

Real View Software License Agreement

This Software License Agreement (“Agreement”) is a legal agreement between you (either individually or a single entity) (“Customer”) and Real View, LLC, or any of its affiliates, including but not limited to any company that controls, is controlled by or is under common control with Real View, LLC, from whom the Real View Product is licensed or to whom this Agreement is assigned (collectively, “Company”), for the enclosed Professional Kitchen Planning and Ordering System software product(s) and all accompanying user documentation and included materials (“System”). This Agreement is effective upon the first installation or the first use of the System on any computer or on in any location whether at the customer premises or elsewhere. PLEASE READ THE TERMS OF THIS AGREEMENT CAREFULLY BEFORE YOU INSTALL OR USE THIS SOFTWARE.

1. ACCEPTANCE OF TERMS

BY INSTALLING OR OTHERWISE USING THE SOFTWARE OR BY CLICKING ON THE “ACCEPT” BUTTON THAT PRESENTS UPON INSTALLATION OF THIS SOFTWARE, YOU (“CUSTOMER”) SIGNIFY YOUR AFFIRMATIVE ACCEPTANCE OF EACH AND EVERY TERM CONTAINED IN THIS AGREEMENT and you acknowledge that you have been presented with this Agreement in a written form accompanying the delivery of the Software and/or electronically upon initialization of the Software and have had the opportunity to reject such terms and conditions by returning the unused Software for a full refund of any amounts paid, if any, and/or choosing not to proceed with an electronic download and receiving a full refund of any amounts paid, if any. Upon installation of the Software you will be bound by all of the terms, conditions, and restrictions contained herein and shall not be entitled to a refund of fees paid, if any.

2. GRANT OF LICENCE AND RESTRICTIONS

2.1 Grant of License. Subject to the terms and conditions of this Agreement, the Company grants the Customer, and Customer hereby accepts under any and all intellectual property rights owned or otherwise asserted by Company a non-exclusive, non-transferable, non-sub-licensable right to use internally the System and any upgrades and modifications thereto provided by Company, subject to the limitations based on number of users (“Seats”), listed in the purchasing documentation.

2.2 License Limitation. License may not be granted to any entity that owns, develops, supervises development, or distributes any Planning or Ordering software program that is competing directly or indirectly with the System or might compete with the System in the

future, or to any entity (individual or corporation) that is providing consulting surfaces or support to or contracted by the aforementioned entity. You may not use the System to develop any software or other technology having the same primary function as the System, including but not limited to using the System in any development or test procedure that seeks to develop like software or other technology. If you become subject to the limitation of this Section 3.2, you must uninstall the System and return all materials to the Company.

2.3 Ownership. Notwithstanding any provision to the contrary containing in this Agreement, Customer agrees that the System, including but not limited to all images and documentation, and any and all modifications performed to such, and all intellectual property rights associated therewith, is and will remain the sole and exclusive property of The Company. Customer shall not have any right, title, or interest to the System or copies thereof except as provided in this Agreement, and no license, right, title, interest to such Company Technology is granted to Customer by virtue of this Agreement and/or Company's performance hereunder. As such, The Company will continue to have the unfettered right to utilize the System and Company's Technology (and any portion or portions thereof) in any manner as determined by The Company in its sole and absolute discretion; and The Company will retain all right, title and interest to any modifications made to the System, derivative works derived from the Company's Technology, and/or incorporating the Company's Technology pursuant to this Agreement, if any, (including, without limitation, any source code for said modifications and the right to own all patents and copyrights relating thereto) including, but not limited to, modifications to enable the System to function on a different operating system or different browser.

2.4 Reverse Engineering. Customer acknowledges and agrees that the System contains trade secrets of The Company and its suppliers, and to protect them Customer may not translate, reverse engineer, decompile, or disassemble the System or otherwise reduce the System to a human perceivable form or permit any other party to do so, except to the extent applicable law expressly prohibits the foregoing restriction.

2.5 Use of System. Customer may not modify System or merge all or any part of it with another program. Customer may not adapt, translate, rent, lease, sublicense, loan, resell for profit, distribute, time-share, or create any derivative work of the System. Except as otherwise provided for in this Agreement, Customer may not copy the System or any of components of thereof including images, models, graphic elements, and other files that might have been installed temporarily or otherwise on Customer's computer.

2.6 Use of Images. Customer may not redistribute, sell or publish images included with or created by System as stock photography or clipart. Customer may not use the images in electronic format or distribute the Images on-line or in multimedia applications unless all of the following are met: The Company grants Customer express written permission; the

images are incorporated for viewing purposes only; a Company's credit is included.

2.7 Redistribution. Customer may not allow or sell access to System to, or use System for the benefit of, any distributor, reseller, sub-licensor, aggregator, or re-marketer of any kind.

2.8 Proprietary Notices. Customer agrees to respect and not to remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of System or output generated by System, and to reproduce and include same on each copy of System authorized hereunder.

3. CONFIDENTIAL INFORMATION

3.1 Nondisclosure. Each Party agrees that neither will, at any time during or after the term of this Agreement, disclose, or disseminate to any other person or entity any proprietary information regarding the business, processes, algorithms, technology, software, documentation, hardware components, or products and prices of thereof of the other Party ("Confidential Information") and information from which the disclosing Party derives economic value actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy ("Trade Secrets") (collectively the "Proprietary Information"); provided however that either Party may disclose Proprietary Information to supervisory or regulatory authorities, their counsel and accountants, or otherwise publicly disclose the Proprietary Information, if legally required to do so. If a receiving Party becomes otherwise legally required do disclose any Proprietary Information, the receiving Party will provide the Party that owns the Proprietary Information with prompt notice of such request(s) so that it may seek an appropriate protective order or other remedy and/or waive the receiving Party's compliance with these provisions.

3.2 Protection of Proprietary Information. Except as provided in Section 4.1, each Party will use diligent efforts to ensure that any Proprietary Information obtained from the other Party will be disclosed only to the receiving Party's employees and agents and then only to the extent that the disclosing Party determines in its reasonable discretion that such employees and agents need to know the information disclosed, and that such employees and agents will be bound by obligations at least as strict as those contained in this Section for the Proprietary Information, but in no case less than reasonable care.

3.3 Non-Proprietary Information. Nothing contained herein will be construed to restrict or impair in any way the right of the Parties to disclose or communicate any information which (i) is at the same time of its disclosure hereunder generally available to the public;

(ii) becomes generally available to the public through no fault of the receiving Party; (iii) is, prior to its initial disclosure hereunder, in the possession of the receiving Party as evidenced in a documentary form; or (iv) is acquired by the receiving Party from any third party having a right to disclose it to the receiving Party.

3.4 Survivorship. The Parties' obligations under this Section 4 will survive the termination of this Agreement.

4. LIMITED WARRANTIES

4.1 As Documented Software Warranty. The Company warrants to Customer that during the Warranty Period System provided to Customer hereunder, when properly installed by Customer will in all material respects conform to its most recent Documentation delivered to Customer. The Warranty Period shall be thirty (30) days from the date of Customer's first receipt. The customer will have a free trial period to evaluate the System and to confirm that it matches its description and customer's expectations and needs.

4.2 Sole Remedy. Except as otherwise provided, in the event that Customer discovers and reports a material program error in the System during the Warranty Period, The Company agrees to use its reasonable commercial efforts to correct, cure, replace, or otherwise remedy such material malfunction without additional charge to Customer other than maintenance and technical support fees. If the Company cannot or will not correct, cure, or replace such program error, and such program error is material, then Customer will have the additional option during the trial period only to terminate this Agreement, return the System and other Company provided materials, and obtain a full refund of all amounts paid to Company, if any. Customer acknowledges that the foregoing is Customer's SOLE REMEDY with respect to the warranty provided in Section 4.1. Customer agrees to cooperate and work closely with Company in a prompt and reasonable manner in connection with Company's correction efforts. Invocations of the remedy in this Section shall not be cause for Customer to delay the payment of any fee that becomes due.

4.3 Disclaimer of Warranty. Except for the foregoing express warranty and remedies, Customer acknowledges and agrees that System is provided on an "as is" and "as available" basis and Customer's use of System or services is at its own risk. Company makes no other warranties, either express or implied under this Agreement and hereby disclaims all implied warranties, including any warranties regarding fitness for purpose (even if Company has been informed of such purpose), merchantability, accuracy of data, or conformity with description, non-infringement, or title. Further, except as may be expressly set forth, Company does not warrant, guarantee, or make any representations that System will be free from bugs or that their use will be uninterrupted or error-free or without infiltration or compromise of the security systems.

4.4 No Alteration of Warranty. No agent of Company is authorized to alter or exceed the warranty obligations of Company as set forth herein.

5. LIMITATION OF LIABILITY

5.1 Notwithstanding the warranty provision set forth in Section 4.1 above, all of Company's obligations with respect to such warranty shall be contingent on Customer's use of System in accordance with this Agreement and in accordance with Company's instructions as provided by Company in the Documentation, as such instructions may be amended, supplemented, or modified by Company from time to time.

5.2 Customer assumes the entire risk as to the results and performance of System. Regardless whether any remedy set forth herein or in any of the Company's Limited Warranties set in Section 4 hereof fails of its essential purpose or otherwise, in no case shall either party be liable to each other or to any third party for any special, indirect, punitive, consequential, or incidental damages including, but not limited to, lost revenue or profit, loss of business or other commercial or economic loss arising out of or related to this agreement however caused or under what cause of action it has arisen (including but not limited to tort, contract, negligence, strict product liability, and breach of warranty), even if advised beforehand of the possibility of such damages. In no event shall Company and its dealers and suppliers be liable to Customer or any third party for damages in excess of the amount actually paid to Company under this Agreement.

5.3 Company accepts no liability for collection risk, even if due to undetected or detected fraud (other than the fraudulent conduct of Company), denial of credit, or for any damages due to termination. Company, further, accepts no liability for Customer's backup, disaster recovery or security practices, or failure to implement such practices.

5.4 Customer agrees that Company is not liable or responsible for any damage to the Equipment, or any loss of or casualty to the Equipment from any causes whatsoever. No such damage, casualty or loss will affect Customer's responsibilities and obligation under this Agreement.

5.5 Company shall have no liability for any program errors or other defect (1) caused by accident, Customer's negligence, misuse, or unauthorized modifications or movement, (2) caused by use of System on equipment other than those type and minimums specified by Company and/or on equipment that is improperly configured, installed, prepared, or maintained (except where such installation, preparation, maintenance, or configuration was accomplished by Company), including failure to maintain environmental and electrical conditions described in any documentation; or (3) if Customer is delinquent in the payment of any fees not subject to a good faith dispute; or (4) proximately caused by error of malfunction in third party hardware or third party software. Failure of the Customer to

install any software or hardware updates and/or data transmission format modifications may, at Company's option result in an invalidation of any of the warranties provided above. 5.6 The limitations in this section shall apply whether or not the alleged breach or default is a breach of a fundamental condition or term or a fundamental breach. The Customer acknowledges that the limitations set forth in this Section 4 are integral to the amount of consideration levied in connection with the license of System and any services rendered hereunder and that, were Company to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher.

6. INDEMNIFICATION

6.1 By Company. Notwithstanding anything to the contrary above, Company shall indemnify and hold harmless Customer from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright or patent by System. Customer agrees to notify Company of any such claim promptly in writing and to allow Company to control the proceedings, and agrees to cooperate fully with Company during such proceedings. Company shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, Company may replace, in whole or in part, the System with a substantially compatible and functionally equivalent computer program or modify System to avoid the infringement. Company shall have no liability regarding any claim arising out of: (a) use of other than a current, unaltered release of System unless the infringing portion is also in the then current, unaltered release, (b) use of System in combination with non-Company software, data or equipment if the infringement was caused by such use or combination, (y) any modification or derivation of System not specifically authorized in writing by Company or (c) use of third party software. **THE FOREGOING STATES THE ENTIRE LIABILITY OF LICENSOR AND THE EXCLUSIVE REMEDY FOR LICENSEE RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SYSTEM.**

6.2 By Customer. Customer understands that Company has no control over Customer's use of System, although Company strongly urges Customer to use System in the manner and for the purposes it was intended to be used. Moreover, Company does not accept any financial liability or other risks relating to the use of the Designated Equipment. Accordingly, Customer agrees to hold Company harmless, indemnify and defend Company against all claims, liabilities, losses, suits, proceedings, damage, costs including reasonable attorney fees relating to this Agreement, including without limitation those arising on account of Customer's modification or enhancement of the System, whether authorized or unauthorized by Company, or otherwise caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by Company, its officers, employees, agents, representatives and contractors, or to the use or ownership of the Designated Equipment. This duty to indemnify shall survive the termination of this Agreement.

7. TERM AND TERMINATION

7.1 Term. This Agreement will be in effect upon installation and continue in effect until terminated.

7.2 Termination. Either Party may terminate this Agreement upon the occurrence of any of the following events:

7.2.1 Material Breach. Breach by the other Party of any of the material terms of the Agreement or numerous breaches of duties or obligations hereunder that cumulatively constitute a material breach and the failure of the breaching Party to cure that breach(es) within thirty (30) days from receipt of written notice from the non-breaching Party identifying the breach, unless extended by mutual agreement of the Parties;

7.2.2 Insolvency. The other Party is declared insolvent or bankrupt, or makes an assignment of substantially all of its assets for the benefit of creditors, or a receiver is appointed, or any proceeding is demanded by, for or against the other Party under any provision of bankruptcy or insolvency legislation that is not terminated within sixty (60) days.

7.3 Effect of Termination. All earned and unpaid fees shall become immediately due and payable. In the case of any termination other than a termination by Customer under Section 6.2, any unearned fees shall also become immediately due.

7.5 Survival. Sections 2.2 (Ownership) 3 (Confidential Information), 4. (Limited Warranties), 5 (Limitation of Liability), 6 (Indemnification), 7 (Term and Termination), 9 (Arbitration), and 10 (Provisions of General Applicability) will continue in effect after termination of this Agreement. The restriction set forth in Sections 4 shall continue: (i) with respect to any Trade Secret, for as long as such information continues to be a Trade Secret under applicable law; and (ii) with respect to all other Proprietary Information, during the term of this Agreement and for a period of five (5) years from the date of its expiration or termination.

8. ASSIGNMENT

8.1 Customer may not sell, pledge, assign, sublicense, or otherwise transfer or share its rights under this Agreement without the prior written consent of Company., which Company may withhold in its sole discretion. Any attempted sale pledge, assignment, sublicense or other transfer in violation hereof shall be void and of no force or effect. Company may assign or transfer its rights and delegates its duties hereunder at any time without the consent of Customer.

9. ARBITRATION

9.1 Arbitration. Any dispute arising out of or relating to the terms, interpretation of performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted by a single arbitrator in Boston, Massachusetts under the rules and procedures of the American Arbitration Association then in effect; and the award shall be in writing and enforceable in any court of competent jurisdiction. During the conduct of the arbitration, the parties shall continue to perform their respective obligations under the terms of this Agreement.

9.2 Applicable law. This Agreement and the rights and obligations of the parties hereunder shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflicts of laws rules.

10. PROVISIONS OF GENERAL APPLICABILITY

10.1 Extend. This Agreement shall apply to each Release of System that Customer is currently licensing from the Company or shall license in the future.

10.2 Entire Agreement. This Agreement is the entire agreement between Company and Customer superseding any other agreements or discussions, oral or written, and may not be changed except by a signed agreement.

10.3 Headings. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

10.4 Waiver. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.

10.5 Severability. If any provision of this Agreement is declared by a Court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be severed from the Agreement and the other provisions shall remain in full force and effect.

10.6 Notice. All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day after being sent by overnight courier, charges prepaid, with a confirming fax; and addressed as first set forth above or to such other address as the party to receive the notice or request so designates by written notice to the other.

10.7 Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies or any other causes beyond the control of such party (“Force Majeure”) provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof and uses its best efforts to cure the delay. In the event of such Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of three (3) months, after which time, this Agreement shall automatically terminate.

10.8 Reference. Customer consents to the public use of its name as a customer of licensor and agrees to accept reasonable telephone reference calls.

10.9 Consent. Customer consents to acts by Company to disable System (including the triggering of software features that prevent operation of System) in the event that Customer fails to pay the License Fee for System or uses or transfers System in breach of this Agreement.

10.10 Modification. This Agreement may not be modified or amended except by a writing which is signed by authorized representatives of each of the parties.

10.11 Waiver of Breach. The failure of either party to exercise any right or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the agreement.