accessing, or otherwise Using the Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install, access, copy or Use the Software. Each time you access the Software you agree to the then current terms of this EULA as may be changed from time to time.

### 1. DEFINITIONS.

The capitalized terms below will have the following meanings when used in this EULA. All other capitalized terms shall have the meaning ascribed to them throughout this document.

1.1 “SOFTWARE” means any and all software applications designed by RM including the core Restaurant Manager POS application as well as any secondary modules and interfaces that might be installed after the initial installation of the core POS application.

1.2 “DESIGNATED SYSTEM(s)” means those computer systems owned or leased by you on which the Software is installed, as specified at the time of purchase.

1.3 “DOCUMENTATION” means all printed or electronic material relating to the Software provided by RM.

1.4 “PERMITTED USE”, with respect to any Software, means use only for internal business purposes, only on the Designated System(s), and only as specified in the Documentation, unless otherwise authorized in writing by RM.

1.5 “SERVICES” means services provided to you by Reseller, such as installation, implementation, project management, consulting, training or maintenance and support.

1.6 “USER DATA” means any data or information supplied by you to RM or to or through the Software, and any reports, data queries, responses to data queries, or other output generated by the Software or based on such data or information.

1.7 “RESELLER” means the authorized value-added-reseller of RM who installs, configures, maintains, supports, and/or services the Software licensed to you pursuant to the Agreement.

### LICENSE GRANT AND RESTRICTIONS ON USE.

1.8 Subject to the conditions herein and the full payment of all applicable fees due to both RM and the Reseller, RM hereby grants you, and you hereby accept, a limited, nontransferable, non-sub-licenseable, non-exclusive, perpetual (but revocable for breach including but not limited to non-payment) license to access, use, display and execute ("Use") the Software in object code form only, solely for the Permitted Use. Your Use of the Software is authorized only for the number of Designated Stations invoiced to you by Reseller.

1.9 The Software and this EULA may not be sold, assigned, leased, sublicensed, or otherwise transferred or made available for Use by third parties (including without limitation, Use as part of a service bureau), in whole or in part, by you without RM's prior written consent. The license granted to you pursuant to this EULA does not authorize you to grant rights of Use to any third-party outsourcing provider, facilities manager, consultant, contractor, supplier, or customer, without RM's prior written consent.

1.10 You are provided the Software in object code format only, and you shall not disclose, manipulate, modify, enhance, analyze, decompile, disassemble, engineer or reverse engineer the Software or its source code, seek to discover or decipher the source code or the architecture, libraries, utilities, code, or other internal aspects of the Software, or attempt to do any of the foregoing, and shall not permit any of your employees, agents, contractors, subcontractors or other third parties to do so or attempt to do so.

1.11 You may be issued a security key and/or password that will allow you to Use the Software. You shall not assign or transfer your security key or password to any other entity or person without RM's written consent. You shall maintain and be responsible for the security of your security key and passwords and shall be liable for any Use occurring with your security key or password. You must promptly inform RM of any apparent breach of security, such as loss, theft or unauthorized disclosure or use of your security key or password of which you are aware.

1.12 You hereby acknowledge and agree that RM is the sole owner of all copyright, patent, trademark, trade secret and other proprietary or intellectual property rights in and to the Software, including but not limited to the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, screen displays, and report formats associated therewith. RM reserves all rights in and to the Software not expressly granted to you hereunder. Your license to use any third-party software products provided to you by RM or Reseller shall be governed solely by, and subject to all terms and conditions of, the applicable third-party software license(s) and neither RM nor Reseller shall have any liability for any third-party software provided.

1.13 You shall not delete, remove, modify, obscure, fail to reproduce or in any way interfere with any proprietary, trade secret, or copyright notice appearing on or incorporated in the Software. Before recycling, discarding, or disposing of any media or equipment that contain the Software, you shall permanently erase or otherwise destroy the Software contained therein.

1.14 To the extent that Use of the Software outside the United States is permitted by RM, you shall be solely responsible for complying with all export or re-export restrictions and regulations imposed by the government of the United States and the Country of use.

## 2. USER OBLIGATIONS.

2.1 Except as otherwise provided herein, you shall have sole responsibility for acquiring and maintaining your own technology environment, including but not limited to terminals, PC's, laptops, operating systems, servers, Internet access, local area networks and wide area networks. You shall also be responsible for making any necessary modifications to firewalls, proxy servers and other hardware and software necessary to Use the Software and comply with all applicable rules and regulations. [LW1]

2.2 In the case that the Software is interfaced to any third-party payment processing applications, you hereby agree to comply with all applicable federal, state and local laws, rules, regulations and orders (collectively, "Laws") including, without limitation, all present and future laws and regulations relating to the privacy of individually identifiable financial or other information including, without limitation if applicable, the Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159, 111 Stat. 1952), as amended from time to time and implementing regulations thereof, and the current Payment Card Industry Data Standards, available at <https://www.pcisecuritystandards.org/>.

2.3 You shall maintain complete and accurate records sufficient to substantiate all transactions associated with this EULA, all fees paid or payable by you to Reseller or RM, and all use of the Software hereunder, including but not limited to, the identity and number of users and Designated Systems. RM has the right, at reasonable times and upon advance reasonable written notice, to inspect and make copies of your books and records for the purpose of verifying compliance with this EULA. You shall maintain all such books and records for a period of two (2) years following the date of final payment by you under the terms of your sales and service agreements between you and your authorized Reseller.

### 3. TERMINATION.

3.1 This EULA shall terminate immediately upon:

3.1.1 a breach of this EULA by you; or

3.1.2 expiration or termination of Software use privileges or of any agreement between you and Reseller.

3.2 RM may terminate this EULA if you fail to pay in full any amounts due to RM, its parents, affiliates, subsidiaries or Reseller when due, become insolvent or bankrupt or cease to do business; become unable or admit in writing your inability to pay all debts as they mature; make a general assignment for the benefit of or enter into any composition or arrangement with creditors; authorize, apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of your assets or has proceedings seeking such appointment commenced against you which are not terminated within thirty (30) days of such commencement; file a voluntary petition under any bankruptcy or insolvency law, or has proceedings under such laws instituted against you which are not terminated within thirty (30) days of such commencement.

3.3 RM, its parents, affiliates, or subsidiaries shall have no liability to you, Reseller or any third party for any termination of this EULA or suspension of your Use of the Software. Upon termination or expiration of this EULA for any reason, you shall immediately (a) discontinue all Use of the Software, and (b) at your expense, return to RM all Documentation and Software (if any).

3.4 In the event that RM is required to engage the services of any attorney to collect payment, or to enforce any other obligations of you under this EULA, RM shall be entitled to recover its reasonable attorneys' fees and costs from you in addition to any award.

3.5 Notwithstanding anything to the contrary herein, the provisions of Sections 3.3 and 4 through 9 hereof, as well as any other provisions of this EULA necessary to interpret the respective rights and obligations of the parties hereunder, shall survive the expiration or termination of this EULA.

### 4. CONFIDENTIAL AND PROPRIETARY INFORMATION.

4.1 You agree to hold the Software in confidence, and to protect the confidential nature thereof, and shall not disclose any trade secrets contained, embodied or utilized therein, to anyone other than your authorized users having a need for such disclosure, and then only to allow Use of the Software as authorized herein. You shall take all necessary steps to ensure that the provisions of this Section are not violated by any of your employees, agents, consultants, contractors, or any other person under your control or in your service. Under no circumstances shall you permit any competitors of RM in the restaurant software market to access or Use the Software.

#### 5. DISCLAIMER OF WARRANTY.

5.1 EXCEPT AS SET FORTH IN SECTION 8.1, THE SOFTWARE AND ANY SERVICES ARE PROVIDED BY RM "AS IS" "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, AND RM HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION. RM DOES NOT WARRANT THAT: (A) OPERATION OF THE SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE, (B) FUNCTIONS CONTAINED IN THE SOFTWARE OR SERVICES SHALL OPERATE IN COMBINATIONS WHICH MAY BE SELECTED FOR USE BY YOU, OR (C) THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS. ANY WARRANTIES WITH RESPECT TO THE SOFTWARE OR SERVICES MADE BY ANY RESELLER OR OTHER PARTY SHALL BE BETWEEN YOU AND THAT PARTY ONLY AND ANY WARRANTY CLAIMS SHALL BE MADE DIRECTLY TO RESELLER OR OTHER THIRD PARTY AND NOT RM.

5.2 You agree that you are solely responsible for any and all User Data you send, display or process through the Software, and RM does not accept, and hereby expressly disclaims, any and all liability with respect to same. To the extent that User Data is being transmitted over internal data networks or the Internet hereunder, you acknowledge that RM has no control over the functioning of the networks or the Internet and RM makes no representations or warranties of any kind regarding the performance or security of the User Data. The successful operation of the Software is dependent on your identification and constant use of proper procedures, protections and systems and input of correct data.

5.3 You hereby grant RM, its parents, affiliates and subsidiaries a non-revocable, assignable, perpetual license in the User Data. The User Data may be used in conjunction with third-party service providers. California law permits California residents to request the categories of personal information we disclose to third parties for direct marketing purposes, those third parties' names and addresses, and the nature of their business. If you are a California resident and would like this information, please contact us at the addresses listed above.

#### 6. LIMITATION OF LIABILITY; DISCLAIMER OF DAMAGES.

6.1 IN NO EVENT WILL RM, ITS PARENTS, AFFILIATES, SUBSIDIARIES OR RESELLER BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST BUSINESS, REVENUES, OR PROFITS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER BASED ON CLAIMS FOR BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF RM OR RESELLER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.2 IN NO EVENT SHALL RM, ITS PARENTS, AFFILIATES, SUBSIDIARIES OR RESELLER BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE SOFTWARE OR SERVICES, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, OR DELAY BY RM OR RESELLER IN THE DELIVERY OF THE SOFTWARE (OR ANY REVISIONS OR UPDATES THERETO) OR SERVICES UNDER THIS EULA.

6.3 EXCEPT FOR THE CREDIT OF LICENSE FEES UNDER SECTION 8.1, RM'S, ITS PARENTS, AFFILIATES, OR SUBSIDIARIES,'S MAXIMUM LIABILITY UNDER THIS EULA SHALL BE LIMITED TO THE LESSER OF (i) THE LICENSE FEES RECEIVED BY RM DURING THE 6-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE, OR (ii) ONE THOUSAND DOLLARS (\$1,000.00).

6.4 The software you are licensed to use may be interfaced to a variety of third-party payment processing platforms and was developed, certified and released in accordance with a data security standard known as PA-DSS 2.0 which ensures that the software includes features specifically designed to prevent credit card fraud and identify theft. By accepting the terms of this EULA, however, you are agreeing not to hold RM, its parents, affiliates, subsidiaries or the Reseller responsible for any data security breaches that might occur in conjunction with the use of the Software and any sort of third-party payment processing platform.

## 7. INDEMNITY.

You hereby agree to defend, indemnify and hold RM, its parents, affiliates, subsidiaries and Reseller harmless from and against any losses, liabilities, damages, demands, penalties and expenses (including, without limitation, court costs and attorneys' fees) arising out of or in connection with (a) Use of the Software by you and/or any third party, whether or not authorized by you, who accesses the Software by means of the security key or password provided to you, (b) any breach or alleged breach of this EULA or any Law by you, (c) any failure of the User Data to be accurate, complete or error-free, (d) your failure to implement, configure or operate the Software in accordance with the Documentation or, rules, regulations, or the Law, (e) your misuse or modification of the Software, (f) your failure to install any fix, patch, update or upgrade or properly maintain the Software, Designated Systems or your other systems or infrastructure, or (g) your failure to maintain the Software at least to the release immediately prior to the then-current version.

## 8. LIMITED INFRINGEMENT REMEDY.

8.1 Should the Software become, or in RM's opinion be likely to become, the subject of a claim of infringement of a patent, trade secret or copyright, during the term hereof, RM may (a) procure for you, at no cost to you, the right to continue to use the Software, (b) replace or modify the Software, at no cost to you, to make it non-infringing, provided that substantially the same function is performed by the replacement or modified Software, or (c) if in RM's judgment the right to continue to use the Software cannot be reasonably procured or the Software cannot reasonably be replaced or modified, terminate this EULA, and take possession of, or destroy the affected Software. If RM takes the actions specified in Section 8.1(c), RM will grant you a credit equal to the fees received in payment for the affected Software depreciated on a straight-line 3-year bRMs.

8.2 RM, its parents, affiliates, and subsidiaries shall have no liability for any claims (a) with respect to any third party software, or (b) based on use of other than the latest release of the Software if RM determines that such claim could have been avoided by the use of the latest release of Software and such latest version has been made available to you, or (c) based on use or combination of the Software with software or other materials not provided or expressly approved by RM; or (d) to the extent that the claim arises primarily out of your methods of doing business using the Software rather than those products' own methods of operation. In addition, you shall forfeit all rights if you alter or modify the Software in any manner.

8.3 THIS SECTION 8 STATES THE ENTIRE LIABILITY OF RM, ITS PARENTS, AFFILIATES, AND SUBSIDIARIES AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF PATENTS, TRADE SECRETS OR COPYRIGHT BY THE SOFTWARE PRODUCTS OR ANY PARTS THEREOF, AND

RM SHALL HAVE NO ADDITIONAL LIABILITY TO YOU OR ANY THIRD-PARTY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

## 9. MISCELLANEOUS.

9.1 Assignment; Binding Effect. This EULA and your right to Use the Software may not be assigned or transferred by you, whether by operation of law or otherwise, without the prior written consent of RM and Reseller. Any attempted assignment in violation of this Section 10.1 shall be null and void and of no force or effect. RM may assign its rights under this EULA this freely without your consent at any time.

9.2 Force Majeure. Neither RM nor Reseller shall be liable for non-performance or delays caused by acts of God, wars, terrorist acts, riots, strikes, fires, shortage of labor or materials, labor disputes, governmental restrictions, failures of the Internet or network or telephonic communication services, water, wind, or other causes beyond their reasonable control.

9.3 Notices. All notices, requests and demands given to or made upon the parties shall be in writing and shall be delivered by any method providing for proof of delivery. Any notice shall be deemed given on the date of receipt. Notices to RM shall be delivered to: Restaurant Manager, 1734 Elton Road, #219, Silver Spring, Maryland 20903. Notices to you shall be delivered to the address you provided to Reseller during your initial purchase, until a different address has been designated by notice to the other party in accordance with this Section 9.3.

9.4 Governing Law; Jurisdiction. This Agreement shall be deemed to be made under and shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to its conflicts of law rules. All actions brought with respect to this Agreement shall be brought exclusively in the U.S. District Court for the District of Maryland or the Circuit Court of Montgomery, Maryland. You hereby irrevocably waive all claims you may now or hereafter have that any such courts lack jurisdiction over you and agree not to plead or argue otherwise. In addition, you hereby irrevocably waive all claims you may now or hereafter have that any such courts are an inconvenient forum for an action or proceeding arising out of or in connection with this EULA and you agree not to plead or argue otherwise.

9.5 Equitable Relief. You agree that any violation by you of the provisions or covenants of this EULA contained in Sections 1 (License) and 4 (Confidential and Proprietary Information) will cause immediate and irreparable harm to RM for which money damages will not constitute an adequate remedy at law. Therefore, you agree that, in the event you breach or threaten to breach said provisions or covenants, RM shall be entitled to injunctive and/or other preliminary or equitable relief, in addition to any other remedies available at law, without having to prove actual damages or to post a bond.

9.6 Severability. Any provisions of this EULA that are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of this EULA or affecting the validity or enforceability of such provisions in any other jurisdiction. If a court of competent jurisdiction declares any provision of this EULA to be invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to reduce the scope, duration, or area of the provision, to delete specific words or phrases, or to replace the provision with a provision that is valid and enforceable and that comes closest to expressing the original intention of the parties hereto, and this EULA shall be enforceable as so modified.

9.7 Entire Agreement; Amendment. This EULA sets forth the entire agreement between you and RM

with respect to your Use of the Software. RM reserves the right to amend, modify or supplement this EULA at any time, which amendments, modifications or supplements shall be effective when notification to you has been made or upon accessing the Software. You shall be solely responsible for reviewing and complying with such amendments, modifications and/or supplements.

9.8 Waiver. No term or provision of this EULA will be considered waived and no breach will be considered consented to by RM, unless such waiver or consent is in a writing signed by RM. No consent to or waiver of a breach of this EULA by RM, whether express or implied, will constitute a consent to, waiver of, or excuse for any other, different, or subsequent breach of this EULA by you.

9.9 Headings. Headings used in this EULA are for convenience of reference only and shall in no way be used to construe or limit the provisions herein.