

SUBSCRIPTION SERVICES AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE OR CLICKING "AGREE" CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON YOUR EMPLOYER'S BEHALF.

This agreement is between WH Solutions, LLC, a Texas Corporation (**WHS**), and the customer agreeing to these terms (**Customer**).

1. SOFTWARE SERVICE AND HARDWARE.

This agreement provides Customer access to and usage of an Internet-based software service (**Service**), and the right to purchase hardware for use with the Service (**Hardware**), as both are specified on an order or through the online ordering process.

2. USE OF SERVICE AND PURCHASE OF HARDWARE

- a. **Customer Owned Data.** All data uploaded by Customer to the Service remains the property of Customer, as between WHS and Customer (**Customer Data**). Customer grants WHS the right to use the Customer Data solely for purposes of performing under this agreement.
- b. **Access and Usage.** Customer may allow its contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors.
- c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify WHS promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.
- d. **WHS Support.** WHS will provide customer support for the Service under the terms of WHS's then current Customer support policy (**Support**).
- e. **Additional Services.** WHS may provide onboarding/set-up services as further set forth on an order or through the online ordering process.
- f. **Hardware.** Customer may purchase Hardware from WHS for use with the Service. Title to the Hardware passes to Customer upon delivery. Customer bears all freight, shipping and handling costs for the delivery of the Hardware.

3. HARDWARE WARRANTY.

- a. WHS agrees to pass-through or assign to Customer any warranties that WHS obtains from the manufacturers or vendors of the Hardware to the extent permitted by the terms and conditions of such warranties.

4. WARRANTY DISCLAIMERS.

- a. **WARRANTY DISCLAIMER. THE SERVICE IS PROVIDED 'AS IS' WITHOUT WARRANTY. WHS DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICE AND HARDWARE, EXCEPT ANY PASS-THROUGH WARRANTIES ON THE HARDWARE THAT ARE AVAILABLE**

PURSUANT TO SECTION 3 ABOVE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE WHS TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, WHS DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED, AND THAT THE HARDWARE MAY BE DEFECTIVE.

5. PAYMENT.

Customer must pay all fees for the Service monthly, in advance, by ACH withdrawal or by credit card, as such fees are specified in an order or through an online ordering process. Each monthly subscription will renew automatically unless either party gives the other at least 15 days prior written notice of non-renewal. Customer is responsible for the payment of all sales, use, withholding, VAT, and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

6. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). WHS's Confidential Information includes, without limitation, the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below). Customer's Confidential Information includes, without limitation, the Customer Data.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
 - i. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

7. WHS PROPERTY.

- a. **Reservation of Rights.** The software, workflow processes, user interface, designs, Software and Documentation, and other technologies provided by WHS as part of the Service are the proprietary property of WHS and its licensors, and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with WHS. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. WHS reserves all rights unless expressly granted in this agreement.

- b. **Restrictions.** Customer *may not* (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Software and Documentation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes.
- c. **Software and Documentation.** All software provided by WHS as part of the Service, and the Service documentation, sample data, marketing materials, training materials, and other materials provided through the Service or by WHS (**Software and Documentation**) are licensed to Customer as follows: WHS grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in connection with the Service.
- d. **Mobile Software.** Some Software licensed above may include mobile software to access the Service via an iOS mobile device (**App Store Software**). To use the App Store Software, Customer must have a mobile device that is compatible with the App Store Software, and have an active subscription to the Service. The App Store Software is only designed to operate on supported mobile operating systems and devices. Customer may use mobile data in connection with the App Store Software and may incur additional charges from Customer's wireless provider for these services. Customer agrees that it is solely responsible for any such charges. Customer acknowledges that WHS may from time to time issue upgraded versions of the App Store Software, and may automatically electronically upgrade the version of the App Store Software that Customer is using on its mobile device. Customer consents to such automatic upgrading on its mobile device.
- **Mobile Software Additional Terms.** Customer agrees that this agreement is solely between Customer and WHS, not Apple, and that Apple has no responsibility for the App Store Software or content thereof. Customer's use of the App Store Software must comply with the App Store Terms of Service. Customer acknowledges that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Software. In the event of any failure of the App Store Software to conform to any applicable warranty, Customer may notify Apple, and Apple will refund the purchase price for the App Store Software to Customer. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this agreement and any law applicable to WHS as provider of the App Store Software. Customer acknowledges that Apple is not responsible for addressing any claims by Customer or any third party relating to the App Store Software or Customer's possession and/or use of the App Store Software, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this agreement and any law applicable to WHS as provider of the App Store Software. Customer acknowledges that, in the event of any third-party claim that the App Store Software or Customer's possession and use of that App Store Software infringes that third party's intellectual property rights, WHS, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this agreement. If applicable, Customer must comply with any applicable third party terms of agreement when using the Service. Customer and WHS acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this agreement as relates to Customer's license of the App Store Software, and that, upon Customer's acceptance of the terms and conditions of this agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this agreement as relates to Customer's license of the App Store Software against Customer as a third-party beneficiary thereof. Customer represents and warrants that: (i) it is not located in a country that is subject to a U.S Government embargo, or that has been

designated by the U.S. Government as a "terrorist supporting" country; and (ii) it is not listed on any U.S. Government list of prohibited or restricted parties. For any questions or complaints with the Service, please contact WHS at: support@recipeasy.io or, 2247 W. State Highway 71, La Grange TX 78945.

- e. **Aggregated Data.** During and after the term of this agreement, WHS may use and owns all anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support, and other business purposes.

8. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders have expired or are terminated for material breach under **Section 8(b)**.
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c. **Return WHS Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay WHS for any unpaid amounts and destroy or return all property of WHS. Upon WHS's request, Customer will confirm in writing its compliance with this destruction or return requirement.
- d. **Suspension for Violations of Law.** WHS may temporarily suspend the Service and/or remove the applicable Customer Data if it in good faith believes that, as part of using the Service, Customer has violated a law. WHS will attempt to contact Customer in advance.
- e. **Suspension for Non-Payment.** WHS may temporarily suspend the Service if Customer is more than 30 days late on any payment due pursuant to an order.

9. LIABILITY LIMIT.

- a. **Exclusion of Indirect Damages.** WHS is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss.
- b. **Total Limit on Liability.** Except for WHS's indemnity obligations, WHS's total liability arising out of or related to this agreement (whether in contract, tort, or otherwise) does not exceed the amount paid by Customer within the 6-month period prior to the event that gave rise to the liability.

10. INDEMNITY.

- a. **Defense of Third-Party Claims.** WHS will defend or settle any third-party claim against Customer to the extent that such claim alleges that WHS technology used to provide the Service violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies WHS of the claim in writing, cooperates with WHS in the defense, and allows WHS to solely control the defense or settlement of the claim.
 - **Costs.** WHS will pay infringement claim defense costs it incurs in defending Customer, and WHS negotiated settlement amounts, and court-awarded damages.

- *Process.* If such a claim appears likely, then WHS may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If WHS determines that none of these are reasonably available, then WHS may terminate the Service and refund any prepaid and unused fees.
 - *Exclusions.* WHS has no obligation for any claim arising from: WHS's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by WHS. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND WHS'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. **By Customer.** If a third party claims against WHS that any part of the Customer Data infringes or violates that party's patent, copyright, or other right, Customer will defend WHS against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that WHS promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.

11. GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Fayette County, Texas, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

12. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by WHS. No waiver is effective unless the party waiving the right signs a waiver in writing.
- b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger or sale of substantially all the assets of a party.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.
- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.
- f. **No Additional Terms.** WHS rejects additional or conflicting terms of any Customer form-purchasing document.

- g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- h. **Survival of Terms.** Any terms, that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- i. **Export Compliance.** Customer must comply with all applicable export control laws of the United States, foreign jurisdictions, and other applicable laws and regulations.}
- j. **Feedback.** If Customer provides feedback or suggestions about the Service, then WHS (and those it allows to use its technology) may use such information without obligation to Customer.