

# Terms & Conditions of Use

**ESHINE, INC.**

**Effective as of October 7, 2019.**

Thank you for choosing Eshine restaurant management and operations software solutions developed by EShine, Inc. ("EShine").

Please carefully read our terms and conditions of use ("Terms" or "Terms of Use"). These Terms govern your access to and use of any of our products or services, including our software and related applications (including any mobile, tablet, computer device apps), features across all devices and platforms (i.e. computer, tablets, mobile devices, etc.), our training and support services, and our website [www.eshine.us](http://www.eshine.us) (collectively, the "Services").

You agree that your use of our Services constitutes acceptance of these Terms listed below. If you work for or represent a business, you represent and agree that you are authorized by that business to enter into this agreement on behalf of that business. References to "we," "us," and "our" refer to EShine. References to "you" and "your" refer to you, a user of our Services ("Customer"). If for any reason, or no reason at all you do not agree to any of these Terms, you must stop using our Services.

We may amend or modify these Terms at any time in our sole discretion. It is your responsibility to check our Terms periodically for changes. Your continued use of our Services following the posting of changes constitutes your acceptance of and agreement to be bound by those Terms, as amended.

EACH OF THE PARTIES AFFIRMS THAT IT UNDERSTANDS THE TERMS AND CONDITIONS SET FORTH ABOVE, INCLUDING THE AGREEMENT TO ARBITRATE, AND, SEPARATELY, THE EXCLUSIONS OF WARRANTIES AND LIMITATIONS OF REMEDIES STATED HEREIN, AND ACKNOWLEDGES THAT THE SAME CONSTITUTE AN AGREED ALLOCATION OF RISK REFLECTED IN THE PRICE OF OUR SERVICES.

## 1. **Contact Information:**

Address:  
EShine, Inc.  
13555 Bel-Red Rd, Suite 232A  
Bellevue, WA 98005

Customer Service:  
Email: [support@eshine.us](mailto:support@eshine.us)

## 2. **Your Use of Our Services:**

- a. Our Services: We strive to provide easy to use restaurant management and operations software tools to our customers. We reserve the right, in our sole discretion, to change, modify, or discontinue any aspect or feature of our Services. We are not a payment processing company. You will directly enter into a separate, free-standing agreement with an accredited third party payment processor (the "Payment Processor") to enable you to process bank cards or digital payments by your own customers.

Subject to additional charges, we will assist you in the implementation of our software through the delivery of a variety of consulting services, including onsite implementation consultation and product training. For onsite trainings, you are responsible for providing a suitable training space and suitable computers for any onsite product training, and is responsible for all costs associated with the training including without limitation procurement of a training space, training computers, and catering as necessary. You agree to reimburse EShine for all reasonable, actual travel expenses including, but not limited to, airfare, hotel accommodations, rental car, airport parking, taxi service, and meals. If you want to request onsite services, you need to notify us at least 30 days prior to your requested onsite service date, and the final date must be mutually agreed upon by both parties, acting reasonably.

If you purchase our implementation consulting services that include online product training, or if you purchase additional online product training, we will provide such online product training using a qualified EShine product specialist working remotely using the Internet for screen viewing and a telephone for voice conversation. Any online product training session must be scheduled with EShine at least 10 business days in advance, and any dates on which the online product training occurs shall be mutually agreed. You agree to initiate the voice telephone call to EShine so that all telephone charges for the online product training are paid for by you.

- b. Eligibility and Registration: You must be a restaurant or a food service establishment that has at least one physical location. You must possess all the permits and licenses required by applicable laws and regulations to lawfully operate your food service business. You must have been approved by one or more Payment Processors compatible with our Services. You must maintain all the information you provided during your registration process so that it remains true, accurate, up-to-date and complete at all times.
- c. Account Security: You are responsible for access to and control of your account, and for all activities that occur under your account or password. You should not reveal your account information to anyone. You must notify us immediately at support@eshin.us if you believe that your account has been compromised.

### **3. Fees and Refunds:**

- a. **Fees:** You must purchase our Services pursuant to our payment schedule before we grant you any access to our Services. Any failure by you to timely pay shall constitute a material breach. Without prejudice to our other rights or remedies, any amount unpaid after 30 days from the date due will bear interest from the due date at the lesser of the highest rate allowed by applicable law or 1.5% per month. You agree that we may collect reasonable fees (including attorney's fees) arising out of, or related to, our efforts to collect fees or other amounts from you.
- b. **Fee Changes:** We may, from time to time, change our fees upon 60-days' notice to you, provided we will not increase fees more than once per calendar year to become effective in the subsequent year.
- c. **Refunds:** You may be entitled to receive refunds pursuant to our payment schedule.

#### **4. License:**

Conditional upon Customer making full payment pursuant to the terms and conditions of our payment schedule, we grant a limited, nonexclusive, non-assignable license to access and use our Services for managing and operating your restaurant business at the physical location where our software is installed. We will grant you access to our Services, in a manner to be determined by us based on our consultation with you. Any changes to locations or additional locations shall be subject to the prior written approval of us and may, at our sole discretion, require additional payment by you. In our sole discretion, we may develop, or commission the development of, enhancements of the Services which we may make available to Customer, from time to time.

We will provide to you, at no charge, any upgrades released by us during the Term. Upon receipt by you of such free upgrade, all your existing licenses shall be immediately upgraded to the new version of this software.

#### **5. Prohibited Conduct:**

Our Services are here to simply and streamline your business operations. You must use good judgement and comply with any applicable laws and regulations when using and accessing our Services. You shall not use our Services to conduct any illegal activities or business practices, such as tax evasion or tax fraud.

You shall not: (a) reverse engineer, adapt, translate, prepare derivative works from, disassemble, decompile, modify, adapt or change or otherwise attempt to derive the source code of any portion of the Products or their components, or authorize others to do so; (b) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols or labels appearing on or in the Products; (c) transfer any data generated by the Software or contained on the Database to any computer or other electronic device except for such devices included in the Hardware; (d) incorporate the Products or any portion thereof into any other compilations, materials, products or services; (e) use or copy the

Products for any purpose other than in accordance with the terms and conditions of this Agreement; (f) transfer, sell, resell, give, lease, pledge, mortgage, grant a security interest in or otherwise encumber, distribute or sublicense the Products, or any portion thereof, to any other party; or (g) disclose or grant access to any of the Software, Database, or any data generated thereby or therefrom, to any third party, or use the same or any data generated thereby or therefrom to provide service bureau, commercial time-sharing, rental, or other services. In the event of any violation of this Section 5, and in addition to any other remedies available to us, we may immediately terminate your access to our Services and you will not receive any refund.

## **6. Ownership of Copyrights, Trademarks and Other Proprietary Rights:**

Eshine and/or our third party content providers retain all rights in the intellectual property in and on our website and our software, including but not limited to trademarks, service marks, trade dress, inventions, ideas, trade secrets, the source code, the HTML code, the "look and feel" of the website and software application interface, the respective color combinations, layout, and all other graphical elements, and the copyrights in and to the content. Except as expressed stated otherwise in these Terms or in writing by us, you shall not copy, reproduce, modify, distribute, resell our Services, including our software or any written materials. Nothing in these Terms grants you an express or implied license to use any of our intellectual property except as set forth in Section 4. If you are ever held or deemed to be the owner of any intellectual property in any portion of our Services, you irrevocably and exclusively assign to us (or if any applicable law prohibits or limits such assignment, you hereby irrevocably and exclusively license to us) all right, title and interest in and to such intellectual property in those portions of our Services, in perpetuity, in any and all media, whether now or hereafter known or devised. Upon our request, you will promptly take such other actions, including, without limitation, the prompt execution and delivery of documents in recordable form, as may be reasonably necessary to vest, secure and perfect the rights and interests of us in and to the rights assigned to us under these Terms.

## **7. Our Right to Inspect:**

During the term and for a period of one year following the expiration or termination of our Services, to ensure your strict compliance with the terms of these Terms, we or our designee, may inspect your hardware, files, computers, equipment, facilities, and premises; retrieve, analyze, use, and produce all data in your files for or in connection with our software; and copy, remove, or uninstall from any item (including any data, information, or application) you may possess in violation of these Terms. You must not hinder, obstruct, or in any manner interfere with our exercise of any of its rights under this Section 7.

## **8. Support and Maintenance:**

- a. Customer Support: Eshine shall provide support to Customer during the term of this Agreement. Eshine strives to provide Customer with timely response to any customer support inquiries during regular business hours (Monday through Friday,

9:00 AM to 5:00 PM Pacific Time, except on U.S. national holidays). EShine reserves the right to change its normal hours and/or days of operation.

- b. Data Confidentiality: In the event that we cannot, despite reasonable efforts, resolve a customer support issue by providing product support to you online, or accessing your database online, you understand that your only option for solving the problem may be to send us a copy of your database so that we may diagnose the problem at our own facilities in order to attempt to duplicate the problem in our testing lab. We understand that any data within your database is confidential, and we agree to preserve the confidentiality of your database and will take commercially appropriate security measures to ensure that any customer data that is accessed by, or comes into the possession or knowledge of us is not disclosed to any third party, unless authorized in advance, in writing by us. Our obligations and duties under this Section shall survive expiration or termination of the Term.
- c. Support Only For Recent Releases: You understand that we only provide product support for the most recent release and immediately previous release of any EShine application(s). In the event that you have licenses to an EShine application that is two or more versions previous to the current release, you understand that you must upgrade to the most recent release or the immediately previous release in order to receive product support for that application.
- d. Your Equipment Responsibility: You are responsible for purchasing, supplying, and maintaining its system, generally, and all other necessary computer hardware and software needed to run the client and/or server components of our software, as specified in our system requirements documentation. We are not responsible for hardware failure, for failure of communications networks including but not limited to the Internet or Customer's Internet service provider ("ISP"), or for problems related to software other than our software itself. Your hardware and communications network must be sufficient to run Software (server or client, as appropriate) with adequate performance.

## 9. **Term, Termination and Expiration:**

- a. Term: The term of these Terms shall begin on the day that we grant you access to our Services and shall continue terminated by either of us upon written notice pursuant to this Section, or upon 1st year anniversary of our granting you access to our Services, whichever is earlier ("Term").
- b. Termination: You may terminate our Services and/or these Terms as follows:
  - i. You may terminate at any time during the Term upon 10-days' prior written notice to EShine, for any reason or no reason; or
  - ii. In the event that either your or us breach any material term or condition of these Terms and fails to cure such breach within fifteen (15) days after receiving written notice of the breach, then the non-breaching party may terminate this Agreement by providing written notice of the same at any time following the end of such fifteen (15) day period. If we terminate under this paragraph, you are not entitled to any refunds; or

- iii. In the event of termination of any other agreement (if any) between you and us, then we may immediately terminate this Agreement by providing written notice of the same. You will not be entitled to any refunds; or
  - iv. In the event that you make a general assignment for the benefit of creditors, applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of your assets, or such a receiver, trustee or liquidator is appointed, such party has filed against it an involuntary petition of bankruptcy that has not been dismissed within sixty (60) days thereof, or files a voluntary petition of bankruptcy, or seek to take advantage of any other law relating to the relief of debtors, or, in the case of you, file a petition or answer seeking reorganization, winding up, or has wound up or liquidated its business, then we may immediately terminate this Agreement by providing written notice of the same.
- c. Effect of Termination: Upon termination or expiration of our Services for any reason, within ten (10) days after such termination or expiration, you agree to: (a) return any tangible products (if any) to us, or destroy all copies of such products, at our sole option; (b) delete from all computer systems all copies of our software and products; and (c) provide us with a written statement that it has complied with the foregoing obligations. Sections 6, 7, 10, 11, 12, 14, and 16 shall service termination or expiration of Services.

## **10. Disclaimer; Limitation of Liability:**

### **No Warranties:**

THE HARDWARE, SOFTWARE AND DATABASE ARE PROVIDED ON AN "AS-IS, WHERE-IS" BASIS. ESHINE'S MAKES NO REPRESENTATIONS OR WARRANTIES UNDER THESE TERMS. ESHINE DISCLAIMS ALL WARRANTIES — WHETHER EXPRESS OR IMPLIED, STATUTORY OR ARISING BY CUSTOM OR TRADE USE — INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON INFRINGEMENT AND ANY IMPLIED INDEMNITIES.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ESHINE, ITS AGENTS, OR REPRESENTATIVES SHALL CREATE OR CREATES ANY REPRESENTATION OR WARRANTY. ESHINE DOES NOT REPRESENT OR WARRANT THE OPERATION OF THE SOFTWARE TO BE UNINTERRUPTED OR ERROR-FREE. NOR DOES ESHINE MAKE ANY WARRANTY OR REPRESENTATION REGARDING THE USE OR OUTPUT OF THE HARDWARE, SOFTWARE OR ANY DATABASE IN CONNECTION THEREWITH, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE OR THAT THE HARDWARE, SOFTWARE OR DATABASE WILL MEET CUSTOMER'S NEEDS OR REQUIREMENTS.

SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

Limitation of Liability:

IN NO EVENT SHALL ESHINE, OR ITS LICENSORS, THEIR RESPECTIVE OWNERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND CONTRACTORS, IF ANY, LIABLE FOR ANY DAMAGES — INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS OR OPPORTUNITY, BUSINESS INTERRUPTION, LOSS OF DATA, OR OTHER PECUNIARY LOSS) — ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE HARDWARE, SOFTWARE, DATABASE, OR ARISING OUT OF THE TERMS OF THIS AGREEMENT, EVEN IF ESHINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND REGARDLESS OF THE CAUSE OR THE FORM OF ACTION — WHETHER BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, OR OTHERWISE — ESHINE LIABILITY TO CUSTOMER FOR DAMAGES SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM FIRST ACCRUED.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ESHINE HAS NO AND SHALL HAVE NO LIABILITY HEREUNDER FOR ANY CLAIM ABOUT WHICH YOU DO NOT NOTIFY ESHINE IN WRITING WITHIN ONE YEAR OF ITS ACCRUAL.

**11. Indemnification and Insurance:**

- a. You release and shall, during and after the term hereof, indemnify, defend and hold us and our owners, shareholders, directors, officers, licensors, agents and contractors harmless from and against any actual or threatened claims, losses, liabilities (including, without limitation, any punitive damages and fines), costs and expenses (including, without limitation, reasonable costs of litigation, attorneys' and expert witness fees) related to any third-party actions, including Third Party Services (defined below) that were made available to you through our Services (a) in which it is determined that we are not at fault; and (b) arising from or relating to any breach hereof by you, or any acts or omissions of you, its agents or contractors in connection with your use of our Services, including, without limitation, any advertising, promotion, marketing, sales or distribution, use or resale of insurance products or services.
- b. You will secure and maintain throughout the term of your use of our Services such liability insurance as will protect us from any and all claims, damages, and liabilities arising out of bodily harm (including death) or property damage that may occur in connection with the Software and/or the performance of any services and your other obligations under this Agreement. All such insurance will be placed with such insurers and under such forms of policies as may be acceptable to us. You will

deliver to us certificates of insurance and such additional assurance or evidence of the insurance required by this Agreement as we may from time to time request.

## **12. Confidentiality:**

- a. Our Services incorporate confidential and proprietary information developed or acquired by or licensed to us. You must take all reasonable precautions necessary to safeguard such confidentiality which precautions must, in no event, be less demanding than those required for you to protect your own confidential information. The placement of copyright or other proprietary notices on our software or materials in connections with our Services, or any copies thereof, does not constitute publication or otherwise impair their confidential nature. Except as provided in the following sentence, you must not disclose, in whole or in part, our software and the database thereof (including any data generated thereby or therefrom) or any information that we designate as confidential. You may only disclose such items to such of your employees and consultants who require disclosure thereof, or access thereto, to enable you to use our Services as authorized under these Terms. At our request, such employees and consultants, however, must first agree in writing to comply with the use and nondisclosure restrictions contained in these terms. You acknowledge that any unauthorized use or disclosure of our Services including our software and database thereof will cause and its licensors, if any, irreparable damage. If any unauthorized use or disclosure occurs, you must immediately notify us and take, at your expense, all available actions needed to prevent further unauthorized disclosure or use and/or recover the disclosed confidential information.
- b. You shall not acquire any general or specific right in any patent, trademark or copyright owned or used by us. You will at all times respect, protect and not infringe upon our copyrights, trade secrets and other proprietary rights. Specifically, you shall not remove, obscure or alter in any way any serial numbers, copyright or other proprietary rights notices on any EShine information, data or materials.
- c. You agree that any breach of the covenants, terms and conditions in this Section shall be deemed material and shall provide us with just cause to terminate our Services to you without prejudice to our right to recover damages which may result from such breach.

## **13. Independent Parties:**

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agent or employment relationships between Customer and EShine.

## **14. Applicable Law; Dispute Resolution; Arbitration:**



- a. The construction, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Washington without regard to principles of conflicts of law.
- b. You acknowledge that you have that, it is to the benefit of both of us that in the event of any dispute or claim arising between you and EShine as to our respective rights and obligations under these Terms, either you or we hereto may give the other written notification of such dispute or claim. We will attempt to settle any claim or controversy between them through consultation and negotiation in good faith and with a spirit of mutual cooperation. After attempts to resolve our dispute have failed, either you or we may, upon written notice to the other, request that such controversy or claim be referred to the appropriate management personnel of each party for negotiation and resolution. If such a request is made, the applicable and appropriate management-level personnel of the parties will meet in person or by telephone within seven days after such request and will review and attempt to negotiate a mutually acceptable resolution of the controversy or claim in dispute. If the dispute is not resolved after three (3) weeks of direct negotiation, you and EShine shall attempt to resolve the dispute through mediation. **If the mediator is unable to facilitate a settlement of the dispute within a reasonable time, as reasonably determined by the mediator, the mediator shall issue a written statement to both EShine and you to that effect and the aggrieved party may then seek relief through final arbitration, in accordance with the Commercial Rules for the American Arbitration Association. The selection of an arbitrator shall be made pursuant to and under the terms of the policy and procedures then in effect issued by the American Arbitration Association, Commercial Arbitration Division. The arbitration shall take place in English in Seattle, Washington.**

#### 15. Privacy Policy:

We value your business and patronage. Please review our Privacy Policy, the terms of which are incorporated into this agreement as if set forth in full.

#### 16. Third Party Services:

We may make third party content available to you through our Services and may provide links to web pages, applications, mobile apps, sites and content of third parties (collectively the "Third Party Services") as a service to those interested in this information, including not limited to services provided by the Payment Processors. We do not control, endorse or adopt any Third Party Services and expressly disclaims any and all representations, warranties or conditions of any kind regarding the Third Party Services, including without limitation the accuracy or completeness of information, implied warranty of merchantability, fitness for a particular purpose, data loss, non-interference with or non-infringement of any intellectual property rights, quality, reliability, or content in or linked to the Third Party Services, regardless of whether such products or services are designated as "certified," "validated" or the like. You acknowledge and agree that we are not responsible or liable in any manner for any

Third Party Services and we undertake no responsibility to update or review any Third Party Services. You use such Third Party Services at your own risk.

**17. Miscellaneous:**

- a. If any provision of these Terms should be found by any court to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- b. None of the provisions of these Terms shall be considered waived unless such waiver is in writing and signed by the waiving party. No such waiver shall be a waiver of any past or future default, breach or modification of the provisions of these Terms unless expressly stipulated in such waiver.
- c. The headings in these Terms are solely for convenience of reference and shall not affect its interpretation.
- d. These Terms have been reviewed and approved by each of the parties. In the event it should be determined that any provision of these Terms is uncertain or ambiguous, the language in all parts of these Terms shall be in all cases construed as a whole according to its fair meaning, not strictly construed for nor against either party, nor construed with any presumption or rule requiring that it might be construed against the party causing these Terms, or any part of it to be drafted.