



SETUP + ACTIVATION FORM

MERCHANT INFORMATION

Name of Business _____ Website _____

Number of Locations _____ Contact Name _____

Contact Info (email + phone) _____

Referring Agent _____

CHOOSE YOUR PLAN

☐ **Service Fee Plan**

\$1.50 / Transaction

A minimum of 75 orders per month or a \$75 charge will be imposed

☐ **Fixed Monthly Plan**

\$139 / Month

MENU BUILD + SETUP

Quoted Cost

\$499

Setup fee includes internet printer, full menu build, system training and promotional materials.

FOOD TAX RATE

Enter Tax Rate (per location)

Location 1 _____

Location 2 _____

Location 3 _____

Location 4 _____

SIGNATURE

By my signature I acknowledge that the information provided is accurate and that I have read and agreed to the selected plan and to the Terms & Conditions:

Signature _____ Title _____

Print Name of Signer _____ Date _____



ACH AUTHORIZATION FORM

I (we) hereby authorize e|tab or its designated agent(s) hereinafter called Company, to initiate debit/credit entries to my (our) account indicated below and the financial institution named below, hereinafter called Financial Institution, to debit/credit the same to such account for subscription to monthly e|tab services. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

FINANCIAL INSTITUTION

BRANCH

ADDRESS

CITY

STATE

ZIP

ROUTING NUMBER

ACCOUNT NUMBER

TYPE OF ACCOUNT

☐ Checking ☐ Savings

This authority is to remain in full force and effect until Company has received written notification from me (or either of us) of its termination in such time and manner as to afford Company and Financial Institution a reasonable opportunity to act on it.

PRINT / TYPE INDIVIDUAL NAME

SIGNATURE

DATE

****Please Attach Copy of Voided Check to This Form****



TERMS + CONDITIONS

These Terms and Conditions for eTab LLC are by and between eTab LLC with offices located at 19 W. 44th Street, Suite 1416, New York, NY 10036 ("eTab" or "We") and the Merchant listed on the eTab Merchant Application and Agreement ("Merchant" or "You").

By executing this Agreement, you agree to comply with the following terms and conditions outlined in this Agreement.

1. AGREEMENT FOR SERVICES. eTab is the owner of the software (referred to herein as the "Service") that can produce commercial applications for business use including, (i) a mobile application for consumer ordering for take out, delivery, and on-premise, (ii) a mobile-optimized, e-commerce enabled online menu and ordering site, (iii) free standing kiosks to facilitate customer orders and payment, and (iv) a wait staff application to facilitate on-premise mobile ordering. By selecting the Service with eTab, You will be enrolled to receive the configuration of the Service selected by You and agreed by eTab in the attached Selection of Services Form.

You agree to share with eTab any and all requested historical sales data, whether generated by or stored on the point of sale and/or generated by using the Service, and whether gathered from servers, wait staff, and patrons utilizing the Service and/or ordering and paying traditionally (i.e. not utilizing the Service).

eTab agrees to provide maintenance, service, updates and enhancements to the Service on an as-needed basis. Troubleshooting and error corrections will be addressed in an expeditious manner and eTab will provide contact information to the Merchant that will allow for access to support services during all normal business hours.

You agree that nothing contained in this Agreement will be construed to (i) require eTab to provide a minimum number of hours of service to the Merchant or limit the right to perform similar services for the benefit of other persons or entities; (ii) require eTab to guarantee any specific results in relation to the services to be provided by eTab hereunder; or (iii) in any way limit eTab's ability to develop and sell advertising content for the Service.

2. LICENSE. You acknowledge that You will have a limited, non-exclusive, nontransferable license to use the Service. You acknowledge and agree that You will not use the Service for any purpose that is illegal. You agree that the You will use the Service carefully and will not use it in any way that might result in any loss of eTab's or any third party's property or information.

Your right to access and use the Service is personal to your business and is not transferrable by You to any person or entity. The Service may be only be used for lawful purposes. The Merchant is expressly prohibited from engaging in the following:

- (a) Using any robot, spider, script, scraper, deep link, or other similar automated data gathering or extraction tools, programs, algorithms, or methodologies to access, acquire, copy, or monitor the Service without eTab's prior written consent, which may be withheld for any reason;
- (b) Using the Service in any manner that could damage, disable, overburden, disrupt, or impair the Service server, or interfere with any other party's use and enjoyment of the Services;
- (c) Uploading content on the Service on behalf of another or permit, enable, induce, or encourage any third party to post content for you; Disobeying any applicable policies or regulations of third party networks and Services connected to the Service;
- (d) Modifying, adapting, duplicating, translating, copying, printing, disassembling, decompiling, framing, reformatting, otherwise tampering, or attempting to reverse engineer the Service in any way.

3. PROPRIETARY NATURE OF SERVICES. eTab represents and warrants to you that it is the exclusive owner and/or maintains an express license to provide the Services under this Agreement. The Services, and related technology, provided under this Agreement are proprietary to eTab and/or its licensor(s) and protected by applicable copyright laws and/or similar laws of other jurisdictions. Trademarks and Service marks, including, without limitation, the registered name of eTab, which may appear on the online site and/or in the Services, are the Service and trademarks of eTab or affiliated entities. ANY COPYING, DISTRIBUTING, TRANSMITTING, POSTING, LINKING, DEEP LINKING, OR OTHERWISE MODIFYING OF THE SERVICE WITHOUT THE EXPRESS WRITTEN PERMISSION OF ETAB IS PROHIBITED. Any violation of this requirement may result in a copyright,

trademark or other intellectual property right infringement that may subject you to civil and/or criminal penalties. You agree to abide by any and all additional trademark and copyright notices, information or restrictions contained in any part of the online site and/or Services.

4. OBLIGATIONS OF MERCHANTS. The Merchant acknowledges that it is fully responsible for maintaining the security of its account and the Services offered. You agree to immediately notify eTab of any unauthorized use of your account, or any other breaches of security via email at security@e-tab.com or to such other address as eTab may provide you from time to time. ETAB WILL NOT BE LIABLE FOR ANY ACTS OR OMISSIONS BY YOU, INCLUDING ANY DAMAGES OF ANY KIND INCURRED AS A RESULT OF SUCH ACTS OR OMISSIONS.

By electing to use eTab's Service, you are entirely responsible for engaging with your customers and maintaining the accuracy and integrity of your content. You will have the option to upload certain descriptions, images, videos, menu information or other marketing materials (collectively "Content") for the purpose of displaying your products or services in connection with the Service. eTab employees, independent contractors and/or sales agents shall have the right to access Your account and upload Content from time to time as requested by You, and that you will authorize eTab (as applicable) to allow such employees, independent contractors and/or sales agents to access Your account, upload your Content, and/or make such other changes or modifications to your site as you may request from time to time. You warrant to eTab that you are the exclusive owner of such Content or maintain a license to display such Content. You agree to not hold eTab responsible and/or liable for any inaccuracies in presentation of the Content to You or any other end users of the Service.

Further, by executing this Agreement for Services, you represent and warrant that:

- (a) You will act in a professional manner that is commercially reasonable within your industry.
- (b) You will keep all content that you submit updated with the most current information.
- (c) You will notify eTab immediately of any discrepancies.
- (d) The uploading, copying, and use of the Content you provide will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark, or trade secret rights of any third party;
- (e) You warrant that you are authorized and have all necessary permissions to post or make available the Content.
- (f) You have fully complied with any third party licenses relating to the Content, and have done all things necessary to successfully pass through any required terms;
- (g) The Content does not contain or install any viruses, worms, malware, Trojan horse, or other harmful or destructive content;
- (h) The Content is not spam, is not machine or randomly-generated, and does not contain unethical or unwanted commercial content designed to drive traffic to third party sites or boost the search engine rankings of third party sites, or to further unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing);
- (i) The Content is not illegal, pornographic, obscene, defamatory, libelous, or inflammatory;
- (j) The Content does not bully, harass, threaten, or intimidate; does not contain threats or incite violence towards individuals or entities; and does not violate the privacy or publicity rights of any user or third party;
- (k) You will not conduct your business or use the Service in a manner that results in or may result in complaints, disputes, claims, fines, penalties (and, in the event that the Service includes e-commerce capability, will not result in or may result in fees, fines, penalties, reversals or chargebacks) and/or other liability to eTab, third parties or you;
- (l) Your Content and/or account with eTab arising out of or relating to the Service is not named in a manner that misleads your end users or other third parties into thinking that you are another person or company, e.g., you are not using the name of a person or entity other than yourself or company other than your own;
- (m) You will not disrupt, damage, impair, or interfere with the business of eTab by disrupting its relationships with customers, agents, representatives, or vendors.

5. IMAGE AND CONTENT OWNERSHIP. You agree not to upload, post, or otherwise make available on this Service any material protected by copyright, trademark, or other proprietary right without the express permission of the owner of the copyright, trademark, or other proprietary right. eTab does not have any express burden or responsibility to provide you with indications, markings, or anything else that may aid you in determining whether the material in question is copyrighted or trademarked. You will be solely liable for any damage resulting from any infringement of copyrights, trademarks, proprietary rights, or any other harm resulting from such a submission.

The Content provided by Merchant to eTab is owned, controlled, and/or licensed by Merchant, and at all times remains the sole responsibility of Merchant and not eTab. By uploading your own Content for inclusion on the Service, you grant eTab a world-wide, royalty-free, and non-exclusive license to reproduce, modify, adapt, and publish the Content solely for the purpose of displaying, distributing, and promoting your Content. If you delete Content, eTab will use reasonable efforts to remove it from the Service, but you acknowledge that caching or references to the Content may not be made immediately unavailable.

By using the Services you acknowledge that any images and content provided by eTab (or eTab's third party Service providers) to you are not sold or distributed to you but instead licensed to you for use as part of the Service only. Nothing contained in this Agreement gives you the right to claim ownership in the images or content provided by eTab as contemplated by the Services provided under this Agreement.

6. PRIVACY/NON-DISCLOSURE. eTab (and/or its third party Service providers) collect and store information, including personal information, about you and your use of the Service. This information is gathered in a number of ways, including when you visit the applications or online sites developed as part of the Service and your interaction with the Service. Personal information is information that can be used to uniquely identify or contact you. Non-personal information is information that does not permit direct association with you. We may collect, use, transfer and disclose non-personal information for any purpose. You can choose not to provide personal information we may request of you, but, in general, most of the personal information we request is required in order to provide our Service in full and the lack of such personal information will prevent us from doing so.

We may supplement the personal information you provide with publicly available information about you as well as information from other sources, as permitted by law. We use this personal information, for example, to process your Services, to create your online site and to utilize other integrated tools.

We keep track of your interactions with us and collect information related to you and your use of our Service, including but not limited to: your online activity and transactions. We only use this information to provide you additional personalized Services, and to otherwise enhance or administer our Service offering to you.

You acknowledges and agree that in providing the Service, eTab may disclose to You certain confidential, proprietary trade secret information belonging to eTab (such certain, proprietary trade secret information of ours is referred to herein as the "eTab Confidential Information"). The eTab Confidential Information may include, but is not limited to, the Service, any and all data pulled from the Service, computer programs, flowcharts, diagrams, manuals, schematics, development tools, specifications, design documents, marketing information, financial information or business plans. During the term of this Agreement and for a period of five (5) years after the termination of this Agreement, You agree that the You will not, without eTab's express prior written consent, disclose any of the eTab Confidential Information or any part thereof to any third party, except to the extent that such eTab Confidential Information (i) is or becomes generally available to the public through no fault of the Yours; (ii) is rightfully received by the You from a third party without limitation as to its use; or (iii) is independently developed by the You.

7. THIRD PARTY WEBSITES, SERVICES, AND CONTENT. The Service may contain links to third-party websites, including your social profiles, all of which are not under the control of eTab, and eTab is not responsible for, nor does it guarantee the accuracy or integrity of, the content(s) of any linked website, any link contained in a linked website, or any changes or updates to such sites. The inclusion of any link does not imply that eTab endorses or accepts any responsibility for the content on any third party site. Your correspondence or business dealings with, or participation in a transaction on or in any third party site found through the Service, including payment and delivery of related goods or Services, and any other terms, conditions, warranties, or representations associated with

such dealings, are solely between you and such third party. eTab is not responsible or liable for any loss or damage of any kind incurred as the result of any such dealings or as the result of the presence of links to such third party websites on the Service.

8. DISCLAIMER OF WARRANTY. ALL INFORMATION, CONTENT, SERVICES, AND MATERIAL AVAILABLE ON THE SERVICE IS PROVIDED ON AN "AS IS" BASIS. THE USE OF THE SERVICES OR THE DOWNLOADING OR OTHER ACQUISITION OF ANY MATERIALS THROUGH THIS SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK. TO THE FULL EXTENT APPLICABLE BY LAW ETAB DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE ARE NOT ABLE TO WARRANT THE NON-INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS. YOUR USE OF THE SITE IS AT YOUR OWN RISK. NEITHER ETAB NOR ANY OTHER PERSON OR ENTITY INVOLVED GUARANTEES THAT SERVICES THROUGH THE SERVICE WILL BE TIMELY, SECURE, UNINTERRUPTED, OR DEFECT-FREE. WE DO NOT GUARANTEE THE ACCURACY OF ANY INFORMATION OR MATERIAL FOUND ON THE SERVICE.

9. LIMITATION OF LIABILITY. IN NO EVENT WILL ETAB, ITS AFFILIATES, OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR INDEPENDENT CONTRACTORS) BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF BUSINESS, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OR LOSS OF DATA, OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE. ETAB'S SOLE AND EXCLUSIVE LIABILITY TO MERCHANT FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THE SERVICE OR AS A RESULT OF ANY ERRORS, OR OMISSIONS SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES PAID HEREUNDER. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE, YOU ASSUME ALL RISKS CONCERNING THE SUITABILITY AND ACCURACY OF THE INFORMATION WITHIN THE SERVICE. THE SERVICE MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS. ETAB ASSUMES NO RESPONSIBILITY, AND DISCLAIMS ALL LIABILITY, FOR ANY SUCH INACCURACIES, ERRORS, OR OMISSIONS ON THE SITE.

YOU WILL REMAIN SOLELY RESPONSIBLE FOR MAINTAINING COMPLIANCE WITH REQUIREMENTS AND POLICIES OF ALL OTHER THIRD PARTY PROVIDORS, INCLUDING BUT NOT LIMITED TO, MAINTAINING PAYMENT CARD INDUSTRY ("PCI") COMPLIANCE.

10. INDEMNIFICATION. You agree to indemnify, defend, and hold eTab and its affiliates, officers, agents, co-branders, partners, independent contractors, service providers, and employees harmless from any claim or demand made by any third party due to or arising out of your use of the Service, your connection to the Service, your violation of this Agreement, your infringement of any third parties' rights, or your violation of any rights of other users of the Service. Any such indemnification shall include the payment of reasonable attorney's fees incurred in the defense of such claim.

11. TERMINATION OF ACCESS. eTab reserves the right (but not the obligation) to terminate your privilege to use the Service at any time, for any reason. In addition, eTab shall have the right to (i) remove any material that in eTab's sole opinion may violate, or that is alleged to violate, any applicable law, policies (i.e. card associations), or this Agreement; (ii) terminate any portion of the Service, and/or remove a user or users or otherwise terminate any use of the Service if eTab determines in its sole discretion that such use is unlawful and/or prohibited by the law, policies, or this Agreement; and (iii) if provided with a court order provide law enforcement officials with all requested information about the Merchant and account from which the illegal activity or material originated.

12. FEES; MERCHANT PROCESSING APPLICATION. The fees for this Service are outlined in the Merchant Processing Application and Agreement (the "Merchant Application"), provided separately to and incorporated herein by this reference. You acknowledge that eTab has engaged with Priority Payment Systems, LLC ("Priority") as third party service provider for billing, collections, and processing of all transactions that occur using the Service. By executing this Agreement along with the attached Merchant Application, you authorize all fees and the collection of such fees as specified in the Merchant Agreement.

13. NOTICES. We may need to notify you from time to time regarding changes to this Agreement or the Services. You agree that such notices will be effective upon sending them to you through email to the email address or postal mail address provided by you from time to time, or notifying you via other means required by law. If you do not provide us with accurate information to contact you, we will not be held liable if you do not receive the notice.

14. INDEPENDENT RELATIONSHIP. Nothing in this Agreement is intended to create or shall be construed as creating an employer-employee relationship, or a partnership, agency, joint venture, or franchise between eTab and Merchant. Each party is responsible for its own federal, state, and local taxes for any transaction occurring through the Service.

15. GENERAL INFORMATION.

Term; Termination. This Agreement for Services shall commence on the Effective Date and shall continue in effect on an annual automatic renewal basis, or as otherwise specified in the Merchant Application until either You or eTab elect to terminate the Agreement in accordance with its terms. This Agreement may be terminated by either party for convenience upon thirty (30) days prior written notice to the other party, subject to the terms and conditions of the Agreement, along with the Merchant Application, with the effective date of termination to be on the last day of the billing cycle in the period in which you request termination of Service or eTab provides notification of termination. In the event of termination, the licenses granted to You under this Agreement will be revoked on the effective date of termination.

Survival. The terms and conditions of this Agreement which by their nature or by their express terms are reasonably intended to survive beyond expiration or termination of this Agreement shall so survive.

Jurisdiction and Choice of Law. The validity, interpretation, and performance of the Agreement are governed and controlled by the laws and regulations of the State of New York. In the event of a dispute, you agree to submit to the personal and exclusive jurisdiction of the state and/or federal courts located in New York County, New York. You hereby waive any objections to forum or jurisdiction on the grounds of forum non conveniens or otherwise.

Severability. In the event any provision of the Agreement is found to be illegal, invalid, or unenforceable for any reason, the legality, validity, and enforceability of the remainder of the terms and conditions shall not be affected and shall remain in full force and effect to the greatest extent permitted by law.

Changes to this Agreement; Changes to Fees. We reserve the right to change or modify the terms and conditions of Service, including the fees associated with the Service, at any time. Changes to the terms and conditions, fees or other policies will be effective upon sending notification to the email address or postal address on file. In consideration of the Services provided by us, you shall be charged, and agree to pay us, any and all fees set forth in this Agreement and any additional pricing supplements provided from time to time, all of which shall be calculated and payable pursuant to the terms of this Agreement and any additional pricing supplements. Subject to the terms of this Agreement, we may increase our fees for Services for any reason at any time, by notifying you twenty (20) days prior to the effective date of such change or addition.

Entire Agreement. This Agreement, along with eTab's other policies, contains the complete Agreement between the Merchant and eTab regarding the subject matter hereof.

Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, provided however, that notwithstanding the foregoing or anything in this Agreement to the contrary, eTab reserves the right to assign this Agreement to any affiliate, parent company or subsidiary, or to any entity that gains control of eTab by way of merger, acquisition or otherwise.

16. Binding Agreement. As a condition of your use of the Services, you agree that (i) you are the owner or authorized representative of the Merchant; (ii) you possess the authority to create a legally binding obligation; (iii) that you will at all times comply with this Agreement; and (iv) you have the right to provide any and all information you submit to eTab, the information is only about your company, and all such information is accurate, true, current, and complete.