

MASTER SERVICES AGREEMENT

Customer's Legal Name Doing Business As

Street Address City State Zip Code

Specify Whether Customer is (circle one) a Corporation, Partnership, Taxpayer Identification Number
Sole Proprietorship, Non-Profit or Other Type of Entity

Recipient/Title For Notices Facsimile Number

This Master Services Agreement ("MSA") is among the CUSTOMER identified above and FIRST DATA MERCHANT SERVICES CORPORATION ("FDMS") and/or its Affiliates (collectively, "PROVIDER") for the Services identified below.

The intent of this MSA is to provide one set of standardized "Terms and Conditions" to be utilized for multiple relationships within the United States between CUSTOMER and PROVIDER and, in certain circumstances, other service providers. All services provided by PROVIDER (individually or in conjunction with other service providers "Services") will be identified as individual addenda to this MSA ("Addendum") with specific operational specifications and associated pricing. These Addenda will be subject to the Terms and Conditions of this MSA unless the applicable Addendum specifically states that additional and/or other terms and conditions apply, provided that each Addendum may identify certain references herein to PROVIDER that shall then be deemed for purposes of such Addendum to be references to PROVIDER and one or more other service providers who are a party to such Addendum

The parties hereto acknowledge and agree that PROVIDER is party to an agreement with Burger King Corporation (the "Corporate Agreement" and "Corporate" respectively), pursuant to which PROVIDER is the exclusive provider of Services to Corporate locations and is the exclusively endorsed provider of Services to its independent franchise locations (each a "Franchisee"). CUSTOMER acknowledges that PROVIDER is extending the terms and conditions set forth in this Agreement in consideration of CUSTOMER's current status as a Franchisee.

In consideration of the mutual covenants and agreements set forth herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, PROVIDER and CUSTOMER agree as follows:

1. Services. The Services provided shall be more fully described in Addenda executed contemporaneously herewith or subsequently by all applicable parties.

2. Term.

2.1 Existing Customers. An "Existing Customer" is defined as a Customer that currently has an established relationship with Provider via the Pay It Your Way Program. For Existing Customers, this MSA and any Addenda hereto shall be in effect upon signing of each document by all parties. The initial term of the MSA and any

Addenda shall commence upon the first day of the month following the full execution of this MSA and Addenda, and shall thereafter be coterminous with the Corporate Agreement, unless earlier terminated in accordance with the terms of this MSA and/or any Addenda hereto.

2.2 New Customers. A "New Customer" is defined as a Customer that has no established relationship with the provider. For New Customers this MSA and any Addenda hereto shall be in effect upon signing of each document by all parties and shall thereafter be coterminous with the Corporate Agreement, unless earlier termination in accordance with the terms of this MSA and/or any Addenda hereto

This MSA and any Addenda hereto shall automatically renew for successive one (1) year terms (each a "Renewal Period") until terminated by the parties upon sixty (60) days notice prior to the end of the then existing term. This MSA shall be effective until all Addenda are terminated. Additionally, the parties hereto acknowledge and agree that to the extent CUSTOMER ceases to be a Franchisee during the term of this MSA or any Addenda, PROVIDER shall have the right to terminate this Agreement upon thirty (30) days notice to CUSTOMER.

3. Financial and Other Information.

- 3.1 Upon request from PROVIDER, CUSTOMER agrees to provide PROVIDER quarterly financial statements of CUSTOMER within forty five (45) days after the end of each fiscal quarter and annual financial statements, prepared by an independent certified public accountant, within ninety (90) days after the end of each fiscal year. Notwithstanding the foregoing, in the event that PROVIDER, in its reasonable discretion, feels that an Event of Default, as outlined in the Citi Merchant Servicers Bankcard Addendum to Master Services Agreement, may have occurred, CUSTOMER agrees to provide PROVIDER annual audited financial statements of CUSTOMER within ninety (90) days after the end of each fiscal year. Any and all financial statements shall be prepared in accordance with generally accepted accounting principles. CUSTOMER also shall provide such other information concerning CUSTOMER's compliance with the terms and provisions of this Agreement as PROVIDER may reasonably request. CUSTOMER authorizes PROVIDER to obtain from third parties financial and credit information relating to CUSTOMER in connection with PROVIDER's determination whether to accept this Agreement and PROVIDER's continuing evaluation of the financial and credit status of CUSTOMER. Upon PROVIDER's reasonable request and with reasonable prior notice, CUSTOMER shall provide to PROVIDER or their representatives reasonable access to CUSTOMER's facilities and records during CUSTOMER's normal hours of operation (i.e., 9 a.m. to 5 p.m., Monday through Friday) for the purpose of performing any inspection and/or copying of CUSTOMER's books and/or records pertaining to the Card transactions contemplated in this Agreement. Alternatively, CUSTOMER may elect to provide copies of such books and/or records to PROVIDER
- 3.2 CUSTOMER will provide PROVIDER with written notice of CUSTOMER's intent to liquidate, substantially change the basic nature of its business, transfer or sell any substantial part (25% or more in value) of its total assets, or if CUSTOMER or its parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, change the control or ownership of CUSTOMER or its parent, thirty (30) days prior to such liquidation, change, transfer or sale taking place. CUSTOMER will also notify PROVIDER of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of CUSTOMER's total assets not later than three days after CUSTOMER obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

4. Indemnification.

4.1 CUSTOMER agrees to indemnify and hold harmless PROVIDER, its Affiliates, agents, subcontractors (to the extent Provider's agents, Affiliates, and subcontractors provide Services under the MSA and/or any Addendum) employees directors and officers from and against all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from:

- (i) any breach of any representation, warranty, covenant, provision of this MSA or any Addenda by CUSTOMER; or
- (ii) any misrepresentation by CUSTOMER under this MSA or any Addenda hereto
- (iii) any gross negligence or willful misconduct of CUSTOMER, its employees, or agents in connection with CUSTOMER's Card transactions or otherwise arising from CUSTOMER's provision of goods and services to Cardholders.
- (iv) CUSTOMER's failure to comply with any data security obligations under this MSA or any Addendum, including but not limited to, the data security obligations of CUSTOMER pursuant to Section 25 of the Bankcard Addendum

4.2 PROVIDER agrees to indemnify and hold harmless CUSTOMER employees, directors and officers (collectively, "CUSTOMER Indemnitees") from and against all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from:

- (i) any breach of any representation, warranty, covenant, provision of this MSA or any Addenda by SERVICERS
- (ii) any misrepresentation under this MSA or any Addenda hereto by SERVICERS.
- (iii) any gross negligence or willful misconduct of SERVICERS, their employees, or agents in connection with or otherwise arising from SERVICERS' provision of Services hereunder;
- (iv) SERVICERS failure to comply with any data security obligations under this MSA or any Addendum, including but not limited to, the data security obligations of SERVICERS pursuant to Section 25 of the Bankcard Addendum
- (v) any allegation that the Services or any other process, deliverable, Equipment, or Software (collectively or individually, "Intellectual Property") provided by SERVICERS under this MSA, any Addenda hereto (including an Equipment Lease or Purchase Agreement), or CUSTOMER's use thereof, infringes or misappropriates the copyright, patent, trade secret, trademarks or other intellectual property right or interest of any person (the "Intellectual Property Right") except to the extent that such allegation arises from (a) CUSTOMER's use of the Intellectual Property other than in compliance with this MSA and any documentation regarding the Intellectual Property ("Documentation") supplied by PROVIDER, (b) CUSTOMER's use of the Intellectual Property in combination with other software, equipment, systems, services, processes, components or elements not specifically authorized by PROVIDER as indicated in the Documentation, if the infringement or misappropriation would not have occurred but for such use or combination.

If any Intellectual Property is, or in either party's reasonable opinion is likely to be, held to constitute an infringement of such third party's Intellectual Property Rights, then PROVIDERS, in addition to its indemnity obligations and at its expense, will procure for CUSTOMER the right to continue to use the infringing Intellectual Property, or modify the infringing Intellectual Property, so that it is no longer infringing, or replace the infringing Intellectual Property with a non-infringing Intellectual Property of equal or superior functional capability or quality.

4.3 In the event of any legal action or claim with any third parties concerning any transaction or event in which a claim for indemnification against a party may be made under this Agreement ,any Addenda hereto (including an Equipment Lease or Purchase Agreement), the party to be indemnified hereunder (the "indemnified party") agrees to: (a) promptly notify the party indemnifying hereunder (the "indemnifying party") of the legal action

or claim, (b) reasonably cooperate with the indemnifying party in the making of claims or defenses, and (c) provide information, assist in the resolution of the legal action or claim and make available at least one employee or agent who can testify regarding said claim or defenses. The indemnifying party shall, upon written notice from the indemnified party, immediately undertake the defense of any said legal action or claim with counsel reasonably satisfactory to the indemnified party. In any event the indemnifying party shall be entitled to direct the defense and settlement thereof with counsel reasonably satisfactory to the indemnified party; provided, however, that the indemnifying party shall not compromise or settle any claim or action affecting the indemnified party to the extent that it involves more than the payment of money by the indemnifying party hereunder without the indemnified party's written consent.

5. Warranties; Exclusion of Consequential Damages; Limitation on Liability

5.1 Disclaimer of Warranties. THIS MSA AND ANY ADDENDA IS AN AGREEMENT FOR SERVICES AND EXCEPT AS EXPRESSLY PROVIDED IN THIS MSA AND ANY ADDENDA, FDMS AND ITS AFFILIATES DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO CUSTOMER OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

5.2 PROVIDER'S Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS MSA AND ANY ADDENDA TO THE CONTRARY, FDMS AND ITS RESPECTIVE AFFILIATES' CUMULATIVE LIABILITY , IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY CUSTOMER AGAINST FDMS AND/OR ITS AFFILIATES, WHETHER RELATED OR UNRELATED) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS MSA AND ANY ADDENDA) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED the lesser of fees paid under the agreement or \$250,000); PROVIDED HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE FOLLOWING: (i) LOSSES FOR WHICH PROVIDER IS OBLIGATED TO INDEMNIFY CUSTOMER UNDER THE MSA, ANY ADDENDA, OR EQUIPMENT LEASE (OR PURCHASE) AGREEMENT; (ii) LOSSES INCURRED AS A RESULT OF PROVIDER'S BREACH OF ANY OBLIGATIONS OF CONFIDENTIALITY OR DATA SECURITY UNDER THE MSA AND/OR ANY ADDENDA.

5.3 Exclusion of Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS MSA AND ANY ADDENDA TO THE CONTRARY, IN NO EVENT SHALL ANY PARTY OR ITS AFFILIATES BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, ALL DAMAGES (INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES) PAID TO A THIRD PARTY BY AN INDEMNIFIED PARTY SHALL BE DEEMED DIRECT DAMAGES OF SUCH INDEMNIFIED PARTY AND SHALL NOT BE LIMITED BY THIS SECTION.

5.4 CUSTOMER'S Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS MSA AND ANY

ADDENDA TO THE CONTRARY, CUSTOMER AND ITS AFFILIATES' CUMULATIVE LIABILITY , IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY PROVIDER AGAINST CUSTOMER AND/OR ITS AFFILIATES, WHETHER RELATED OR UNRELATED) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS MSA AND ANY ADDENDA) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED the lesser of the fees paid under the contract or \$250,000); PROVIDED HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE FOLLOWING: (i) LOSSES FOR WHICH CUSTOMER HAS AN OBLIGATION TO INDEMNIFY CUSTOMER UNDER THE MSA, ANY ADDENDA, OR EQUIPMENT LEASE (OR PURCHASE) AGREEMENT; (ii) LOSSES INCURRED AS A RESULT OF CUSTOMER'S BREACH OF ANY OBLIGATIONS OF CONFIDENTIALITY OR DATA SECURITY UNDER THE MSA AND/OR ANY ADDENDA; OR (iii) CUSTOMER'S OBLIGATIONS TO PAY PROVIDERS ANY AND ALL FEES PAYABLE UNDER ANY ADDENDA, (IV) CUSTOMER'S LIABILITY FOR CHARGEBACKS, OR (V) CUSTOMER'S LIABILITY FOR PAYMENT OF ANY AND ALL THIRD PARTY FEES AS DEFINED PURSUANT TO THE BANKCARD ADDENDUM

6. Independent Contractor; Third Party Beneficiaries. The parties are independent contractors. Neither party shall have any authority to bind the other. This MSA and any Addenda is entered into solely for the benefit of PROVIDER and CUSTOMER and will not confer any rights upon any person not expressly a party to this MSA and any Addenda, including consumers. PROVIDER may subcontract with others to provide Services, provided, however, that PROVIDER shall remain fully liable for the actions and/or omission of any such subcontractor in the performance of the Services.

Each party agrees to be solely responsible for all obligations and liabilities relating to the operation of its business and the compensation of its employees, including, but not limited to, compliance with laws governing workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits.

At such party's expense as described herein, each Party agrees to defend and indemnify the other Party and the other Party's Affiliates, agents, and their respective employees, officers, directors from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees as provided herein) arising out of such Party's alleged failure to pay, when due, all such taxes and obligations (collectively referred to for purposes of this Section as "Employment Claim(s)"). The indemnifying Party shall pay to the other Party any reasonable expenses or charges incurred by the other Party arising from any such Employment Claim(s) as they are incurred by the other Party.

7. Publicity. Neither party will initiate publicity relating to this MSA and any Addenda without the prior written approval of the other, except that: (i) either party may make disclosures required by legal, accounting or regulatory requirements; and (ii) PROVIDER may issue a press release announcing the execution of this MSA, subject to the prior written approval of CUSTOMER.

8. Confidentiality. Each party acknowledges and agrees that the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, the terms of this MSA, any Addenda attached hereto (including an Equipment Lease or Purchase Agreement), financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other

than to those of its employees, agents, contractors and Affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this MSA). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party or (d) becomes available to the receiving party on a nonconfidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party. Furthermore, this Section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that the receiving party shall provide the disclosing party with prompt notice, unless prohibited by law or court order, thereof so that the disclosing party may seek an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this section, the receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such confidential or proprietary information, the receiving party may disclose such information upon written notice to the disclosing party. Notwithstanding anything to the contrary in the MSA, any Addenda or any other agreement between PROVIDER and CUSTOMER, CUSTOMER hereby authorizes SERVICERS to provide or grant access to Franchise Data (as defined below) in SERVICERS' possession to Corporate for Corporate's use in managing the PIYW Program and SERVICERS agree, to the extent permitted by the Association Rules and Applicable Law, to provide Corporate with the Franchise Data; provided, however, that CUSTOMER agrees to indemnify SERVICERS, Affiliates, agents, and subcontractors (to the extent SERVICERS agents, Affiliates, and subcontractors provide Services under the MSA and/or Bankcard Addendum) employees directors and officers from and against all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from SERVICERS provision of the Franchise Data to Corporate. Further, notwithstanding any provision to the contrary, contained in the MSA, this Bankcard Addendum or any Schedules hereto, SERVICERS' provision of Franchise Data to Corporate as contemplated in this Section shall not be deemed a breach of the MSA, this Bankcard Addendum or any Schedules hereto, including without limitation, Annex 2 to the Bankcard Addendum. For purposes of this Section "Franchise Data" means aggregate transaction count and sales by Merchant ID, help desk reporting, and transaction and equipment fees.

9. Compliance with Laws. In performing its obligations under this MSA and any Addenda, the parties agree to comply with all federal and state laws, rules and regulations applicable to it for the Services provided for hereunder.

10. Assignment. Neither party may assign its rights or delegate its obligations under this MSA and any Addenda without the other's prior written consent, which consent will not be unreasonably withheld. Either party may, however, assign any or all of its rights or delegate any or all of its obligations under this MSA or any Addenda to an Affiliate or an entity acquiring all or substantially all of the assets of said party and agrees to provide the other party with written notice of any such assignment or delegation as promptly as practicably possible following any such assignment or delegation. In the case of CUSTOMER, such notice will be provided to PROVIDER no later than 30 (thirty) days following the assignment or delegation. Upon receipt of such notice, PROVIDER, shall have 60 (sixty) days to review same. If PROVIDER, in its sole discretion, approves such transfer or delegation, CUSTOMER shall remain liable only for obligations under this Agreement incurred up through the date of the transfer or assignment. The party to whom the Agreement or any Addenda was transferred or assigned shall be bound to the terms and conditions of this Agreement and the Addenda to the same extent as if PROVIDER and such assignee or transferee entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. If PROVIDER, in their sole discretion, determine that they disapprove of any transfer or assignment, PROVIDER may terminate this Agreement or any Addenda upon forty-five (45) days notice to CUSTOMER and CUSTOMER shall remain liable for any and all obligations under this Agreement (Notwithstanding the foregoing, PROVIDER may terminate this Agreement immediately upon the occurrence of any Event of Default during the aforementioned forty-five (45) day notice period). PROVIDER's failure to disapprove of a transfer or assignment within sixty (60) days of their receipt of notice of such shall constitute their approval. A party to whom

PROVIDER transfers or assigns the Agreement shall be bound to the terms and conditions of this Agreement to the same extent as if CUSTOMER and such assignee or transferee entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. For purposes of this Agreement, any transfer of voting control of CUSTOMER or its parent shall be considered an assignment hereof. The restrictions and conditions of assignment or transfer set forth in this Section apply only to assignments or transfer by PROVIDER and do not apply to any PROVIDER parent or Affiliate's assignment or transfer of agreements between such PROVIDER parent or Affiliate and CUSTOMER existing at the time of execution of this MSA.

11. Choice of Law and Venue. This MSA and any Addenda shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to this MSA and any Addenda shall be in the appropriate state or federal court located in New York.

12. Waiver of Jury Trial. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS MSA AND ANY ADDENDA.

13. Force Majeure. PROVIDER shall not be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by, any outbreak or escalation of hostilities, war, riots, terrorism or civil disorders in any country; strikes, labor difficulties, fire, earthquake, fire flood, elements of nature or other acts of God, any act or omission of the other party or any government authority, or other causes reasonably beyond the control of PROVIDER. Notwithstanding the foregoing, nothing in this Section 13 shall limit PROVIDER's obligation to maintain and implement, including in the event of a force majeure, a commercially reasonable disaster recovery plan and procedure that is at least commensurate with industry standards.

14. Attorney Fees Related to Contract Obligations. Subject to the provisions of Section 5 above (including without limitation the provisions excluding certain losses from the limitations of liability set forth in Section 5), CUSTOMER shall be liable for and shall indemnify PROVIDER for any and all attorney's fees, collection costs and other costs and expenses paid or incurred by PROVIDER in the enforcement hereof, or in collecting any amount due from CUSTOMER to PROVIDER hereunder or resulting from any breach by CUSTOMER of any of the terms or conditions of this MSA, any Addenda (including an Equipment Lease or Purchase Agreement). Subject to the provisions of Section 5 above, PROVIDER shall be liable for and shall indemnify CUSTOMER for any and all attorney's fees, collection costs and other costs and expenses paid or incurred by CUSTOMER in the enforcement hereof, or in collecting any amount due from PROVIDER to CUSTOMER hereunder or resulting from any breach by PROVIDER of any of the terms or conditions of this MSA, any Addenda (including the Equipment Lease or Purchase Agreement).

15. Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing, shall be sent by mail (return receipt requested) or courier, if to Customer at the address appearing on the first page of this MSA, with a copy to: General Counsel at the same address and if to PROVIDER at the following address: First Data Merchant Services, 1307 Walt Whitman Road, Melville, New York 11747, Facsimile (631) 683-7516, Attention: Executive Vice President Operations, with a copy to Attention: General Counsel's Office, **6200 S. Quebec St., Suite 260-A, Greenwood Village, Colorado 80111**, and shall be deemed to have been given when delivered.

16. Headings. The headings contained in this MSA and any Addenda are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this MSA and any Addenda.

17. Severability. The parties intend every provision of this MSA and any Addenda to be severable. If any part of this MSA and any Addenda is not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

18. Entire Agreement; Waiver. This MSA and any Addenda (including Schedules to any Addenda) hereto constitute the entire agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of this MSA and any Addenda shall not be deemed a waiver of any subsequent breach of the same or another term or condition. Purchase orders, requests for production, pre-printed terms or other CUSTOMER-generated documents that PROVIDER may receive are for administrative convenience only and do not modify this MSA and any Addenda and are expressly rejected by PROVIDER. The words "including", "include" and "includes" will each be deemed to be followed by the term "without limitation". This MSA any Addenda (including an Equipment Lease or Purchase Agreement), may be executed in counterparts, each of which will be deemed an original for all purposes, but all of which when taken together will constitute one agreement.

The parties hereto have caused this MSA and any Addenda to be executed by their duly authorized officers. **THIS MSA AND ANY ADDENDA IS NOT BINDING UPON EITHER PARTY UNTIL SIGNED BY BOTH PARTIES.**

("CUSTOMER")

FIRST DATA MERCHANT SERVICES CORPORATION
("FDMS")

By: _____

By: _____

Name: _____

Name: _____

(Please Print or Type)

(Please Print or Type)

Title: _____

Title: _____

Date: _____

Date: _____

CITI MERCHANT SERVICES
BANKCARD ADDENDUM TO MASTER SERVICES AGREEMENT

This Merchant Services Bankcard Addendum ("Bankcard Addendum") is among the CUSTOMER identified above, CITICORP PAYMENT SERVICES, INC ("CPSI" or "BANK") and FIRST DATA MERCHANT SERVICES CORPORATION ("FDMS") (CPSI and FDMS are collectively referred to as "SERVICERS"). The terms of the Master Services Agreement between FDMS and CUSTOMER are incorporated herein and the parties hereto agree to be bound by such terms. provided that (i) references in Sections 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3, 5.1, 5.2, 5.3, 5.4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 of the Master Services Agreement to FDMS and PROVIDER shall for purposes of their incorporation into this Addendum be deemed to be references to CPSI in addition to FDMS, (ii) references in the Sections identified in (i) above to party shall for purposes of their incorporation into this Addendum be deemed to be references to CPSI, FDMS and CUSTOMER, (iii) references in the Sections identified in (i) above to other party or "other" when referencing the parties shall for purposes of their incorporation into this Addendum be deemed to be references to a particular party or to both other parties, as applicable, (iv) notwithstanding the above, with respect to Bank's obligation to indemnify CUSTOMER pursuant to Section 4.2 of the Master Services Agreement, references in Section 4.2 to SERVICERS shall be deemed to be references to Bank only, and (v) references in the Sections identified in (i) above to "Addendum" or "any Addenda" for purposes of their incorporation into this Addendum shall mean only this Bankcard Addendum when applied to CPSI and (vi) notices to CPSI under Section 16 of the Master Services Agreement shall be to the address set forth in Section 26.2 of the Addendum. The terms of the Schedules attached hereto are also incorporated by reference herein and the parties hereto agree to be bound by such terms.

This Bankcard Addendum, together with the incorporated terms and conditions of the Master Service Agreement and the terms of the Schedules attached hereto, contains the terms and conditions under which FDMS and/or CPSI and/or other third parties will provide services to Customer. Discover Card transactions, American Express Card Transactions and Other Card Services are not provided to you by CPSI, but are provided by FDMS and/or third parties. For PIN Debit transactions, such third parties may include sponsoring or acquiring banks that are not related to Bank ("Debit Network Banks").

CPSI, as a wholly-owned operating subsidiary of a member of Visa U.S.A., Inc. ("VISA") and MasterCard International Incorporated ("MasterCard") (VISA and MasterCard, collectively, the "Associations" or "Bankcard Associations"), is a licensee of the Bankcard Associations permitting it to acquire VISA and MasterCard transactions and has sponsored FDMS with the Bankcard Associations as a "Member Services Provider" (as defined in the Rules). Accordingly, FDMS shall perform certain functions in connection with authorization, processing and settlement for Customer hereunder. As between themselves, the respective rights and obligations of FDMS and CPSI shall be governed by the agreements between them and/or their parent entities and the Rules. Customer acknowledges that, notwithstanding anything contained in any or all of this Bankcard Addendum (which includes the Annex(es), Operating Procedures, attachment(s), schedule(s) or supplement(s) referred to herein or amendments to any of the aforesaid) to the contrary, CPSI's obligations hereunder shall be limited to the sponsorship and settlement of certain Card transactions submitted in accordance with the terms and conditions of this Bankcard Addendum and the Rules, and CPSI shall not have any obligation or liability of any nature in connection with any and all Other Card Services (such as American Express and Discover), Debit Transactions PIN_debit or EBT transactions or related services or any services of any kind provided by FDMS or its Affiliates provided hereunder or pursuant hereto.

In consideration of the mutual covenants and agreements set forth herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, SERVICERS and CUSTOMER agree as follows:

1. **Definitions.** As used in this Bankcard Addendum, capitalized terms will have the meaning set forth in Annex 1.
2. **Services.**
 - 2.1 During the term of the Bankcard Addendum, CUSTOMER shall use SERVICERS as its exclusive provider of all Services for CUSTOMER.
 - 2.2 Subject to the Rules, Services may be performed by FDMS, BANK or other third-party banks subject to the agreements between them as the same may be modified from time to time. In addition to SERVICERS, one or more Affiliates of PROVIDER may assist in providing Equipment and local support functions in connection with this Bankcard Addendum, provided that PROVIDER is fully responsible for the actions and/or omissions of any such Affiliates performed in connection with this Bankcard Addendum.
 - 2.3 **Effect of Termination of MSA or Bankcard Addendum.**
 - (i) In the event that the Corporate MSA or Bankcard Addendum is terminated early by any party, each CUSTOMER shall have the right, but not the obligation, to terminate any and all agreements between CUSTOMER and PROVIDER (or SERVICERS) without payment of early termination charges or other termination fees as a result of Franchisee's early termination.
 - (ii) Without limiting the foregoing, in the event this Bankcard Addendum is terminated early in accordance with, and due to, an Event of Default by SERVICER specified in subsection 21.11, then CUSTOMER may also terminate any and all Equipment Lease Agreements with FDMS and such termination will be without penalty to CUSTOMER, including without limitation any early termination charges due under such Equipment Lease Agreements.
3. **Acceptance of Cards.**
 - 3.1 CUSTOMER will accept any Card properly tendered, without imposing any special conditions not required or allowed by the Rules. CUSTOMER will assess no special charge or extract any special agreement, condition (including any minimum or maximum transaction amounts) or security from a Cardholder in connection with any Card transaction. CUSTOMER shall not post signs indicating that CUSTOMER will refuse to honor Card transactions below or above a specified amount. CUSTOMER may offer a discount for using cash if clearly disclosed as a discount from the price available for all other means of payment. CUSTOMER shall not engage in acceptance practices or procedures that discriminate against, discourage or favor the offered use of any particular Card accepted by CUSTOMER, other than co-branded Cards or other proprietary Cards. CUSTOMER will not require Cardholders to provide personal information such as a home or business telephone number, a home or business address, or any form of identification (such as a driver's license) as a condition for honoring and accepting a Card, unless specifically required by this Bankcard Addendum or the applicable Rules.
 - 3.2 To the extent CUSTOMER processes a transaction that requires the Cardholder signature, including, without limitation, a manually entered transaction, CUSTOMER must check each Card accepted for validity in accordance with the terms of this Bankcard Addendum, the Operating Procedures and the applicable Rules. CUSTOMER must not submit for settlement any sale that was not created between the CUSTOMER and the Cardholder for settlement and under no circumstances may CUSTOMER submit any sale that has been previously charged back by the Cardholder and returned to CUSTOMER.
 - 3.3 CUSTOMER will check each Card used during a transaction for validity in accordance with the terms of this Bankcard Addendum, the Operating Procedures and the applicable Rules. CUSTOMER will not honor a Card that appears to be invalid or expired.
 - 3.4 All Sales Drafts and Credit Vouchers must include (i) either a manual imprint or an electronic printing of the Card obtained by passing the magnetic stripe on the Card through a point-of-sale terminal, of Cardholder information contained on the Card or magnetic stripe; (ii) the signature of the authorized user as it appears on

the Card, if required; (iii) the date of the transaction; (iv) a description of the merchandise sold or the services rendered; and (v) the total cash price of the Card transaction (including taxes).

- 3.5 Except for transactions completed by using magnetic stripe reading point-of-sale terminals that print Card transaction records or originated at limited amount terminals that are capable of reading magnetic stripes and limit each Card transaction to twenty-five dollars(\$25), CUSTOMER is deemed to warrant the true identity of any Cardholder unless CUSTOMER manually imprints the Card on the Sales Draft, as described in subsection 3.4, above.
- 3.6 Unless a Card transaction is governed by Section 6, Section 9 or otherwise specifically authorized by SERVICERS in writing, CUSTOMER may only complete a Card transaction when (i) the Card is present and (a) the data stored on the magnetic stripe is electronically read and printed by a magnetic stripe reader or (b) the Card is manually imprinted, (ii) the Card is signed and the signature on the Sales Draft, if required, appears to be the same as the signature on the Card, (iii) the Cardholder resembles the person pictured (if any) on the Card, and (iv) all, or the appropriate portion, of the embossed account number on the Card matches with the corresponding digits printed on the Card and with the account number displayed and/or printed by a point-of-sale device reading the magnetic strip on the Card. (If a previously unsigned Card is signed at the time of a Card transaction, CUSTOMER will review (and identify on the Sales Draft) a current, official government identification document (such as a driver's license or passport) bearing the Cardholder's signature.) CUSTOMER will deliver at least one copy of the Sales Draft or agreement or Credit Voucher to the Cardholder.

4. **Operating Procedures; Rules.**

CUSTOMER acknowledges that it has received the Operating Procedures¹, the terms of which are incorporated into this Bankcard Addendum. CUSTOMER agrees to follow the procedures in the Operating Procedures in connection with each Card transaction and to comply with all applicable Rules. From time to time, SERVICERS may change the Operating Procedures, in whole or in part, and other operating procedures reasonably requested by SERVICERS and such shall become effective upon notice to CUSTOMER. If there is any conflict between the terms of this Bankcard Addendum and the Operating Procedures, the terms of this Bankcard Addendum will govern, unless the conflict is directly related to a change in the Operating Procedures or the Rules which specifically addresses a procedure or requirement detailed in this Bankcard Addendum. If CUSTOMER loses or otherwise misplaces the Operating Procedures or notices of changes thereto, CUSTOMER shall be responsible for contacting SERVICERS to obtain replacement copies.

5. **Authorization.**

- 5.1 CUSTOMER shall be responsible for obtaining Authorization in advance for each Card transaction. The Authorization number provided by SERVICERS shall be noted by CUSTOMER in the appropriate place on the Sales Draft. If Authorization is declined, CUSTOMER shall not complete the Card transaction.
- 5.2 CUSTOMER shall comply with any special authorization procedures contained in any other sections of this Bankcard Addendum, the Operating Procedures the Schedules and the Rules.
- 5.3 CUSTOMER acknowledges that Authorization, (i) indicates only the availability of credit at the time of Authorization; (ii) does not warrant that the person presenting the Card is the rightful Cardholder; and (iii) is not an unconditional promise or guarantee by SERVICERS that any Card transaction will not be subject to Chargeback.
- 5.4 CUSTOMER may, as permitted in this Bankcard Addendum and for an additional fee, obtain a voice authorization or manually enter the transaction, in the event that the POS Terminal is not operating properly. SERVICERS will provide CUSTOMER with an approval number for voice authorized transactions and CUSTOMER shall record such approval number on the Sales Draft.

5.5 SERVICERS shall have no obligation to process any transactions initiated with a Card type not selected by CUSTOMER on the Application and SERVICERS shall be entitled to decline such transactions without first attempting to obtain an authorization. In the event any such transaction is inadvertently not declined by SERVICERS and is authorized by a card-issuing organization, Credit Card Association, or Network, CUSTOMER shall be fully liable for each transaction, as if the Card type initiating in such transaction was selected by CUSTOMER on the Application.

6. Telephone and Mail Orders.

6.1 If CUSTOMER is authorized to accept telephone or mail orders, Authorization for each such Card transaction, regardless of the face amount, must be obtained and CUSTOMER must write "TO" (indicating telephone order), or "MO" (indicating mail order) as applicable, on the Sales Draft in lieu of the Cardholder's signature. CUSTOMER assumes all responsibility for identification of the Cardholder and the validity of the Card information for telephone and mail orders. For telephone and mail order Card transactions where merchandise is to be shipped or delivered to or for the Cardholder, the shipping date shall not be more than seven (7) calendar days after the Authorization is obtained, and any shipping costs not included in the Authorization amount must not exceed fifteen percent (15%) of the amount authorized.

6.2 An installment payment option may be offered for telephone or mail order merchandise if all terms are clearly disclosed, each installment is authorized, the first installment is not submitted for settlement until the merchandise is shipped, and subsequent installments are submitted no more frequently than monthly.

6.3 Under no circumstances may CUSTOMER require that a Cardholder complete a postcard or other document which displays the Cardholder's account data in plain view when mailed.

7. Multiple Sales Drafts and Partial Consideration.

7.1 Except as shall be specifically set forth in the Operating Procedures or the Rules, CUSTOMER shall list all items of goods and services purchased during each Card transaction and the total amount thereof on a single Sales Draft.

7.2 CUSTOMER shall comply with all special procedures and conditions applicable under the Operating Procedures and the Rules with respect to any partial payment transaction. CUSTOMER shall not use more than one Sales Draft to represent a single Card transaction to avoid the need for Authorization.

8. Preauthorized Orders and Recurring Sales.

8.1 A Preauthorized Order or Recurring Sale may include the funding of reloadable proprietary gift cards.

8.2 If CUSTOMER is authorized to accept Preauthorized Orders or Recurring Sales, Authorization for each such Card transaction, regardless of the amount, must be obtained and CUSTOMER must write "Recurring Transaction" (for Visa and other non-MasterCard Card transactions) or "PO" (for MasterCard Card transactions) as applicable, on the Sales Draft in lieu of the Cardholder's signature.

8.3 Except for preauthorized health care payments for the incremental costs not covered by insurance, advance deposits and installment payments, all made in compliance with this Bankcard Addendum and the Operating Procedures and Rules, a Preauthorized Order or Recurring Sale may not include partial payments made to CUSTOMER for goods or services purchased in a single transaction. In no event may any finance charges be imposed on any periodic payments in connection with a Preauthorized Order or Recurring Sale.

8.4 CUSTOMER may not accept a Preauthorized Order or Recurring Sale from a Cardholder for the purchase of goods or services which are delivered or performed periodically unless the Cardholder completes and delivers to CUSTOMER a written request (and, when applicable, a written renewal request) identifying (i) the goods or services to be charged to the Cardholder's account, (ii) the amount of the preauthorized or recurring charges (unless such charges are for variable amounts), (iii) the frequency of the preauthorized or recurring charges and (iv) the duration of time for which the Cardholder's permission is granted. If CUSTOMER accepts any

Preauthorized Orders or Recurring Sales for variable amounts, CUSTOMER must comply with the supplemental provisions set forth in the applicable Schedules.

- 8.5 The Cardholder's written request (including any written renewal request) must be (i) retained for the duration of the preauthorized or recurring charges; (ii) provided in response to a Card issuing bank's request for original documentation; and (iii) used no longer after receiving notice of cancellation.

9. Internet Processing.

CUSTOMER must obtain approval from SERVICERS to accept and process Internet transactions through SERVICERS. CUSTOMER also acknowledges that it must inform SERVICERS of its use of any processing software, third party Internet payment gateway, shopping cart, Web Site host, or other service provider (collectively "Internet Service Providers"), that any Internet payment gateway must be approved by SERVICERS and that CUSTOMER is prohibited from transmitting any cardholder transaction data to any Internet Service Providers (or any third party) without the approval of SERVICERS. If CUSTOMER accepts Internet transactions without such approval, SERVICERS may, in addition to any other rights it may have under this Bankcard Addendum, establish a chargeback reserve account to protect them from risk of loss. If authorized to accept payment by Internet, the Sales Draft shall be completed without the Cardholder's signature or an Imprint but shall include the Cardholder's name, billing address, Card number, expiration date, of the Card, a description of the merchandise or service and the date and amount of all charges. All Internet transactions will be settled by SERVICERS into a depository institution in the United States. CUSTOMER shall process Internet transactions only (a) if the Internet transactions have been encrypted by SERVICERS or by an Internet Service Provider acceptable to SERVICERS and (b) Cardholder data is protected by CUSTOMER as required by the then-current Rules, PCI data security requirements, or any other applicable regulations. Encryption is not guarantee of payment to CUSTOMER. CUSTOMER acknowledges that Internet transactions may be authorized and settled through separate BIN/ICA numbers and interchanges and that SERVICERS may be unable to combine deposits of Internet transactions and non Internet credit and debit Card transactions. Because the transactions processed via the Internet are higher risk, CUSTOMER may be charged higher fees which are set forth on the Schedule of Fees. Internet transactions are subjected to a higher incidence of chargebacks and, as with non-Internet transactions, receiving an authorization and following procedures will not relieve the CUSTOMER of liability associated with chargebacks and/or the fraudulent use of customer data obtained off of CUSTOMER's Web Sites. All communications costs related to Internet transactions are CUSTOMER's responsibility. SERVICERS will not manage the Internet telecommunication link which is also CUSTOMER's responsibility. Obtaining any license or sub-license of software required to permit CUSTOMER to process Internet transactions shall be CUSTOMER's responsibility, and if obtained from SERVICER's, subject to a separate agreement. SERVICERS do not guarantee that obtaining required approvals from SERVICERS or implementing suggested security measures will cause CUSTOMER's Internet transactions to be secure or impregnable, and SERVICERS will not be responsible in the event of the infiltration of CUSTOMER's or any Internet Service Provider's security systems. CUSTOMER further acknowledges and agrees that SERVICERS are not responsible for the security of the Cardholder data or information stored on CUSTOMER's or any Internet Service Provider's computers, systems or Web Site(s) and that CUSTOMER will be solely responsible for any liability, fines, or penalties arising from its use, storage, or dissemination of cardholder data.

10. Cardholder Refunds and Credits.

- 10.1 If a Cardholder returns goods or cancels services purchased from CUSTOMER with a Card, or CUSTOMER allows any other price adjustment after a sale has been completed and a refund or adjustment is due to the Cardholder (other than any involuntary refund required by applicable airline or other tariff or by law), CUSTOMER will not return cash to the Cardholder but will instead prepare a Credit Voucher and process each such refund or adjustment, as specified in the Operating Procedures and Rules. CUSTOMER will give the Cardholder a copy of the completed Credit Voucher.
- 10.2 If CUSTOMER establishes a policy limiting refunds or acceptance of returned merchandise (e.g., no refund, exchange only, in-store credit only, or special conditions), CUSTOMER must follow the procedures regarding refunds and returned merchandise as set forth in the Rules including, without limitation, the proper disclosure of such policy on all copies of each Sales Draft in letters at least 1/4" high in close proximity to the space provided for the Cardholder's signature.
- 10.3 CUSTOMER will not accept money from a Cardholder for the purpose of preparing and depositing a Credit Voucher that will effect a deposit to the Cardholder's account. CUSTOMER must not process a Credit Voucher without having completed a previous Card transaction with the same Cardholder (or with a Cardholder who purchased a gift returned by the recipient). Under no circumstances may CUSTOMER require a Cardholder to waive the Cardholder's right to dispute a Card transaction with the Card issuing bank.

11 Presentment of Card Transactions.

- 11.1 CUSTOMER shall electronically or physically deliver to SERVICERS Sales Drafts for all Card transactions to be processed and settled hereunder. The deadlines for submitting Sales Drafts are: (i) for VISA and MasterCard Card transactions, the special time frames specified in the Schedules for CUSTOMER's Card transactions to qualify for the special pricing provided under applicable VISA and MasterCard incentive programs; (ii) for Card transactions involving Cards other than VISA or MasterCard, the time frames established by CUSTOMER's agreement with the applicable Association or by the applicable Rules; (iii) the applicable time of day specified in the Schedules hereto and (iv) in no event later than the fifth calendar day or third banking day (whichever is earlier) after completing Card transactions (unless CUSTOMER is entitled to any special extension of these deadlines). CUSTOMER acknowledges that the times specified in clause (iv) of the previous sentence are the maximum deadlines and that faster time frames are required to qualify for incentive programs.
- 11.2 CUSTOMER will not submit any Sales Draft that was not created in conjunction with a Card transaction between CUSTOMER and the applicable Cardholder. Under no circumstances will CUSTOMER submit any Sales Draft that has been previously charged back by the Cardholder and subsequently returned to CUSTOMER.

12. Settlement of Card Transactions.

- 12.1 SERVICERS will only be required to settle CUSTOMER's Card transactions for Cards as specified herein. Promptly after presentment of Sales Drafts pursuant to Section 11, above, as applicable, SERVICERS will initiate a transfer via Automated Clearing House Credit of the applicable settlement funds to CUSTOMER. When SERVICERS receive payment of settlement funds through automated clearing house credit, SERVICERS will initiate a transfer of such applicable settlement funds through ACH to CUSTOMER's Settlement Account. Settlement by automated clearing house credit will take place no later than the second banking day after SERVICERS receive settlement funds from the applicable Association.
- 12.2 All settlements to CUSTOMER for VISA and MasterCard Card transactions will be based upon gross sales, less credits/refunds, adjustments, applicable interchange, assessments, fees, Chargebacks, amounts payable to third parties pursuant to instructions from CUSTOMER in accordance with the Rules. Settlement will take

place no later than the second banking day after SERVICERS receive settlement funds from the applicable Association. Notwithstanding the foregoing, to the extent CUSTOMER utilizes certain Bank-identified accounts with ABA numbers (021000089; 031100209; 021502040), CUSTOMER may be eligible to receive settlement funds earlier than the foregoing two (2) banking day timeframe.

12.3 All credits to CUSTOMER's Settlement Account or other payments to CUSTOMER are subject to, among other things, SERVICERS' final audit, Chargebacks (including SERVICERS' related losses), fees and fines imposed by the Associations. CUSTOMER agrees that SERVICERS may debit or credit CUSTOMER's Settlement Account for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to CUSTOMER. Alternatively, SERVICERS may elect to invoice CUSTOMER for any such amounts, net due 30 days after the invoice date. CUSTOMER shall have the right to dispute any debiting related to non-recurring equipment-related fees or charges and any transaction fees or charges that are being billed outside of the normal business cycle (i.e., outside of the business cycle during which the Cardholder transaction occurred). Specifically, CUSTOMER will contact FDMS' Priority Unit and define the actual disputed item, providing as much documentation to support the dispute as reasonably necessary for FDMS to investigate the dispute item(s). To the extent the Priority Unit determines CUSTOMER was improperly debited, the amount debited will be promptly credited to CUSTOMER's Settlement Account. Failure by CUSTOMER to receive and/or place in use any products or services, whether provided by FDMS or a third party, shall not be grounds for CUSTOMER to withhold or delay payment for any product or service provided or tendered by FDMS.

12.4 SERVICERS will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties including but not limited to delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve System, or delays caused by any Association or CUSTOMER's financial institution. In addition to any other remedies available to SERVICERS under this Bankcard Addendum, CUSTOMER agrees that should any of the events set forth in sub-Paragraphs 21.3 (i), (iv), (vi)(b), (vi)(c), (ix) or (x) occur, SERVICERS may, upon at least 24 hours' advance written notice, change processing or payment terms, to suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to CUSTOMER from SERVICERS pursuant to the terms of this Bankcard Addendum, until SERVICERS have had reasonable opportunity to investigate and discuss such event with CUSTOMER. CUSTOMER further agrees that should any of the other events set forth in sub-Paragraph 21.3 occur and fail to be cured within 30 days following notice to CUSTOMER, that SERVICERS may change processing or payment terms and/or suspend credits of payments as previously outlined in this Section 12.4. SERVICERS shall provide CUSTOMER with notice of actions taken by SERVICERS in accordance with this paragraph as soon as practicable. In cases of fraud or similar cause, no prior notice shall be required, but SERVICERS shall notify CUSTOMER in writing within three (3) business days after effectuating a suspension of credits or other payments, which notice shall state SERVICERS' reason for the belief that such fraud or similar cause exists.

12.5 All amounts due from CUSTOMER to SERVICERS for payment of the Services will be collected by SERVICERS pursuant to the provisions of Section 13 below.

13 Fees; Adjustments; Collection of Amounts Due.

13.1 SERVICERS shall charge CUSTOMER a fee for the Services, which shall be calculated and payable pursuant to the Schedules. The fees with respect to Card transactions shall be a per transaction fee for all such Card transactions. On a monthly basis, SERVICERS shall collect its fees for the Services (as set forth in the Schedules), via an ACH debit entry to CUSTOMER's Settlement Account on or around the first day of each calendar month. CUSTOMER acknowledges that the fees stated herein are based upon the qualification of CUSTOMER's transactions for certain reduced interchange fees as set by the applicable Association. If CUSTOMER's Card transactions fail to qualify for the reduced interchange fees, SERVICERS

shall process such Card transactions at the applicable interchange fees as set by the applicable Association. If a transaction fails to qualify for CUSTOMER's anticipated interchange levels, then the Association will downgrade the transaction and process it at a more costly interchange level for which it does qualify. In that event, CUSTOMER shall be charged a Non-Qualified Interchange Fee, which is the difference between the interchange fee associated with the anticipated interchange level and the interchange fee associated with the interchange level at which the transaction actually was processed ("Non-Qualified Interchange Fee").

- 13.2 Subject to Section 5 of the MSA, in the event CUSTOMER is charged a Non-Qualified Interchange Fee due to SERVICER's failure to submit a Card transaction to the appropriate Association, SERVICERS shall reimburse CUSTOMER for the Non-Qualified Interchange Fee, provided that the cause for such failure was within SERVICERS sole and exclusive control.
- 13.3 The fees for Services set forth in the Schedules are based upon assumptions associated with CUSTOMER's method of doing business. If CUSTOMER significantly alters its method of doing business, SERVICERS may adjust CUSTOMER's discount fee and transaction fees upon thirty (30) days' prior notice.
- 13.4 The fees for Services set forth in the Schedules may be adjusted to reflect increases or decreases by Associations in interchange, assessment or other Association fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be CUSTOMER's responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or other third party. CUSTOMER shall at all times be responsible for payment of all fees and charges set forth in the Schedules (including increases additions, or modification made thereto), as well as including without limitation, the fees and charges of any Association, Network, card-issuing organization, telecommunications provider, federal, state, or local governmental authority (each a "Third Party") including, without limitation any switch fee, issuer, reimbursement fee, adjustment fee, interchange fee, assessment fee access fee, or any Association or Network fee, fine or expense imposed upon SERVICERS due to any failure by CUSTOMER to comply with its obligation under this Addendum (subject to express limitations otherwise set forth herein) (collectively, Third Party Fees").
- 13.5 If CUSTOMER receives settlement funds by wire transfer, SERVICERS may charge wire transfer fees of ten dollars (\$10) per wire, notwithstanding any lesser amount shown on the Schedules, during any month in which the average daily settlement funds wire transferred to CUSTOMER is less than ten thousand dollars (\$10,000).
- 13.6 In addition to the regular Chargeback fees, as set forth on the Schedules, CUSTOMER agrees to pay SERVICERS any fines, fees, or penalties imposed on SERVICERS by any Association, resulting from Chargebacks and any other fines, fees or penalties imposed by an Association with respect to acts or omissions of CUSTOMER.
- 13.7 If CUSTOMER's Chargeback Percentage for any line of business exceeds the estimated industry chargeback percentage, CUSTOMER shall, in addition to the regular Chargeback fees due to SERVICERS and any applicable Chargeback handling fees or fines imposed by the applicable Association, pay SERVICERS the excessive Chargeback fee shown on the Schedules for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry chargeback percentage is subject to change from time to time by SERVICERS in order to reflect changes in the industry chargeback percentage reported by VISA or MasterCard. Each then-current industry chargeback percentage for CUSTOMER's applicable line(s) of business will be reflected in the monthly loss prevention report furnished to CUSTOMER.
- 13.8 If CUSTOMER believes any adjustments should be made with respect to CUSTOMER's Settlement Account for any amounts due to or due from SERVICERS, CUSTOMER shall notify SERVICERS (at the addresses set forth in Section 26.2, respectively) in writing within seventy five (75) days after any debit or credit is or should have been effected. If CUSTOMER notifies SERVICERS after such time period, SERVICERS may, in their discretion, assist CUSTOMER at CUSTOMER'S expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from SERVICERS, but SERVICERS shall not have any

obligation to investigate or effect any such adjustments. Any voluntary efforts by SERVICERS to assist CUSTOMER in investigating such matters shall not create any obligation to continue such investigation or assist with any investigation in response to any future notices of possible adjustments that are not timely submitted.

- 13.9 If SERVICERS believes any adjustments should be made with respect to CUSTOMER's Settlement Account for any amounts due to or due from CUSTOMER, SERVICERS shall notify CUSTOMER (at the addresses set forth in Section 26.2, respectively) in writing within one hundred twenty (120) days after any debit or credit is or should have been effected. If SERVICERS notifies CUSTOMER after such time period, SERVICERS may, in their discretion, assist SERVICERS at SERVICERS'S expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from CUSTOMER, but CUSTOMER shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by CUSTOMER to assist SERVICERS in investigating such matters shall not create any obligation to continue such investigation or assist with any investigation in response to any future notices of possible adjustments that are not timely submitted. The time limits contained in this Paragraph shall not apply to Chargeback or Third Party Fees.

14. Chargebacks.

14.1 CUSTOMER shall be responsible for all Chargeback amounts relating to Card transactions settled by SERVICERS where:

- (i) merchandise is returned and a proper credit for Cardholder is not received by SERVICERS for processing;
- (ii) the Sales Draft is, or is alleged to have been, executed, accepted, endorsed, completed or assigned improperly without authority or not in accordance with the Authorization requirements or provisions of this Bankcard Addendum;
- (iii) regardless of any Authorization obtained (including without limitation, telephone and mail order transactions), CUSTOMER completed a transaction when the Cardholder did not sign the Sales Draft (unless such Cardholder signature was not required);
- (iv) the signature on the draft was unauthorized as compared to the signature appearing on the Card, the signature panel on the Card was blank;
- (v) the Sales Draft is incorrectly completed, incomplete or illegible;
- (vi) the Cardholder disputes the sale, quality or delivery of merchandise or the performance or quality of service covered by the Sales Draft or agreement accepted by such Cardholder;
- (vii) the circumstances in which the Sales Draft was created or submitted by, or credit was received by, CUSTOMER constituted or otherwise involved a breach of any term, condition, representation, warranty or duty of CUSTOMER hereunder;
- (viii) multiple Sales Drafts were executed to avoid the need to obtain authorization necessary to complete the transaction;
- (ix) the extension of credit for merchandise sold or services performed was in violation of law or the rules or regulations of any governmental agency, whether federal, state, local or otherwise;
- (x) a legible copy of the Sales Draft or Credit Voucher cannot be produced by CUSTOMER within ten days of SERVICERS' request (except to the extent SERVICERS are responsible pursuant to Section 16.1);
- (xi) the Cardholder asserts any claim or defense which the Cardholder has as a consumer of goods or services;
- (xii) the Cardholder disputes the validity of a telephone or mail order Card transaction;
- (xiii) the Card transaction is otherwise subject to Chargeback by the Card issuing bank or Cardholder in accordance with the Rules or applicable law; or

(xiv) the Card transaction is subject to Chargeback in accordance with the procedures set forth in the Operating Procedures.

14.2 CUSTOMER shall reimburse SERVICERS for any Chargebacks, return items, or other losses resulting from CUSTOMER's failure to produce a Card transaction record requested by SERVICERS within the applicable time limits.

15. Representations; Warranties.

15.1 Without limiting any other warranties hereunder, CUSTOMER represents and warrants as to each Card transaction submitted by CUSTOMER under this Bankcard Addendum that:

- (i) the Card transaction represents a bona fide sale of merchandise or services not previously submitted;
- (ii) the Card transaction represents an obligation of the Cardholder for the amount of the Card transaction;
- (iii) the amount charged for the Card transaction is not subject to any dispute, setoff, or counterclaim;
- (iv) the Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold—and the merchandise or service was actually delivered to or performed for the person entering into the Card transaction simultaneously upon CUSTOMER's accepting and submitting the Card transaction for processing;
- (v) the Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to CUSTOMER by a Cardholder or arising from the dishonor of a personal check);
- (vi) CUSTOMER has no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;
- (vii) the Card transaction submitted to SERVICERS was entered into by CUSTOMER and the Cardholder; and
- (viii) the Card transaction was made in accordance with the terms of this Bankcard Addendum, Rules and the Operating Procedures.

15.2 SERVICERS represent and warrant that:

- (i) SERVICERS will provide the Services and any Software in accordance with the then current applicable Rules and all applicable laws;
- (ii) all procedural requirements for CUSTOMER specified in this Bankcard Addendum comply with all applicable Rules; and
- (iii) except as may be required of SERVICERS by any Network or Card issuer, all authorization, clearing and settlement of Card transactions will be performed using the applicable Association and/or Network processor.
- (iv) all Services will be provided in a professional and workmanlike manner.
- (v) that each has the requisite authority to enter into this Bankcard Addendum and to grant the rights granted by this Addendum and that no consent of any other person or entity is required by SERVICERS to grant such rights; to the extent certain Software embedded into Equipment may be owned by third parties, all third party license fees for such Software shall be at no additional cost to CUSTOMER.

16. Retention of Records.

16.1 CUSTOMER shall retain legible copies of Sales Drafts and Credit Vouchers for at least six (6) months following the date of each such transaction.

16.2 If the Schedules provide that CUSTOMER shall retain images (on microfilm or otherwise) or legible copies of CUSTOMER's Sales Drafts and Credit Vouchers, CUSTOMER shall retain legible copies of Sales Drafts and Credit Vouchers for a period of at least eighteen (18) months from the date of each such transaction.

CUSTOMER shall submit to SERVICERS a legible copy of a Sales Draft or Credit Voucher within forty-eight (48) hours of a request by SERVICERS.

16.3 Unless the Schedules provide that FDMS is responsible for retaining records of CUSTOMER's Card transaction data and CUSTOMER has actually delivered to FDMS the applicable Card transaction data containing all required information in legible and suitable form for imaging or electronic capture and storage (as applicable), CUSTOMER shall be responsible for the retrieval of all Sales Drafts and Credit Vouchers requested by SERVICERS within the shortest time limits established by the Rules, as specified in the Operating Procedures, this Bankcard Addendum, or other notice from SERVICERS. CUSTOMER shall not be relieved of its responsibility under the preceding sentence for any deficiencies in Card transaction data transmitted or otherwise delivered to SERVICERS, even though FDMS may agree to capture or produce images of, store and retrieve any such incomplete data on CUSTOMER's behalf.

17. Cash Payments by and Cash Disbursements to Cardholders.

CUSTOMER shall not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft, it being the right of the Card issuing bank to receive such payments. Taxes on Card transactions must be included in the amount charged and may not be collected by CUSTOMER in cash. CUSTOMER shall not make any cash disbursements to a Cardholder as part of a Card transaction except to the extent expressly authorized by one or more of the Schedules, the Operating Procedures or the Rules.

18. Confidentiality.

18.1 Unless CUSTOMER obtains consents from each applicable Association, SERVICERS, Card issuing bank and Cardholder, CUSTOMER shall not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any chargebacks, retrieval requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. CUSTOMER shall use proper controls for and shall limit access to, and shall render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. CUSTOMER must not retain or store magnetic stripe data after a transaction has been authorized. If CUSTOMER stores any electronically captured signature of a Cardholder, CUSTOMER shall not reproduce such signature except upon specific request of SERVICERS.

18.2 Except as may be permitted by applicable law and the Rules, SERVICERS shall not use, disclose, sell or disseminate any Cardholder information obtained in connection with processing a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any chargebacks, retrieval requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. SERVICERS shall use proper controls for and shall limit access to, and shall render unreadable prior to discarding, all records containing Cardholder account numbers. SERVICERS must not retain or store magnetic stripe data after a transaction has been authorized.

18.3 CUSTOMER acknowledges that it obtains no ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a third party as an asset upon a bankruptcy, insolvency or failure of CUSTOMER's business. Upon a bankruptcy, insolvency or failure of CUSTOMER's business all Card transactions information must be returned to SERVICERS or acceptable proof of the destruction of all Card transaction information must be provided to SERVICERS.

19. **Supplies; Advertising.**

At CUSTOMER's option and at FDMS' then-current costs, SERVICERS may furnish CUSTOMER with operational supplies such as the forms of sales drafts, credit vouchers and Association decals (excluding any supplies for terminals or other equipment, which shall be CUSTOMER's responsibility). CUSTOMER shall display VISA, MasterCard and, if applicable, other Association decals and program marks on promotional materials furnished by SERVICERS, as required by Rules, but shall not indicate that VISA, MasterCard or any other Association endorses CUSTOMER's goods or services and shall not continue using such materials after termination of this Bankcard Addendum.

20. **Assignment.**

- 20.1 Upon notice to CUSTOMER, another VISA and MasterCard member may be substituted for CPSI under whose sponsorship this Bankcard Addendum is performed. Upon substitution, such other VISA and MasterCard member shall be responsible for all obligations required of CPSI, including without limitation, as may be expressly required by applicable Rules. Subject to Rules, SERVICERS may assign or transfer this Bankcard Addendum and their rights and obligations hereunder and may delegate their duties hereunder, in whole or in part, to any third party in connection with a change in sponsorship, as set forth in the preceding sentence, without notice to or consent of CUSTOMER.
- 20.2 Except as provided in the following sentence, this Bankcard Addendum shall be binding upon permitted successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Bankcard Addendum.

21. **Term; Events of Default.**

- 21.1 This Bankcard Addendum and the applicable Schedules shall become effective upon the date this Bankcard Addendum and the applicable Schedules are signed by BANK, which shall in all instances be on or after the date(s) CUSTOMER and FDMS sign this Bankcard Addendum and the applicable Schedules and CUSTOMER will be promptly advised of the effective date by SERVICERS.
- 21.2 The initial term and any subsequent terms of this Bankcard Addendum shall commence and shall continue in force as described in the MSA.
- 21.3 If any of the following events shall occur (each an "Event of Default"):
- (i) (a) a material adverse change in the financial condition of CUSTOMER or CUSTOMER's procedures regarding Card acceptance, or (b) a material adverse change in products or services of CUSTOMER which results in a material increase in SERVICER's exposure to Chargeback or other potentially unfulfilled obligations of CUSTOMER due under this Addendum; or
 - (ii) any assignment or transfer of voting control of CUSTOMER or its parent other than as permitted under Section 10 of the MSA; or
 - (iii) a sale of all or a substantial portion of CUSTOMER's assets other than as permitted under Section 10 of the MSA; or
 - (iv) irregular Card sales (meaning fraudulent or suspected fraudulent Card sales) by CUSTOMER, excessive Chargebacks or any other circumstances which, in SERVICERS' sole discretion, may increase SERVICERS' exposure for CUSTOMER's chargebacks or otherwise presents a financial or security risk to SERVICERS; or
 - (v) any representation or warranty of CUSTOMER in this Bankcard Addendum is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or

- (vi) (a) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Bankcard Addendum; or
 - (b) CUSTOMER shall fail to establish or maintain funds in a Reserve Account, as detailed in Section 22, or
 - (c) breach by CUSTOMER in any material respect of the Data Security requirements as detailed in Section 25; or
- (vii) [Intentionally omitted.]
- (viii) [Intentionally omitted]
- (ix) CUSTOMER shall: commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into a composition agreement or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; generally become unable to pay its debts or trade obligations as they become due; make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (x) a case or other proceeding shall be commenced against CUSTOMER, in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator or the like of CUSTOMER, or of all or any substantial part of the assets, domestic or foreign, of CUSTOMER, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding against CUSTOMER (including, but not limited to, an order for relief under the Bankruptcy Code) shall be entered; or
- (xi) the independent certified accountants retained by CUSTOMER shall refuse to deliver an unqualified opinion with respect to the annual financial statements of CUSTOMER and its consolidated subsidiaries;

then, upon the occurrence of (1) an Event of Default specified in subparagraphs (iv), (vi)(b), (vi)(c), (ix) or (x) above, SERVICERS may consider this Bankcard Addendum to be terminated immediately, without notice, and all amounts payable hereunder by CUSTOMER to SERVICERS shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by CUSTOMER, and (2) any other Event of Default, this Bankcard Addendum may be terminated by SERVICERS by giving not less than thirty (30) days' notice to CUSTOMER, and upon such notice and failure to cure all amounts payable hereunder by CUSTOMER to SERVICERS shall be due and payable on demand.

21.4 Neither the expiration nor termination of this Bankcard Addendum shall terminate the obligations and rights of the parties pursuant to provisions of this Bankcard Addendum which by their terms are intended to survive or be perpetual or irrevocable and such provisions shall survive the expiration or termination of this Bankcard Addendum.

21.5 If any Event of Default shall have occurred and be continuing, SERVICERS may, in their sole discretion, exercise all of their rights and remedies under applicable law, including, without limitation, exercising their rights under Section 22.

21.6 [Intentionally Omitted]

21.7 This Bankcard Addendum also may be terminated by SERVICERS without notice or penalty, if in their sole discretion, such termination is necessary for SERVICERS to comply with their obligations under any

applicable law, rule or regulation including, but not limited to, the Office of Foreign Assets Control ("OFAC") Regulations and Rules and Association Rules. SERVICERS' termination of this Bankcard Addendum pursuant to this Section 21.7 shall not be deemed a breach of contract by SERVICERS.

- 21.8 If this Bankcard Addendum is terminated for cause, CUSTOMER acknowledges that SERVICERS may be required to report CUSTOMER's business name and the names and other identification of its principals to the Combined Terminated Merchant File maintained by VISA and MasterCard. CUSTOMER expressly agrees and consents to such reporting in the event CUSTOMER is terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by VISA or MasterCard. Furthermore, CUSTOMER agrees to waive and hold SERVICERS harmless from and against, any and all claims which CUSTOMER may have as a result of such reporting.
- 21.9 The provisions governing processing and settlement of Card transactions, all related adjustments, fees and other amounts due from one party to the other party and the resolution of any related chargebacks, disputes or other issues involving Card transactions will continue to apply even after termination of this Bankcard Addendum, until all Card transactions made prior to such termination are settled or resolved. In addition, the provisions of Sections 13 through 18, inclusive, 20, 22, 24 and 25, and Subsections 21.7, 21.9, 26.2 and 26.3, all in this Bankcard Addendum, shall survive any termination. Upon termination of this Bankcard Addendum, CUSTOMER agrees to immediately send SERVICERS all the data relating to Card transactions conducted prior to the date of termination.
- 21.10 After termination of this Bankcard Addendum for any reason whatsoever, CUSTOMER shall continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to this Bankcard Addendum and all other amounts then due or which thereafter may become due to SERVICERS under this Bankcard Addendum or which may be due to SERVICERS before or after such termination to either SERVICERS or any of SERVICERS' Affiliates for any related equipment or related services.
- 21.11 If any of the following events shall occur (each a "Servicers Event of Default"):
- (i) a material adverse change has occurred in the financial condition of SERVICERS or the Services that may adversely impact SERVICERS ability to fully perform its duties and obligations hereunder; or
 - (ii) any assignment of this Bankcard Addendum in violation of Section 10 of the MSA or
 - (iii) any representation or warranty of SERVICERS in this Bankcard Addendum is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or
 - (iv) SERVICER shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Bankcard Addendum, including, without limitation, the Data Security requirements as detailed in Section 25;
 - (v) Either of SERVICERS shall: commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into a composition agreement or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; generally become unable to pay its debts or trade obligations as they become due; make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
 - (vi) a case or other proceeding shall be commenced against either of SERVICERS, in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator or the like of either of SERVICERS, or of all or

any substantial part of the assets, domestic or foreign, of either of SERVICERS, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding against either of SERVICERS (including, but not limited to, an order for relief under the Bankruptcy Code) shall be entered; or

(vii) the independent certified accountants retained by First Data Corporation ("FDC") shall refuse to deliver an unqualified opinion with respect to the annual financial statements of FDC;

then, upon the occurrence of (1) a Servicers Event of Default specified in subparagraphs (v) or (vi) above, CUSTOMER may consider this Bankcard Addendum to be terminated immediately, upon notice, and all amounts payable hereunder by SERVICERS to CUSTOMER shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by SERVICERS, and (2) any other Servicers Event of Default, this Bankcard Addendum may be terminated by CUSTOMER by giving not less than thirty (30) days' notice to SERVICERS and concurrent cure period, and upon such notice all amounts payable hereunder by SERVICERS to CUSTOMER shall be due and payable on demand.

21.12 If any Servicers Event of Default specified in subparagraphs (i), (ii) or (iii) of Section 21.11 above shall have occurred and be continuing, CUSTOMER may, in its sole discretion, exercise all of its rights and remedies under applicable law.

21.13 This Bankcard Addendum also may be terminated by CUSTOMER without notice or penalty, if in its sole discretion, such termination is necessary for CUSTOMER to comply with its obligations under any applicable law, rule (including Association Rules) or regulation. CUSTOMER's termination of this Bankcard Addendum pursuant to this Section 21.13 shall not be deemed a breach of contract by CUSTOMER.

21.14 After termination of this Bankcard Addendum for any reason whatsoever SERVICERS shall continue to bear total responsibility for all Settlement amounts due to CUSTOMER resulting from Card transactions processed pursuant to this Bankcard Addendum and all other amounts then due or which thereafter may become due to CUSTOMER under this Bankcard Addendum or which may be due to CUSTOMER before or after such termination for any related issues.

22. **Reserve Account; Security Interest.**

22.1 CUSTOMER expressly authorizes SERVICERS to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 22. The initial amount of such Reserve Account shall be set by SERVICERS, in their sole discretion, based upon CUSTOMER processing history and the anticipated risk of loss to SERVICERS.

22.2 The Reserve Account shall be fully funded upon three (3) days notice to CUSTOMER, or in instances of fraud or an Event of Default, reserve account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to CUSTOMER's Settlement Account; (ii) one or more deductions or off sets to any payments otherwise due to CUSTOMER; (iii) CUSTOMER's delivery to SERVICERS of a letter of credit; or (iv) if SERVICERS so agree, CUSTOMER's pledge to SERVICERS of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to SERVICERS and shall be in a form satisfactory to SERVICERS. In the event of termination of this Bankcard Addendum by either CUSTOMER or SERVICERS, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by BANK for the greater of ten (10) months after termination of this Bankcard Addendum or for such longer period of time as is consistent with BANK's liability for Card transactions in accordance with Association Rules. CUSTOMER's funds held in a reserve account may be held in a commingled Reserve Account for the reserve funds of BANK's customers, without involvement by an independent escrow agent.

- 22.3 If CUSTOMER's funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from CUSTOMER, or if the funds in the Reserve Account have been released, CUSTOMER agrees to promptly pay SERVICERS such sums upon request. In the event of a failure by CUSTOMER to fund the Reserve Account, SERVICERS may fund such Reserve Account in the manner set forth in subsection 22.2, above.
- 22.4 Any funds money or amounts pertaining to the Card transactions contemplated by this Bankcard Addendum, now or hereafter in the possession of SERVICERS whether now or hereafter due or to become due to CUSTOMER from SERVICERS, may be commingled with other funds of other customers of SERVICERS. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, SERVICERS are hereby authorized by CUSTOMER, at any time and from time to time, without notice or demand to CUSTOMER or to any other person (such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of CUSTOMER's obligations to SERVICERS under this Bankcard Addendum.

23. Liquidated Damages

- 23.1 The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, notwithstanding anything to the contrary elsewhere in this Bankcard Addendum, if (a) CUSTOMER breaches this Bankcard Addendum by improperly terminating it prior to the expiration of the applicable term of the Bankcard Addendum, or (b) this Bankcard Addendum is terminated prior to the expiration of the applicable term of the Bankcard Addendum in accordance with, and due to, an Event of Default by CUSTOMER specified in subsection 21.3, then SERVICERS will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent the damages which would actually be sustained by SERVICERS as the result of such a termination, the parties have agreed that the amount calculated in the manner specified below is a reasonable pre-estimate of SERVICERS' probable loss, which shall be paid to SERVICERS as liquidated damages in the event of any such termination. Any recovery pursuant to this Section 23 shall in no way limit SERVICERS' right to receive any payments due from CUSTOMER pursuant to Section 14. Such liquidated damages shall be paid to SERVICERS within fifteen (15) days after CUSTOMER's receipt of SERVICERS' calculation of the amount due. The liquidated damages amount shall equal 60% of the product of (i) the average net monthly fees, as determined in accordance with subsection 23.2, and (ii) the number of months, including any pro rata portion of a month, then remaining in the initial term or any renewal term, as applicable.
- 23.2 The average net monthly fees shall equal one-twelfth of the gross fees payable pursuant to the Schedules, less applicable interchange fees and assessments due pursuant to this Bankcard Addendum, during the twelve (12) months immediately preceding the date on which (i) SERVICERS receive notice from CUSTOMER of its intention to terminate this Bankcard Addendum early, or (ii) SERVICERS learn of CUSTOMER's early termination in violation of this Bankcard Addendum, or (iii) this Bankcard Addendum is terminated early pursuant to subsection 21.3 (whichever produces the higher amount); provided, however, if the Bankcard Addendum has been in place less than twelve (12) months, the estimated average net monthly fees shall equal the aggregate gross fees paid hereunder by CUSTOMER, divided by the number of months the Bankcard Addendum was effective.
- 23.3 Liquidated Damages as defined herein shall not apply to any Renewal Period.

24. Termination; Transition Assistance

- 24.1 In the event of termination or expiration of this Agreement for any reason, upon request: (i) SERVICERS shall promptly return to CUSTOMER or destroy (as directed by CUSTOMER) any CUSTOMER Confidential Information in SERVICER'S possession; and (ii) CUSTOMER shall promptly return to SERVICERS or destroy (as directed by SERVICERS) any SERVICERS Confidential Information in CUSTOMER'S possession.

24.2 Unless CUSTOMER requests otherwise, in the event of termination of this Addendum by either party, SERVICERS shall provide the following Transition Assistance (defined below) for a period of up to twelve (12) months following the date of termination ("Transition Period"). SERVICERS will perform the terminated or expired Services in accordance with the service levels set forth in Schedule F of the Corporate Agreement and provide to CUSTOMER any and all assistance reasonably requested by CUSTOMER to facilitate the orderly transfer of responsibility for the terminated or expired Services to one or more successor service providers (collectively, the "Transition Assistance"). SERVICERS acknowledges that the continuity of the Services is critical to CUSTOMER and SERVICERS agree to comply with their obligations set forth in this Section 24.2 regardless of whether the Addendum was terminated by CUSTOMER or SERVICERS; except that SERVICERS have no obligation to provide the Transition Assistance if termination is by SERVICERS pursuant to an Event of Default by CUSTOMER.

25. Data Security.

25.1 Per the terms of this Bankcard Addendum, CUSTOMER is required to follow the Operating Procedures and comply with applicable Rules as they may each be amended from time to time. The Association may impose different compliance requirements on different types and levels of customers. The Association may impose restrictions, fines, or prohibit CUSTOMER from participating in Association programs if it is determined CUSTOMER is non-compliant with such programs. CUSTOMER understands that it must be in compliance with applicable data security regulations for its type or level of customer as defined by the Associations security procedures as well as comply with general security procedures. SERVICERS will endeavor to provide CUSTOMER with amended operating procedures outlining the various Association requirements with regard to Data Security, and other matters, pursuant to the terms of the Bankcard Addendum, however, CUSTOMER understands and acknowledges that it is solely the responsibility of CUSTOMER to maintain compliance with all applicable Association PCI Data Security procedures and regulations, and to pay any and all fines assessments and other liabilities levied by the applicable Association for its non-compliance, whether or not SERVICERS provide to CUSTOMER the amended operating procedures.

CUSTOMER also understands and acknowledges that it is solely responsible for the compliance of any and all third parties (including but not limited to Internet Service Providers) that are given access by CUSTOMER, to CUSTOMER's cardholder data, and for any third party POS VAR software that CUSTOMER may use. CUSTOMER further acknowledges that it is CUSTOMER's responsibility to inform SERVICERS of any of CUSTOMER'S third party providers that are granted access by CUSTOMER to CUSTOMER's cardholder data. CUSTOMER also acknowledges that it is CUSTOMER's duty to notify SERVICERS of any data security compromise of CUSTOMERS computers or systems and to cooperate and assist SERVICERS in any subsequent investigation and that CUSTOMER is solely responsible to pay any and all fines, assessments and other liabilities resulting from any such data security compromise.

SERVICERS may in their sole discretion, suspend card processing services under the Bankcard Addendum for any data security compromise.

25.2 PROVIDER shall comply with the requirements set forth in Annex 2 attached hereto and incorporated by reference herein.

25.3 Notwithstanding anything to the contrary in this Bankcard Addendum, CUSTOMER's failure to comply with the Data Security requirements will constitute a breach of this Agreement; provided, however, that SERVICERS may, in their sole discretion and with the consent of the applicable Association, determine to permit CUSTOMER to (i) promptly create a remedial action plan, approved by SERVICERS, describing the

necessary steps to be taken to comply with the Data Security requirements within a timeframe acceptable to SERVICERS and the Association(s) timeframe and (ii) diligently work to complete such remedial action plan in accordance with its terms.

26. Miscellaneous.

- 26.1 If CUSTOMER requests SERVICERS to perform or provide any system enhancements, custom reports, or related service enhancements that are different from or in addition to the system, services and reports SERVICERS otherwise agree to provide to CUSTOMER (collectively, "System Enhancements"), SERVICERS will use reasonable efforts to provide such System Enhancements. Following receipt of any request for System Enhancements and prior to providing the requested System Enhancements, SERVICERS shall provide CUSTOMER with a description of the System Enhancements to be made, together with an estimate of SERVICERS' fee or number of development hours necessary, as applicable, for providing such System Enhancements. If CUSTOMER thereafter instructs SERVICERS in writing to make such System Enhancements, SERVICERS shall do so, and CUSTOMER shall pay the additional fees charged by SERVICERS for such System Enhancements or be assessed for use of development hours, as applicable.
- 26.2 Any notice to BANK shall be provided in the same manner as notice under the MSA and shall be sent to CPSI at, 50 Northwest Point Blvd., Elk Grove Village, IL. 60007 Attention: President, with a copy to General Counsel, 1 Court Square, Long Island City, NY 11120. Notices to FDMS or CUSTOMER shall be in the same manner provided under the MSA.
- 26.3 This Bankcard Addendum, along with the Master Services Agreement, any Schedules and the Operating Procedures, constitutes the entire agreement between the parties with respect to the subject matter. In the event of a conflict between provisions of the MSA and provisions of this Bankcard Addendum a Schedule or the Operating Procedures the provisions of the MSA shall govern. Except as set forth in Section 4 of this Bankcard Addendum, in the event of a conflict between the terms of this Bankcard Addendum and provisions of a Schedule, the terms of this Bankcard Addendum will govern. If there is any conflict between the terms of this Bankcard Addendum and the Operating Procedures, the terms of this Bankcard Addendum will govern, unless the conflict is directly related to a change in the Operating Procedures or the Rules which specifically addresses a procedure or requirement detailed in this Bankcard Addendum.
- 26.4 The parties acknowledge that the VISA and MasterCard Rules give VISA and MasterCard certain rights to require termination or modification of this Bankcard Addendum with respect to transactions involving VISA and MasterCard Cards and the VISA and MasterCard Card system and to investigate CUSTOMER. The parties also acknowledge that issuers of other Cards, for which PROVIDER performs services on behalf of CUSTOMER, may have similar rights under their applicable Rules with respect to this Bankcard Addendum's applicability to transactions involving such other Cards.
- 26.5 CUSTOMER acknowledges and agrees that any of information obtained by SERVICERS may be shared with SERVICERS' Affiliates, who have a need-to-know, in connection with the provision of other services provided to you by SERVICERS, as long as the Affiliates are under obligation to treat such information with the same degree of care as required of SERVICERS under this Addendum or the MSA.

27. Visa and MasterCard Disclosure

Member Bank Information: Citicorp Payment Services, Inc.

The Bank's mailing address is 50 Northwest Point Blvd., Elk Grove Village, IL. 60007, and its phone number is 224-222-2000.

Important Member Bank Responsibilities

- (a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant
- (b) The Bank must be a principal (signer) to the Merchant Bankcard Addendum.
- (c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by FDMS.
- (d) The Bank is responsible for and must provide settlement funds to the Merchant in accordance with the terms of the Bankcard Addendum.
- (e) The Bank is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilities

- (a) Ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and chargebacks below Association thresholds.
- (c) Review and understand the terms of the Bankcard Addendum.
- (d) Comply with Bankcard Association rules.

The parties hereto have caused this Bankcard Addendum to be executed by their duly authorized officers. **THIS BANKCARD ADDENDUM IS NOT BINDING UPON SERVICERS UNTIL SIGNED BY SERVICERS.**

("CUSTOMER")

By: _____

Name: _____
(Please Print or Type)

Title: _____

Date: _____

CITICORP PAYMENT SERVICES, INC. _____
("BANK")

By: First Data Merchant Services
Corporation pursuant to limited
Power of Attorney

Name: _____
(Please Print or Type)

Title: _____

Date: _____

FIRST DATA MERCHANT SERVICES CORPORATION
("FDMS")

By: _____

Name: _____
(Please Print or Type)

Title: _____

Date: _____

ANNEX 1 ANNEX 1

As used in the MSA, Bankcard Addendum or any Schedule hereto, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

- 1.1 "Affiliate" means, with respect to each party, a company, directly or indirectly, controlling, controlled by or under common control with such party.
- 1.2 "Association" means any entity formed to administer and promote Cards, including VISA International and MasterCard International Incorporated.
- 1.3 "Authorization" means the process by which CUSTOMER electronically accesses SERVICERS' computerized system, unless such system is inoperable or otherwise not accessible to CUSTOMER, in which case CUSTOMER shall utilize the designated toll-free telephone number, to obtain credit approval from the Card issuing bank before completion of the Card transaction.
- 1.4 "Bankruptcy Code" means title 11 of the United States Code, as amended from time to time.
- 1.5 "Business Day" means a day (other than Saturday or Sunday) on which SERVICERS are generally open for business.
- 1.6 "Card" means a valid credit card or valid off-line debit card bearing the service mark of VISA or MasterCard and, to the extent the Schedules so provide, a valid card issued by any other Associations specified on such Schedules.
- 1.7 "Cardholder" means the individual whose name is embossed on the Card and any authorized user of such Card.
- 1.8 "Chargeback" means the procedure by which a Sales Draft or other indicia of a Card transaction (or disputed portion thereof) is returned to Bank or the Card issuing bank, for failing to comply with Rules, the liability of which is the CUSTOMER's responsibility.
- 1.9 "Chargeback Percentage" means the ratio of overall Chargeback-to-settlement volume.
- 1.10 "Credit Voucher" means the evidence of a refund or price adjustment by CUSTOMER to a Cardholder's Card account in connection with a prior purchase by such Cardholder using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise.
- 1.11 "CUSTOMER's Chargeback Percentage" means the actual monthly percentage calculated by dividing CUSTOMER's total monthly VISA and MasterCard Chargeback items in any line of business by the number of CUSTOMER's total monthly VISA and MasterCard transactions in such line of business.
- 1.12 "Network" shall mean an entity, organization or association that operates or arranges for computer hardware and software and telecommunications links to enable the interchange, under a common service mark, of electronic fund transfers among the participants in the entity, organization or association, including national and regional debit card networks operated by a single card-issuing organization, such as American Express or Discover, and EBT programs operated by or on behalf of governmental entities.
- 1.13 "Operating Procedures" means the then-current manual prepared by SERVICERS, containing operational procedures, instructions and other directives relating to Card transactions.
- 1.14 "Preauthorized Order" means a Cardholder's written authorization to make one or more future charges to such Cardholder's MasterCard Card account.
- 1.15 "Recurring Sale" means a Cardholder's written authorization to make one or more future charges to such Cardholder's Visa or other non-MasterCard Card account.
- 1.16 "Reserve Account" means a fund established and managed by SERVICERS to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges due to or incurred by SERVICERS.
- 1.17 "Rules" mean the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Association or Network, including but not limited to, data security regulations and requirements such as the PCI Data Security Standards ("PCI-DSS") and Payment Application Data Security Standards ("PA-DSS").
- 1.18 "Sales Draft" means evidence of a purchase of goods or services by a Cardholder from CUSTOMER using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, all of which must conform to Rules.
- 1.19 "Schedules" means the attachments, addenda and other documents, including revisions thereto, which are incorporated into and made part of this Bankcard Addendum.
- 1.20 "Services" means the activities undertaken by SERVICERS to authorize, process and settle all United States Dollar denominated VISA and MasterCard Card transactions undertaken by Cardholders at CUSTOMER's location(s) in the United States and all other activities necessary for SERVICERS to perform the functions specified on the Schedules.
- 1.21 "Settlement Account" means an account at a financial institution designated by CUSTOMER as the account to be debited and credited by SERVICERS for Card transactions, fees, Chargebacks and other amounts due hereunder or in connection herewith (i.e., fines, penalties, attorneys' fees, etc.).
- 1.22 "Restaurant" or "Restaurant Location" means any BURGER KING® restaurant located in the United States, whether owned or operated by Customer, at or through which credit card transactions are accepted in conjunction with Customer's PIYW program.

1.23 "Equipment" means any First Data proprietary Terminals, hardware and peripherals that PROVIDER supplies to CUSTOMER or Franchisees as identified in the Equipment Services and Support Schedule attached to the Bankcard Addendum.

1.24 "Software" means individually each, and collectively all, of the First Data proprietary or third party software embedded in or provided in connection with the Equipment or Services or related documentation, know-how, technology and processes provided to Customer

1.25 "Annual" or "Annually" means each Contract Year.

1.26 "BURGER KING® System" means the system of Company and Franchisee-owned BURGER KING® restaurants in the United States.

1.27 "Terminal" means any First Data proprietary point of sale terminal that PROVIDER is authorized to supply to Customer or Franchisees as identified in the Equipment Services and Support Schedule attached to this Bankcard Addendum.

ANNEX 2

Restricted Data - Data Privacy and Security Requirements

1. **Definitions:** As used in this Annex, the following terms shall mean as follows:

(a) "Security Breach" means an incident confirmed by the PROVIDER or a Visa/MasterCard certified third-party forensic auditor selected by PROVIDER, in which Customer Data is accessed or used without authorization as a result of a compromise of platforms and/or systems utilized by PROVIDER to process CUSTOMER'S transactions, including without limitation, authorization, settlement and chargeback platforms and/or systems. A Security Breach also includes an incident in which Customer Data is accessed or used without authorization as a result of a compromise of Clientline.

(b) "Customer Data" means card account number and Card Identification Numbers (CIDs) of CUSTOMER's (i.e., Merchant's) customers. CUSTOMER will not transmit to PROVIDER, and PROVIDER will not collect, access, use or store any personally identifiable information other than Customer Data under this Agreement

2. **Breach Notification.** In the event of a Security Breach involving compromises of Customer Data by an unauthorized party, PROVIDER shall notify CUSTOMER as soon as practicably possible after such Security Breach is confirmed, subject to a request by law enforcement or other government agency or the Card brands, to withhold such notice pending completion of an investigation. After any Security Breach PROVIDER will engage in dialogue with CUSTOMER to discuss what is being done to rectify the Security Breach and how to prevent future Security Breaches. In addition, PROVIDER will consult with CUSTOMER on communications to its Franchisees.

(a) PROVIDER'S privacy security staff will work with CUSTOMER through PROVIDER'S manager of its relationship with CUSTOMER to answer questions and resolve PROVIDER'S obligations associated with the Security Breach. PROVIDER shall notify CUSTOMER of a Security Breach by e-mailing with a read receipt rfjohnson@whopper.com, drivera@whopper.com with a copy to PROVIDER'S primary business contact within CUSTOMER.

(b) Following the discovery and notification to CUSTOMER of a Security Breach, the parties will coordinate with each other to investigate the Security Breach.

(c) PROVIDER shall take immediate steps to remedy the Security Breach at PROVIDER'S expense in accordance with applicable privacy rights, laws, Rules, and standards applicable to PROVIDER.

(d) Except as may be expressly required by regulators or applicable law or Rules, PROVIDER agrees that it will not inform any third party, excluding any regulator, law enforcement agency or Permitted Third Party (as defined below) whose notification is necessary, of any Security Breach without first obtaining CUSTOMER's prior written consent, other than to inform a complainant that the matter has been forwarded to CUSTOMER's legal counsel. Any such notice or remediation shall be at PROVIDER'S sole cost and expense.

(e) PROVIDER agrees to cooperate with CUSTOMER in any litigation or other formal action against third parties deemed necessary by CUSTOMER to protect its rights in the Customer Data which is the subject of the litigation or investigation, to the extent such litigation or investigation relates to the Services being provided under the MSA.

(f) PROVIDER will promptly use commercially reasonable efforts to prevent a recurrence of any such Security Breach.

3. **Standard of Care.** PROVIDER acknowledges that in the course of its engagement by CUSTOMER, PROVIDER may receive or have access to Customer Data. In recognition of the foregoing, PROVIDER covenants and agrees that:

(a) it will keep and maintain all Customer Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure.

(b) it will not, directly or indirectly, disclose Customer Data to anyone outside CUSTOMER, except to: (i) its Affiliates, subcontractors or agents who assist PROVIDER in providing the Services, (ii) Associations, (iii) Networks, (iv) the Bank and (v) auditors, (all hereinafter, a "Permitted Third Party"), without express written permission from CUSTOMER unless and to the extent required by law enforcement or government bodies or as otherwise to the extent expressly required by regulators, applicable law or regulations. To the extent PROVIDER discloses or makes Customer Data available to a Permitted Third Party, PROVIDER shall remain liable to CUSTOMER for the actions and omissions of the Permitted Third Party concerning the treatment of the Customer Data and shall require by means of a written agreement signed by the Permitted Third Party that the Permitted Third Party complies with the terms and conditions of the Addendum including without limitation, the terms set forth in this Annex.

4. **Information Security.**

(a) PROVIDER certifies that its collection, access, use, storage, disposal, and disclosure of Customer Data complies with federal, and state, privacy and data security law as well as all other regulations, directives, and regulatory guidance applicable to PROVIDER. Upon request by CUSTOMER, PROVIDER will provide additional certifications

regarding PROVIDER'S information security policies or practices if required by applicable state or federal law.

(b) PROVIDER is responsible for any unauthorized collection, access, use, storage, disposal, and disclosure of Customer Data by its employees, agents or subcontractors under its control or in its possession. Without limiting the foregoing, PROVIDER will implement appropriate safeguards to protect the Customer Data that are no less rigorous than accepted industry practices, and will ensure that all such safeguards, including how the Customer Data is collected, accessed, used, stored, disposed of, and disclosed, comply with applicable data protection and privacy law and comply with the terms of this Addendum.

(c) In addition, PROVIDER shall comply with applicable Rules, including without limitation the PCI DSS and PA-DSS requirements, including remaining aware at all times of changes to the Rules and implementing such changes as necessary to remain in compliance. As it relates to PROVIDER'S systems, all changes implemented will be at PROVIDER'S expense. PROVIDER will not be responsible for any expenses related to upgrades in equipment or other changes to CUSTOMER'S systems.

(d) At a minimum, PROVIDER'S information safeguards shall include: (i) secure business facilities, data centers, paper files, servers, back-up systems and computing equipment including, but not limited to, mobile devices and other equipment with information storage capability; (ii) network, device application, database and platform security; (iii) secure transmission, storage and disposal; (iv) authentication and access controls within media, applications, operating systems and equipment; (v) encryption of Customer Data stored on any laptop or PDA devices (e.g., Blackberry) (vi) encryption of Customer Data when transmitted over the internet, (viii) personnel security and integrity including, but not limited to, Authorized Employee background checks consistent with applicable law or Rules; and (ix) limiting access of Customer Data, and obligating privacy and information security training, to PROVIDER'S Authorized Employees. "Authorized Employees" are PROVIDER'S employees who have a need to know or otherwise access the Customer Data to enable PROVIDER to perform its obligations under this Addendum, and who are bound in writing by obligations of confidentiality sufficient to protect the Customer Data in accordance with the terms of this Addendum. PROVIDER will not authorize use of removable electronic media with information storage capability (e.g., flash drives) for storage of Customer Data.

(e) During the term of each Authorized Employee's employment by PROVIDER, PROVIDER will at all times cause such Authorized Employees to strictly abide by its obligations under this Addendum. PROVIDER further agrees that it will maintain a disciplinary process to address any unauthorized access, use or disclosure of Customer Data by any of PROVIDER officers, partners, principals, employees, agents or independent contractors.

5. Oversight of Security Compliance

(a) PROVIDER shall conduct site audits of the facility's Information Technology controls (SAS 70 Type II) including but not limited to, information security controls including network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices.

(b) Upon CUSTOMER's written request PROVIDER will make available to CUSTOMER for review all SAS70 Type II audit reports. PCI DSS and PA DSS compliance may be validated by a letter provided by PROVIDER's security team and by confirming PROVIDER'S listing on the PCI SSC or Visa CISP website. CUSTOMER agrees to treat such audit reports as Confidential Information under the MSA. Any exceptions noted on the SAS70 Type II report will be addressed in the report with management's corrective action.

(c) Upon CUSTOMER's written request, PROVIDER shall promptly and accurately complete an information security questionnaire provided by CUSTOMER or a third party on CUSTOMER's behalf, any such third-party must be mutually agreeable to PROVIDER, regarding PROVIDER'S environment in relation to the Customer Data being handled and/or services being provided to confirm compliance with the Addendum, as well as any applicable laws, regulations, Rules, and industry standards. Such request shall not be made on more than an annual basis. PROVIDER shall fully cooperate with such inquiry. CUSTOMER shall treat the information provided by PROVIDER in the security questionnaire as Confidential Information under the MSA.

(d) Nothing in this Annex 2 will require PROVIDER to make available to CUSTOMER, its agent, or third party, any report, results or any other materials or information, which would breach confidentiality obligations between PROVIDER and any third party.

**Schedule A
Fee Schedule**

1. **Bankcard Fees (per transaction):**

- (a) The Bankcard Service Fee per Visa and/or MasterCard transaction are detailed below plus Interchange and Assessments. Bankcard Service fees will be charged monthly with Interchange and Assessments charged daily. Customer will be charged in accordance with Tier 1 below subject to the provisions of Section 2 of the MSA as applicable.

Thereafter, a new transaction fee tier shall be applied after the BURGER KING® System's total transaction volume reaches and maintains that tier's minimum transaction level for a consecutive twelve (12) month period. Upon notice of qualification by Corporate pursuant to the Corporate Agreement and confirmation by SERVICERS, SERVICERS will adjust CUSTOMER'S transaction fee to the appropriate volume tier and such adjustment shall be effective the following month.

| Tier | Trailing BURGER KING® System Twelve Month Transaction Count Total | Transactions Authorized via Dial | Transactions Authorized via IP |
|-------------|--|---|---|
| I | 0 to 350,000,000 | \$0.015 | \$0.011 |
| II | 350,000,001 to 500,000,000 | \$0.014 | \$0.010 |
| III | 500,000,001+ | \$0.013 | \$0.009 |

- (b) The interchange fees, assessments and qualifying criteria set forth in Attachment I annexed hereto may be changed from time to time as mandated by the Associations.
- (c) Each Foreign Visa/MasterCard transaction submitted by Customer will be subject to a .2% international transaction handling fee. The fees set forth in this Section may be adjusted without notice to reflect increases or decreases in applicable sales or telecommunication taxes as levied by federal, state or local authorities.

2. **Additional Services Fees (per item):**

| | |
|---------------------------------|---------------------|
| Account Set-Up Fee | WAIVED |
| New Chain Merchant ID Set-up | WAIVED |
| New Merchant ID Set-up | WAIVED |
| New Terminal ID Set-up | WAIVED |
| Account Administration Fee | WAIVED |
| Monthly Service Charge | WAIVED |
| ACH Deposit | WAIVED |
| Wire Deposit | \$10.00 |
| ACH Reject | WAIVED |
| Bank Changes | WAIVED |
| Chargeback Fee | WAIVED |
| Excessive Chargeback Fee | WAIVED |
| Retrieval Request Fee | \$1.75 /incident |
| Paper Statement Fee | WAIVED |
| Automated Voice Auth (VRU) | \$0.75/auth |
| Automated Voice Auth w/ AVS | WAIVED |
| Operator Assisted Authorization | \$2.00 |
| Voice with Bank Referral | \$2.00 |
| Imprinter (includes plate) | \$21.00+shipping |
| Activation per POS terminal | WAIVED |
| Down-line Loads (full/partial) | WAIVED |
| Custom Reporting | \$135.00/hour |
| Development Fees | \$135.00/hour |
| Project Management Fees | \$135.00/hour |
| Implementation Fees | WAIVED |
| Online Training Fees | WAIVED |
| Onsite Training Fees | Quoted per incident |
| File Reversals | \$500.00 |
| Batch Fee | WAIVED |
| AVS Fee | \$0.01 |

General Pricing Information for Credit Transactions:

1. Billable transactions include: purchases, returns, declines, reversals, terminal balancing totals and authorizations.
2. The Visa/MC transaction fee includes authorization, data capture and settlement.
3. The fees and charges set forth on this Schedule A are in addition to all other Third Party fees and all fees due and payable to Servicers and/or any applicable Third Party, will be collected by Servicers as set forth in the Bankcard Addendum.
4. Supplies provided at FDMS' then-current costs, plus a minimum supplies handling fee of \$5.00 + shipping per shipment.

| | |
|-------------------------|---|
| Attachment I | Interchange Fees, Qualifications and Assessment Fees |
| Attachment II | Other Card Services |
| Attachment III | Debit Services Addendum |

**Attachment II to Schedule A
Other Card Services**

This Attachment II to Schedule A supplements the Merchant Bankcard Addendum (the "Bankcard Addendum") to which it is attached and sets forth the terms applicable to FDMS provision of the specified services for the Card transactions issued by the entities set forth below:

American Express X JCB _____
Diners Club _____ Discover ("Novus") X

The Card issuing entities selected above are collectively referred to as ("Issuer") unless otherwise specified in this Attachment II.

1. FEES:

Authorization

(Per American Express/Discover transaction)

Customer will be charged in accordance with Tier 1 below subject to the provisions of Section 2 of the MSA as applicable. Thereafter, a new transaction fee tier shall be applied after the BURGER KING® System's total transaction volume reaches and maintains that tier's minimum transaction level for a consecutive twelve (12) month period. Upon notice of qualification by Corporate pursuant to the Corporate Agreement and confirmation by SERVICERS, SERVICERS will adjust Customer's transaction fee to the appropriate volume tier and such adjustment shall be effective the following month.

| Tier | Trailing BURGER KING® System Twelve Month Transaction Count Total | Transactions Authorized via Dial | Transactions Authorized via IP |
|------|---|----------------------------------|--------------------------------|
| I | 0 to 350,000,000 | \$0.015 | \$0.011 |
| II | 350,000,001 to 500,000,000 | \$0.014 | \$0.010 |
| III | 500,000,001+ | \$0.013 | \$0.009 |

* All Card types listed in this Attachment shall be settled by the Card Issuer.

General Pricing Information:

Billable transactions include: purchases, returns, declines, reversals, authorizations & terminal balancing totals.

The credit card transaction fee includes authorization and data capture. Settlement and payment for such card types will be provided by the applicable third party provider, pursuant to the agreement between Customer and such third party provider.

The fees and charges set forth on this Schedule are in addition to all other third party fees and all fees due and payable to Servicers and/or any applicable third party, will be collected by Servicers as set forth in the Bankcard Addendum.

2. GENERAL: Customer understands and acknowledges that FDMS' sole responsibility with respect to ISSUER Card transactions shall be to provide the services specified in this Attachment.

In the event Customer has a separate Issuer Agreement with a respective Issuer, all Chargeback and financial obligations including but not limited to fees and issues related thereto shall be governed by the terms of such Issuer Agreement. Notwithstanding the foregoing, in the event FDMS is providing settlement services for Diners Club and/or JCB

transactions FDMS shall be responsible for providing such services pursuant to the terms of the Bankcard Addendum. Customer shall comply with all terms and conditions of the Issuer Agreement and the applicable rules, regulations, interpretations and other requirements of the respective Issuer and shall not seek authorization for or submit for processing or settlement hereunder any Issuer Card transactions at anytime when Customer does not have in effect a valid Issuer Agreement with such Issuer. Customer agrees to notify FDMS immediately upon the termination of any Issuer Agreement to which it is a party. Upon such termination, FDMS shall have no further obligations hereunder to provide any services to Customer with respect to any transactions involving such Issuer Cards.

In the event Customer does not have a separate Issuer Agreement with a respective Issuer, the Issuer Card services to be provided hereunder shall be in accordance with the terms of the Bankcard Addendum and this Attachment.

3. ISSUER CONSENTS:

Customer shall be responsible for obtaining any operational consents required of Issuer to comply with procedures or practices contemplated by both Customer and FDMS under this Bankcard Addendum.

4. AUTHORIZATION SERVICES ONLY:

In the event FDMS is providing authorization services only for Issuer Card transactions as specified herein, Customer shall seek such authorization through FDMS. In the event that FDMS is not providing processing services for Issuer Card transactions as specified in this Attachment, Customer shall be responsible for processing and submitting directly to the applicable Issuer for settlement of such Card transactions.

5. PROCESSING AND SUBMISSION TO ISSUERS:

In the event FDMS is providing processing services for Issuer Card transactions as specified herein, Customer shall submit to FDMS for processing all of Customer's Issuer Card transactions and FDMS shall process such transactions and transmit them electronically to the applicable Issuer with a summary of such Card transactions

FDMS does not warrant or bear responsibility for the performance of any Issuer in any way.

First Data Merchant Services Corporation

By: _____

Title: _____

Date: _____

(CUSTOMER)

By: _____

Title: _____

Date: _____

Attachment III
FIRST DATA MERCHANT SERVICES CORPORATION
DEBIT TRANSACTION ADDENDUM

Customer understands and agrees that First Data Merchant Services Corporation ("FDMS") is the service provider for processing Customer's debit card transactions ("Debit Services"), pursuant to the terms herein. FDMS will designate a bank that is a member of the debit Network ("Debit Network Bank").

1. Until and unless otherwise authorized by FDMS, Customer agrees to utilize FDMS compatible terminals/PIN pads or systems capable of processing all on-line debit card transactions, and to place them at its merchant locations. As between FDMS and Customer, all Software residing on these terminals or systems is the sole property of FDMS. Any software residing in Customer-owned terminals or systems must be FDMS compatible. Customer's placement of the terminals or system at its merchant locations shall constitute acceptance of all terms and conditions set forth in this Addendum. Customer understands and agrees that neither FDMS nor BANK bear any responsibility whatsoever for Customer's-owned inoperative terminals or systems (or software if applicable). In the case of an inoperative terminal or system Customer shall consult Customer's warranty, or terminal maintenance addendum, as applicable.
2. Customer agrees to submit all debit card transactions and to abide by all applicable rules and regulations of the applicable Pin Debit card Network(s) selected by Customer. Customer understands and agrees that neither FDMS nor Debit Network Bank has any responsibility or liability for any debit card transactions. Customer agrees to hold FDMS and Debit Network Bank harmless from any and all claims, actions, proceedings and other liability which may arise pertaining to such debit transactions. In no event shall FDMS or Debit Network Bank be liable for special, consequential or exemplary damages, including lost profits, revenues and business opportunities.
3. Customer understands that it is granted a non-exclusive, non-transferable, limited sublicense to use the service mark(s) of those POS Networks that Customer participates in accordance with the rules of the applicable debit Networks (each a "Protected Mark"). Customer shall have no power, right or authority to transfer, assign or license any rights in or to the use of any Protected Mark. Customer will not at any time do or cause to be done any act or deed in any way impairing or intended to impair a POS Network's exclusive right, title and interest in and to its Protected Mark. Customer shall permit FDMS or Debit Network Bank at all reasonable times, to inspect the Customer's use of the Protected Mark, and shall, upon request, provide samples of Customer's use of the Protected Mark in advertising or otherwise for review.
4. Customer understands and agrees that the Debit Services are being provided by FDMS and not Debit Network Bank, and therefore Debit Network Bank shall have no liability whatsoever regarding the Services provided by FDMS.
5. Upon notice to Customer, another debit Network member may be substituted for Debit Network Bank under whose sponsorship this Agreement is performed. Upon substitution, such other debit Network member shall be responsible for all obligations required of Debit Network Bank, including without limitation, as may be expressly required by applicable debit Network rules. Subject to debit Network rules, FDMS and Debit Network Bank may assign or transfer this Agreement and their rights and obligations hereunder and may delegate their duties hereunder, in whole or in part, to any third party in connection with a change in sponsorship, as set forth in the preceding sentence, without the notice to or consent of Customer. FDMS agrees to provide CUSTOMER with written notice of any substitution of Debit Network Bank as contemplated in this Section, as soon as practicably possible following any such substitution.

Except as provided in the following sentence, this Agreement shall be binding upon permitted successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

6. Customer further understands that any claims it may have regarding the Debit Services may not be offset against non PIN Debit sales.
7. Customer assumes all responsibility for paper copy of debit card transactions, pursuant to the appropriate debit card Network rules.
8. Within one (1) business day of the original transaction, Customer must balance each location to the FDMS system for each business day that each location is open. If Customer determines that transaction(s) have been processed in error, Customer will initiate the appropriate transaction for adjustment to correct the transaction in question. Customer is responsible for all applicable adjustment fees per appropriate debit card Network.
9. Customer shall be responsible for all telecommunications costs, if any, as they are incurred by Customer for any of the services provided.
10. The responsibility for the installation of terminals shall be dependent upon the type of equipment or system being utilized by Customer.
11. FDMS shall settle debit card transaction proceeds to Customer daily, via a deposit to Customer's Settlement Account. All such settlements to Customer will not be net of adjustments, Network fees or Servicers' fees. Servicers shall invoice Customer monthly for all such fees and debit Customer's Settlement Account monthly in the amount of such invoice.
12. The fees for the PIN Debit Network used to process your transaction will be applied. Which PIN Debit Network will be used will depend upon the availability of the Network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular Network, the routing requirements established by the Networks and the card issuers, or other factors. You agree that we may, at our sole discretion, utilize any PIN Debit Network available to us for a given transaction.

13. Customer shall be responsible for the following debit related fees:

FDMS DEBIT FEE

Customer will be charged in accordance with Tier 1 below subject to the provisions of Section 2 of the MSA as applicable. Thereafter, a new transaction fee tier shall be applied after the BURGER KING® System's total transaction volume reaches and maintains that tier's minimum transaction level for a consecutive twelve (12) month period. Upon notice of qualification by Corporate pursuant to the Corporate Agreement and confirmation by SERVICERS, SERVICERS will adjust Customer's transaction fee to the appropriate volume tier and such adjustment shall be effective the following month.

| Tier | Trailing BURGER KING® System Twelve Month Transaction Count Total | Transactions Authorized via Dial | Transactions Authorized via IP |
|------|---|-------------------------------------|-----------------------------------|
|------|---|-------------------------------------|-----------------------------------|

| | | | |
|-----|----------------------------|---------|---------|
| I | 0 to 350,000,000 | \$0.015 | \$0.011 |
| II | 350,000,001 to 500,000,000 | \$0.014 | \$0.010 |
| III | 500,000,001+ | \$0.013 | \$0.009 |

General Pricing Information:

1. Billable transactions include: purchases, returns, declines, reversals, and authorizations.
2. The PIN Debit Network transactions include authorization, settlement and sponsorship.
3. The fees and charges set forth on this Schedule are in addition to all other third party fees and all fees due and payable to Servicers and/or any applicable third party, will be collected by Servicers as set forth in the Agreement. In addition, Customer will also be charged the Network fees on a per transaction per Network basis, pursuant to Section 11, above.

CUSTOMER AGREES THAT THE ABOVE-REFERENCED NETWORK FEES ARE CONTROLLED BY SAID NETWORK(S) AND ARE SUBJECT TO CHANGE BY THE NETWORK(S) AND THEREFORE TO THE CUSTOMER AT ANY TIME. SERVICERS WILL USE COMMERCIALY REASONABLE EFFORTS TO NOTIFY CUSTOMER PRIOR TO ANY EFFECTIVE CHANGE.

NOTWITHSTANDING THE ABOVE, CUSTOMER WILL BE GIVEN WRITTEN NOTICE BY SERVICERS THIRTY (30) DAYS PRIOR TO OTHER CHANGES IN FEES. CUSTOMER AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS APPLICABLE TO DEBIT TRANSACTIONS. CUSTOMER ACKNOWLEDGES THAT DEBIT TRANSACTIONS ARE GOVERNED BY NETWORK REGULATIONS, AS WELL AS FEDERAL AND STATE LAW, INCLUDING THE ELECTRONIC FUNDS TRANSFER ACT (KNOWN AS REGULATION E) AND AGREES TO BE COMPLIANT WITH SUCH REGULATIONS.

(CUSTOMER)
By: _____
Title: _____
Date: _____

FIRST DATA MERCHANT SERVICES CORPORATION
By: _____
Title: _____
Date: _____

Schedule B – Equipment Service & Support

1. **DEPLOYMENT.**

- a. **Initial Installation.** Upon receipt of an order, FDMS will fulfill the order pursuant to the terms and conditions of this schedule. An Initial Installation deployment is defined as one merchant system, shipped to one US-based address that includes any configuration of the following if applicable: a Terminal, printer, PIN pad, start-up kit or other peripheral.
 - i. **Programming.** Terminals are tested with one Card type prior to deployment to ensure Terminals are functioning properly.
 - ii. **Merchant Start-up Kit(s).** Merchant Start-up Kit is defined as the Burger King Corporation (BKC) and FDMS agreed upon supplies, marketing material, decals, etc.
- b. **Lease or Purchase Option.** CUSTOMER may elect to either lease or purchase an Approved Terminal. The Lease Agreement is attached hereto as Attachment 1 to Schedule B. The Purchase Agreement is attached hereto as Attachment 2 to Schedule B.
- c. **Swap Replacement Program.** CUSTOMER, upon leasing or purchasing Approved Terminal from FDMS or its Affiliates shall be enrolled automatically in the Swap Replacement Program described herein at no additional cost. Swap Replacement Program Fees are set forth in Section 4 below (Additional Equipment Fees). A swap deployment is defined as replacement of a single malfunctioning Approved Terminal with a functioning, refurbished Approved Terminal configured pursuant to BKC's instruction and shipped to CUSTOMER at a United States address. Further, the deployed replacement Approved Terminal will be accompanied by a call tag. CUSTOMER will be required to return the malfunctioning Terminal to FDMS, using the call tag provided (as further described in subsection 1d. below). Notwithstanding any provision contained in this Schedule or the Agreement, in the event CUSTOMER as of the date of this Agreement, is subject to a lease with FDMS for a Verifone terminal ("Legacy Terminal"), such Legacy Terminal will be included in participation of the Swap Replacement Program, provided; however that FDMS shall, to the extent possible replace such Legacy Terminal with a refurbished Legacy Terminal of the same model as that which is subject to the Legacy Terminal Lease.
 - i. **Programming.** Terminals are tested with one (1) card type prior to deployment to ensure terminals are functioning properly.
- d. **Call Tag.** The call tag process is a system of retrieving, managing, reporting and accounting for Equipment sent directly from CUSTOMER to FDMS. No more than a total of three (3) call tags will be issued to CUSTOMER for a single call tag request from CUSTOMER and shall be as follows:
 - i. **Initial Call Tag.** Upon processing an order for a replacement deployment, FDMS includes with the Equipment being shipped, an Authorized Return Service (ARS) box label and a letter explaining how to have the Equipment picked up for return to FDMS.
 - ii. **Second Call Tag.** If the Equipment requested in the initial call tag is not received within fifteen (15) business days, FDMS automatically mails a second letter and a second ARS label requesting the Equipment be returned. Second call tag is shipped via US Mail.
 - iii. **Final Call Tag.** If the Equipment requested in the initial and second call tag letters is not received, FDMS automatically mails a third letter and a third and final ARS label within fifteen (15) business days of the second call tag being issued requesting the Equipment be returned. Final call tag is shipped via US Mail. If FDMS has not received the Equipment forty five (45) days after the final call tag is issued, CUSTOMER will be charged the Unreturned Equipment Fee set forth below.

2. **EQUIPMENT WARRANTY.**

- a. The Equipment shall meet or exceed the manufacturer's specifications and be free from defects in material and workmanship ("Malfunction") for a period of thirty (30) days from the date of delivery ("Warranty Period"). FDMS shall promptly and without any additional charge (such as swap or deployment fees/charge) replace any Equipment which experiences a Malfunction during the Warranty Period.
- b. FDMS represents and warrants that the First Data FD100 64MB Terminal is a FDMS proprietary terminal.

3. **EQUIPMENT FEES.**

| Approved Equipment Type | Purchase | Rental Month-to-Month | Lease (12 Month Term) | Lease (24 Month Term) | Lease (36 Month Term) |
|---|--------------|-----------------------|-----------------------|-----------------------|-----------------------|
| First Data FD100 64 MB Terminal | \$299.00 ea. | \$42.28 | \$22.45 ea. | \$16.15 ea. | \$11.10 ea. |
| -Tax on leased Terminals not included in above pricing. An annual Tax Handling Fee per Terminal will be assessed. | | | | | |
| -Terminal deployment fee of \$45.00 per Terminal (inclusive of shipping charges). | | | | | |
| -All Terminals leased pursuant to this schedule shall be in the swap replacement program, at no additional cost to Customer, during the term of lease. Swap replacement includes, but not limited to, replacement and call tag pick-up of defective Terminal. | | | | | |

4. **ADDITIONAL EQUIPMENT FEES.**

| | |
|--|---|
| Swap Fee (for Legacy Terminals and Approved Terminals) | \$45.00 per Terminal swap order (inclusive of shipping charges) |
| Unreturned Terminal/Device Fee | Equal to purchase price of the Terminal outlined above |
| Imprinters (purchase) | \$21.00 (plus shipping & handling) |
| Certification Fee | \$135.00/hr |
| Development Fee | \$135.00/hr |
| Project Management Fee | \$135.00/hr |
| Supplies | FDMS then current costs, plus \$5.00 & shipping |
| PIN pad encryption | \$45.00/PIN pad injected |

5. **TRANSITION OPTIONS.**

- a. A CUSTOMER subject to a rental agreement for a Legacy Terminal at the time of this Agreement may cancel the rental agreement early, and notwithstanding anything to the contrary in such rental agreement, the only charges upon such early termination will be an early termination fee for each rented Legacy Terminal equal to \$6.18 multiplied by the difference between sixty (60) and the number of monthly rental payments made by Customer prior to cancellation, with respect to such Legacy Terminal. In addition, CUSTOMER must return any rented equipment to FDMS pursuant to the Call Tag Process set forth in Section 1(d) above.
- b. Voluntarily Upgrade to FD100 – If CUSTOMER chooses to voluntarily upgrade a Legacy Terminal to an FD100 prior to completing the sixty (60) month rental agreement period, the following upgrade schedule applies. In addition, CUSTOMER will be responsible for the deployment cost of the FD100 terminal and must return any rented equipment to FDMS pursuant to the Call Tag Process set forth in Section 1(d) above.
 - i. less than six (6) monthly rental payments remaining on the sixty (60) month rental – No cost upgrade; must sign a new twenty-four (24) or thirty-six (36) month FD100 lease.
 - ii. six (6) to twelve (12) monthly rental payments remaining on the sixty (60) month rental – fifty dollar (\$50) upgrade fee per terminal. Customer must sign a new twenty-four (24) or thirty-six (36) month FD100 lease.
 - iii. thirteen (13) to twenty-four (24) monthly rental payments remaining on the sixty (60) month rental – One hundred twenty-five dollar (\$125) upgrade fee per terminal. Customer must sign a new twenty-four (24) or thirty-six (36) month FD100 lease.
 - iv. more than twenty-four (24) monthly rental payments remaining on the sixty (60) month rental – No upgrade available. Cancellation of Lease of Legacy Terminals will apply for rentals with greater than twenty-four (24) monthly rental payments remaining on the sixty (60) month rental.
- c. Swapping and forced to upgrade – To the extent FDMS is unable to fulfill a swap request with respect to a Legacy Terminal with the same model, CUSTOMER shall be required, at their expense, to upgrade to an Approved Terminal. In the event FDMS is unable to replace Legacy Terminals with the same model all Legacy Terminals at that location will be swapped and all cancellation costs associated with such Legacy Terminal rental agreement will be waived.

New leases agreements, if required per this Section 5, shall be subject to the fees and charges set forth in Section 3 above.

9. **ASSUMPTION.**

To the extent a Customer Restaurant Location experiences a change of ownership and desires to assign an existing Lease Agreement to the new owner of the Restaurant, FDMS agrees to permit such assignment pursuant to FDMS' then-current lease assignment procedures. Each Lease Agreement assigned by any Customer as contemplated in this Section, shall be subject to an Assignment Fee of one hundred fifty dollars (\$150.00) per lease agreement.

Attachment I to Schedule B
Equipment Lease Agreement

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between First Data Merchant Services Corporation ("FDMS"), and the Lessee identified on the signature panel of this Equipment Lease Agreement ("Lease Agreement"). In this Lease Agreement, the words "we", "our" and "us" refer to FDMS and its successors and assigns and the words "you" and "your" refer to Lessee and its permitted successors and assigns.

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee (the "Settlement Account"). In the event of default of Lessee's obligation hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to credit Lessee's account for an amount not to exceed the original amount of the debit. In the event we debit your account other than as permitted by this Lease Agreement, and you incur bank fees as a result of such debit, we will credit your account for such bank fees. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time, at Lessor's expense, to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

1. Equipment. We agree to lease to you and you agree to lease from us the equipment identified in Section 4 (the "Equipment"), according to the terms and conditions of this Lease Agreement. The term "Equipment" includes the Equipment initially deployed under the Lease Agreement and/or any additions, replacements, substitutions, or additions thereto at the same Restaurant Location.

2. Effective Date, Term and Interim Rent.

(a) This Lease Agreement becomes effective on the date we deliver any piece of Equipment to you at the Restaurant Location (the "Delivery Date"). This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the Restaurant Location designated by you.

(b) The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated in Section 4. **THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED, provided however,**

(i) in the event the MSA or Bankcard Addendum are terminated due to a Servicer Event of Default under the Bankcard Addendum, you may terminate this Lease Agreement without payment of penalty or Early Termination Charges (as defined in Section 14(b) below), upon written notice to us. In the event of any such termination, you will promptly return the Equipment to us pursuant to the terms of Schedule B to the Bankcard Addendum, or you will be responsible for payment of the Unreturned Equipment Fee as also described therein.

(c) You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Commencement Date until the date preceding the first monthly lease payment. In no event shall the Commencement Date be prior to the Delivery Date.

(d) YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF THE BANKCARD ADDENDUM, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.

3. Site Preparation. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

4. Equipment Fees:

| Equipment Type | Lease (12 Month Term) | Lease (24 Month Term) | Lease (36 Month Term) |
|--|--------------------------|--------------------------|--------------------------|
| First Data FD100 64 MB Terminal | \$22.45 ea. | \$16.15 ea. | \$11.10 ea. |
| Tax on leased equipment not included in above pricing. Annual Tax Handling Fee of \$10.20 per Terminal will be assessed. Terminal deployment fee of \$45.00 per leased terminal (inclusive of shipping charges). Terminal deployment fee inclusive of any additional equipment that is shipped with terminal. | | | |

5. Payment of Amounts Due.

(a) The monthly lease charge is due and payable monthly, in advance. You agree to pay the deployment fee for each order of Equipment.

(b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes,

assessments applicable to the lease of the Equipment, and related supplies including without limitation, state and local sales, use tax and property tax, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee set forth above.

(c) Your lease payments will be due despite dissatisfaction with the Equipment for any reason.

(d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent (10%) of the amount due but no less than ten dollars (\$10.00) for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of twenty-five (\$25.00) for any debit we attempt to make against your Settlement Account that is rejected.

(e) In the event your account is placed in collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort.

6. Use and Return of Equipment; Insurance. (a) You shall cause the Equipment to be operated in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted. (b) You shall not permit any physical alteration or modification of the Equipment, or change the Restaurant Location of the Equipment, without our prior written consent. (c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent. (d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility. (e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment. (f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership. (g) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards. (h) You shall provide proof of insurance. The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder

7. Title to Equipment. We at all times retain title to the Equipment unless we agree otherwise in writing. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. Until delivery to the Restaurant, FDMS assumes all risk of loss, theft, or damage.

8. Return or Purchase of Equipment at End of Lease Period. Upon the completion of your lease term or any extension, you will have the option to; (a) return the Equipment to us, or; (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Equipment. If you wish to purchase the Equipment from us, you must give notice to us in writing prior to the end of the lease term in order to ascertain the purchase price. In the absence of an affirmative election by you to return or purchase the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment. If we terminate this Lease Agreement in the event of a default by you of your Bankcard Addendum, then you shall immediately return the Equipment to us in accordance with Schedule B of the Bankcard Addendum, or remit to us the Unreturned Equipment Fee in accordance with Schedule B of the Bankcard Addendum. We may collect any amounts due to us under this Section 8 by debiting your Settlement Account in accordance with Section 12.3 of the Bankcard Addendum, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

9. Software License. We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (our software and third party software embodied in or provided in connection with the Equipment, referred to collectively herein as "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Equipment. We hereby represent and warrant that we are the owner of the Software, including all associated intellectual property rights, or otherwise have the right to grant you the rights and licenses hereunder without violating any rights of any third party. We further represent and warrant that, as of the date of this Agreement the Software does not infringe upon or misappropriate any valid United States patent, copyrights, trademark, trade secret, or other proprietary rights of any third party. We hereby assign to you any and all manufacturers' or suppliers' warranties, guarantees, representations, services agreements and indemnities, if any, with respect to any third party software delivered by us hereunder to the extent assignable by us.

10. Limitation on Liability. Without limiting the exceptions to the cumulative liability limits specified in Section 5.2 of the Master Services Agreement, you and we agree that our liability arising out of this Lease Agreement shall not exceed the greater of (i) five (5) times the aggregate lease amount paid to us or (ii) the replacement value of the particular Equipment involved. The foregoing limitation shall not apply to any losses for which we are obligated to indemnify you under this Lease Agreement. In no event shall we be liable for any indirect, incidental, special or consequential damages.

Without limiting the exceptions to the cumulative liability limits specified in Section 5.4 of the Master Services Agreement, you and we agree that your liability arising out of this Lease Agreement shall not exceed the greater of (i) five (5) times the aggregate lease amount paid to us or (ii) the replacement value of the particular Equipment involved. The foregoing limitation shall not apply to any losses for which you are obligated to indemnify us under this Lease Agreement. In no event shall you be liable for any indirect, incidental, special or consequential damages.

For the avoidance of doubt, all damages (including but not limited to consequential damages) paid to a third party by an indemnified party shall be deemed direct damages of such indemnified party and shall not be limited by this section.

11. Lessee Representations and Warranties.

(a) Except as expressly provided otherwise herein, all warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or infringement.

(b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

12. Lessor Representations and Warranties. In addition to and without limiting any representations or warranties contained in the MSA or Bankcard Addendum, FDMS hereby represents and warrants as follows:

(a) it is the owner of, and has good and valid title to, the Equipment, free and clear of all encumbrances whatsoever;

(b) it is authorized to enter into this Lease Agreement and to lease the Equipment,

(c) the Lease of the Equipment by you will not conflict with or result in a breach of any agreement to which we are a party,

(d) the Equipment, its manufacture, performance, and production, are in compliance with all applicable laws, rules, and regulations;

13. Indemnification. In addition to and without limiting any indemnities agreed to by the parties in the MSA or Bankcard Addendum, each party ("Indemnifying Party") shall indemnify and hold harmless the other party ("Indemnified Party") from and against any and all losses, liabilities, damages and expenses (including reasonable attorney's fees) resulting from any breach by the other Indemnifying Party of any of its representations, warranties, or obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from the Indemnified Party's gross negligence or willful misconduct.

14. Default; Remedies.

(a) If any debit of your Settlement Account initiated by us for an amount due to us under this Lease Agreement is rejected when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement, any such event shall be a default hereunder provided that you shall have twenty (20) days after notice from us to cure such default, which period shall be extended for an additional twenty (20) days if you demonstrate to our reasonable satisfaction that you are diligently attempting to cure such default. Without limiting the foregoing, any default by you under the MSA or Bankcard Addendum with us will be treated as a default under this Lease Agreement.

(b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period ("Early Termination Charges") together with the fair market value of the Equipment (as determined in good faith by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment but in a commercially reasonable manner and without disturbance to or interruption of the normal business operations of the Restaurant. In any case, you shall also be responsible for our reasonable costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account in accordance with Section 12.3 of the Bankcard Addendum, or any other funds of yours that come into our possession or control in accordance with Section 22 (Reserve Account; Security Interest) of the Bankcard Addendum, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so in accordance with Section 22.4 of the Bankcard Addendum.

(c) If we default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement, any such event shall be a default hereunder. Upon any such termination for default, you may proceed in any lawful manner against us and terminate this Lease Agreement upon notice ("Date of Termination") without any further payment to us or any penalty or Early Termination Charges, other than lease payments due to us through the Date of Termination.

15. Assignment. You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent,

provided however, the party to whom we transfer or assign this Lease Agreement shall be bound to the terms and conditions of this Lease Agreement to the same extent as if you and such assignee or transferee entered into an agreement identical to this Lease Agreement on the effective date of such transfer or assignment.

16. Governing Law; Venue; Miscellaneous. This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the appropriate state of federal court located in Suffolk County, New York. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

17. Notices. All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the MSA, with a copy to the attention of the General Counsel at the same address; and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

18. Order of Precedence, Entire Agreement. No provisions of this Lease Agreement shall amend or limit any provision of the Master Services Agreement ("Agreement" or "MSA") between the parties or any Addenda (including Schedules) thereto except that in the event of an express conflict between a provision of this Lease Agreement and a provision of the MSA or Bankcard Addendum (including any Schedules thereto), the provision of this Lease Agreement shall govern. In the event of any other conflict or inconsistency between this Lease Agreement or any other agreement between the parties, the provision of the MSA or Bankcard Addendum (including any Schedule thereto) shall govern. This Lease Agreement constitutes the entire Agreement between the parties with respect to the lease of the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties.

19. Counterparts. This Lease Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

The parties hereto have caused this Equipment Lease Agreement to be executed by their duly authorized officers.

| | |
|--|--|
| <hr/> <p>("CUSTOMER")</p> <p>By: _____</p> <p>Name: _____ (Please Print or Type)</p> <p>Title: _____</p> <p>Date: _____</p> | <p><u>FIRST DATA MERCHANT SERVICES CORPORATION</u></p> <p>("FDMS")</p> <p>By: _____</p> <p>Name: _____ (Please Print or Type)</p> <p>Title: _____</p> <p>Date: _____</p> |
|--|--|

Attachment II to Schedule B
Equipment Purchase Agreement

This Equipment Purchase Agreement ("Purchase Agreement") is being entered into by and between First Data Merchant Services Corporation ("FDMS"), and the Purchaser identified on the signature panel of this Equipment Purchase Agreement ("Purchase Agreement"). In this Purchase Agreement, the words "we", "our" and "us" refer to FDMS and its successors and assigns and the words "you" and "your" refer to Purchaser and its permitted successors and assigns. This Purchase Agreement governs the sale of certain Terminals provided to Purchaser pursuant to a related Master Services Agreement ("MSA" or "Agreement") and Bankcard Addendum ("Addendum") between FDMS, and Purchaser governing the Services to be provided hereunder.

1. Equipment. We agree to sell to you and you agree to purchase from us the Equipment, as that term is defined in the MSA and/or the Bankcard Addendum and the Schedules thereto, according to the terms and conditions of this Purchase Agreement.

2. Effective Date, Term and Interim Rent.

(a) This Purchase Agreement becomes effective on the date we deliver any piece of Equipment to you at the Restaurant Location

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASE FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEM. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THE AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE PURCHASED UNDER THIS PURCHASE AGREEMENT.

3. Site Preparation. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

4. Equipment:

| Equipment Type | Purchase Price |
|--|----------------|
| First Data FD100 64 MB Terminal | \$299.00 |
| | |
| | |
| | |
| Tax on purchased equipment not included in above pricing. | |
| Terminal deployment fee of \$45.00 per purchased terminal (inclusive of shipping charges). | |
| Terminal deployment fee inclusive of any additional equipment that is shipped with terminal. | |

5. Purchased Equipment. We will sell to you, and you will buy from us the Equipment identified above as being purchased by you, free and clear of all liens and encumbrances (subject to Section 7), except that any Software as that term is defined in the MSA and/or Bankcard Addendum and Schedules thereto, will not be sold to you outright but instead be provided to you pursuant to, and subject to the conditions of Section 8 of this Agreement. You will pay the purchase price specified for the Equipment including all applicable tax, prior to the effective date of the Purchase Agreement or at our option, such amounts will be collected by us by debit or deduction pursuant to this Section 5.

You hereby authorize us to collect all amounts due from you under this Purchase Agreement by initiating a debit entry for such amount to your account designated pursuant to the Addendum to be debited and credit for amounts due from and to you under the Addendum (the "Settlement Account"). All authorizations and other provisions in your Addendum regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under this Purchase Agreement.

6. Use of Equipment. You shall cause the Equipment to be operated in accordance with any operating instructions furnished by us or the manufacturer. You shall not use the Equipment or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designated or reasonably suited. You shall not permit any physical alteration or modification of the Equipment. You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility. The loss, destruction, theft or damage of or to the Equipment after delivery shall not relieve you from your obligation to pay the full purchase price.

7. Transfer of Title; Security Interest. Title to the Equipment shall transfer to Purchaser upon delivery. Notwithstanding the foregoing, until such time as you have paid the full purchase price, you hereby grant to us a security interest in the purchased Equipment and the related Software to secure payment of the purchase price and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact. Until delivery to the Restaurant, FDMS assumes all risk of loss, theft, or damage.

8. Software License. We retain all ownership and copyright interest in and to all computer software, related

documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (our software and third party software embodied in or provided in connection with the Equipment, referred to collectively herein as "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Equipment. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any third party access to the software without our prior written consent. We hereby represent and warrant that we are the owner of the Software, including all associated intellectual property rights, or otherwise have the right to grant you the rights and licenses hereunder without violating any rights of any third party. We further represent and warrant that, as of the date of this Agreement the Software does not infringe upon or misappropriate any valid United States patent, copyrights, trademark, trade secret, or other proprietary rights of any third party. We hereby assign to you any and all manufacturers' or suppliers' warranties, guarantees, representations, services agreements and indemnities, if any, with respect to any third party software delivered by us hereunder to the extent assignable by us. Your obligations under this Section 8 shall survive the termination of this Purchase Agreement.

9. Limitation on Liability. Without limiting the exceptions to the cumulative liability limits specified in Section 5.2 of the Master Services Agreement, you and we agree that our liability arising out of this Purchase Agreement shall not exceed the purchase price of the Equipment. The foregoing limitation shall not apply to any losses for which we are obligated to indemnify you under this Purchase Agreement. In no event shall we be liable for any indirect, incidental, special or consequential damages. For the avoidance of doubt, all damages (including but not limited to consequential damages) paid to a third party by an indemnified party shall be deemed direct damages of such indemnified party and shall not be limited by this section.

10. Indemnification. In addition to and without limiting any indemnities agreed to by the parties in the MSA or Bankcard Addendum, each party ("Indemnifying Party") shall indemnify and hold harmless the other party ("Indemnified Party") from and against any and all losses, liabilities, damages and expenses (including reasonable attorney's fees) resulting from any breach by the other Indemnifying Party of any of its representations, warranties, or obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from the Indemnified Party's gross negligence or willful misconduct.

11. Representations and Warranties.

(a) Except as expressly provided otherwise herein, all warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, or fitness for a particular purpose.,

(b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

(c) FDMS Representations and Warranties. In addition to and without limiting any representations or warranties contained in the MSA or Bankcard Addendum, FDMS hereby represents and warrants as follows:

(i) it is the owner of, and has good and valid title to, the Equipment, free and clear of all encumbrances whatsoever;

(ii) it is authorized to enter into this Purchase Agreement and to sell the Equipment,

(iii) the Purchase of the Equipment by you will not conflict with or result in a breach of any agreement to which we are a party,

(iv) the Equipment, its manufacture, performance, and production, are in compliance with all applicable laws, rules, and regulations;

12. Default: Remedies.

(a) If any debit of your Settlement Account initiated by us for an amount due to us under this Purchase Agreement is rejected when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Purchase Agreement, any such event shall be a default hereunder provided that you shall have twenty (20) days after notice from us to cure such default, which period shall be extended for an additional twenty (20) days if you demonstrate to our reasonable satisfaction that you are diligently attempting to cure such default. Without limiting the foregoing, any default by you under the MSA or Bankcard Addendum with us will be treated as a default under this Purchase Agreement.

(b) Upon any such termination for default for non-payment, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment but in a commercially reasonable manner and without disturbance to or interruption of the normal business operations of the Restaurant. In any case, you shall also be responsible for our reasonable costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Purchase Agreement by charging your Settlement Account in accordance with Section 12.3 of the Bankcard Addendum, or any other funds of yours that come into our possession or control in accordance with Section 22 (Reserve Account; Security Interest) of the Bankcard Addendum, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so in accordance with Section 22.4 of the Bankcard Addendum.

(c) In the event we fail to deliver the Equipment as required under this Purchase Agreement, after receipt of proper

payment therefore, Purchaser shall be entitled to a full and complete refund of the amounts paid to us with respect to such Equipment.

13. Governing Law; Venue; Miscellaneous. This Purchase Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Purchase Agreement shall be in the appropriate state of federal court located in Suffolk County, New York. If any part of this Purchase Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

14. Order of Precedence, Entire Agreement. No provisions of this Purchase Agreement shall amend or limit any provision of the Master Services Agreement ("Agreement" or "MSA") between the parties or any Addenda (including Schedules) thereto except that in the event of an express conflict between a provision of this Purchase Agreement and a provision of the MSA or Bankcard Addendum (including any Schedules thereto), the provision of this Purchase Agreement shall govern. In the event of any other conflict or inconsistency between this Purchase Agreement or any other agreement between the parties, the provision of the MSA or Bankcard Addendum (including any Schedule thereto) shall govern. This Purchase Agreement constitutes the entire Agreement between the parties with respect to the sale of the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties.

15. Counterparts. This Purchase Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Purchase Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Purchase Agreement.

The parties hereto have caused this Equipment Lease Agreement to be executed by their duly authorized officers.

("CUSTOMER")

FIRST DATA MERCHANT SERVICES CORPORATION
("FDMS")

By: _____

By: _____

Name: _____

Name: _____

(Please Print or Type)

(Please Print or Type)

Title: _____

Title: _____

Date: _____

Date: _____