

Terms and Conditions

1. Lease; Services.

1.1. Lease of Systems. Subject to the terms and conditions of this Agreement, Restaurant Technologies hereby leases the Systems to Customer solely for use by Customer as installed by Restaurant Technologies at the applicable Site(s) during the applicable Lease Term (defined below) solely for the following purposes: (a) for the Oil System(s), to deliver and handle Fresh Oil delivered by Restaurant Technologies and Waste Oil until collected by Restaurant Technologies and to monitor the Oil System(s), and (b) for the FFM System(s), to monitor the portions of the Oil System and other equipment to which the FFM System is attached. Customer has no right, title, or interest in the Systems except the limited rights provided in this Agreement. Customer authorizes Restaurant Technologies to file a copy of this Agreement as a financing statement and authorizes Restaurant Technologies to file UCC financing statements evidencing the interest of Restaurant Technologies in the Systems. To the extent the Systems contain software, the lease of the Systems includes a non-exclusive, non-transferable license, without right of sublicense, solely to use the software for Customer's use of the applicable System only as set forth herein during the Lease Term. The Systems shall remain the property of Restaurant Technologies at all times, and the Systems shall remain personal property regardless of whether they becomes affixed or attached to real property or any improvement.

1.2. Services. Restaurant Technologies shall use commercially reasonable efforts to perform or provide the following services during the applicable Lease Term:

(a) Installation: delivery of the Systems to each Site in good working order, and install the Systems at the Site(s) on mutually agreeable dates. Any Site Location remodels where the Systems need to be de- and reinstalled and/or any fryer change or update shall be subject to additional fees.

(b) Oil Delivery and Collection: delivery of Fresh Oil to, and removal of all Waste Oil from, the Oil System(s);

(c) Maintenance: subject to Customer's obligations in this Agreement (i) required preventive maintenance and upgrades to the Systems; (ii) repair of the Systems; and (iii) necessary replacement parts required by normal wear and tear; provided, however, that Customer is solely responsible for, at its sole cost, any damage or injury caused as a result of acts and omissions of any Customer employee, contractor, agent or invitee at the Site, any loss or damage resulting from theft or acts of God, and any loss or damage resulting from a fire;

(d) Training: standard training to Customer's employees with respect to the operation of the Systems, when available;

(e) Call Center Services: provision of a 24x7 call center to which service calls for installation and maintenance can be made by Customer to Restaurant Technologies; and

(f) TOM Services: provision of the TOM Services. The "**TOM Services**" are the Web-based monitoring services available via the Website for use with each Oil System, FFM System (if leased) and the TOM Data, as described in Restaurant Technologies' documentation from time to time pursuant to this Agreement, subject to the following:

i. Customer acknowledges that the scope of use of the TOM Services varies depending on the Systems leased. Subject to the terms and conditions of this Agreement, during each Lease Term for the applicable System, Restaurant Technologies grants to Customer a non-exclusive, non-transferable license, without right of sublicense, to remotely access, via the Website, the TOM Services for use by Customer solely for viewing, downloading and reproducing their TOM Data for internal business purposes and use of monitoring the Oil System and other equipment to which each FFM System is

attached, if applicable. "**TOM Data**" means the electronic data collected by the applicable System and submitted automatically to the TOM Services and all electronic output generated automatically by the TOM Services based on such data. TOM Data excludes any of Restaurant Technologies' content or analysis available on or via the Website, use of which is governed by the Terms of Service.

ii. As between the parties, Customer owns the TOM Data; provided, however, that: (A) Customer does not own any analysis of the TOM Data made by or for Restaurant Technologies, whether or not made available to Customer via the TOM Services; (B) Customer grants, now and in the future, to Restaurant Technologies a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable and sub-licensable license to upload, download, synchronize, reproduce, distribute, display, modify and create derivative works of, use and otherwise exploit the TOM Data for the purpose of providing the TOM Services hereunder, and, during and after the Lease Term, for any purposes if the identity of Customer is not ascertainable from the TOM Data, whether used in an aggregated form with other data or on its own; and (C) Restaurant Technologies shall have no obligation to deliver any TOM Data to Customer whether during or after the Lease Term, except for the access described above.

iii. Customer's system administrator will be provided with a password and URL for access to and use of the TOM Services by the number of users specified in the Additional Locations Addendum(s) for the purposes set forth herein. If no number is specified, there is no limit on the number of users. All users must be employees of Customer. Customer shall promptly notify Restaurant Technologies of any unauthorized access to or use of the TOM Services that becomes known to Customer. Customer shall be responsible for managing the list of authorized users and their corresponding level of access, contacting the Restaurant Technologies call center to modify access to the TOM Services, use of the TOM Services by its users, and its users' compliance with this Agreement.

1.3. Insurance. Restaurant Technologies shall, at its own expense, secure and maintain throughout the term of this Agreement, the insurance coverages specified herein. Upon request by Customer, Restaurant Technologies shall provide Customer with certificates evidencing such insurance. Required coverages are as follows:

(a) Workers' Compensation Insurance in compliance with the statutory requirements of all applicable state and federal laws.

(b) Commercial General Liability Insurance with a minimum combined single limit of liability of One Million Dollars (\$\$1,000,000) per occurrence and Two Million Dollars (\$\$2,000,000) aggregate for bodily injury and/or death and/or property damage and/or personal injury.

(c) Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles and equipment used by Restaurant Technologies to travel to Customer premises with a minimum combined single limit of liability of One Million Dollars (\$\$1,000,000) for injury and/or death and/or property damage.

2. Customer's Obligations.

2.1. Requirements Contract. Customer shall purchase from Restaurant Technologies all of its requirements for cooking oil to be used in the Oil Systems at the Site(s).

2.2. Assignment of Waste Oil. Customer hereby assigns to Restaurant Technologies title to, and all rights to, all used oil generated at the Site(s) from use of the Fresh Oil as soon as it is back in the Oil System(s) ("**Waste Oil**"). Customer further grants Restaurant Technologies the authority to sign delivery manifests on



behalf of the Customer, where relevant. Risk of loss of the Waste Oil remains with Customer until collection of the Waste Oil by Restaurant Technologies.

2.3. Access and Non-Standard Installations. Customer shall provide Restaurant Technologies with reasonable access to the Sites: (a) before the scheduled installation, for Site surveys and (b) after the scheduled installation, for maintenance and repairs of the Systems and for delivery of the Fresh Oil and collection of Waste Oil. Customer, at its expense, may be required to make certain modifications, electrical or otherwise, to accommodate Restaurant Technologies' installation of the Systems. Restaurant Technologies may, at its discretion, engage a qualified third party to perform such modifications necessary to accommodate installation of the Systems where such work falls outside Restaurant Technologies' standard installation scope. Restaurant Technologies will coordinate and manage the scheduling of such services. Restaurant Technologies will bear the costs of services up to a not-to-exceed ("NTE") amount of Two Thousand Dollars (\$2,000) per Site Location. To the extent the required work exceeds the NTE amount, Restaurant Technologies may, at its discretion, either (a) bear the additional costs or (b) provide Customer with a quote for approval prior to proceeding. Customer shall be responsible only for those costs exceeding the NTE amount that are approved by Customer. For standard installations utilizing line runs that are one hundred and twenty (120) feet or less, Restaurant Technologies will use standard equipment at no charge. For line runs that are one hundred and twenty-one (121) feet or more, Customer will pay the additional fees for the longer line runs and associated conduits. Customer will also be responsible for payment of any additional fees that result from an installation requiring a deviation from Restaurant Technologies' standard installation and equipment.

2.4. Use and Operation of Systems.

(a) Use and Limits. Customer shall only use the Systems as permitted herein. Without limiting the foregoing, Customer shall not, without Restaurant Technologies' prior written consent, (i) alter, move, disassemble, or repair the Systems or remove any labels or notices on them, (ii) sell, pledge, mortgage, or otherwise encumber the Systems or any part thereof, or (iii) attach or affix the Systems to a Site(s) or any other goods therein in such a manner as to become part of such Site(s) or such other goods.

(b) Operation. Customer shall operate each System according to operating instructions provided by Restaurant Technologies from time to time, and in accordance with all applicable laws, ordinances, rules and regulations. Customer shall keep each System clean and in sound operating condition for daily use. Customer shall notify Restaurant Technologies immediately of any need for repair or replacement of parts of the Systems. Customer shall not undertake its own repair or replacement of parts of the Systems. A separate service fee may be charged for calls because of unapproved repair, vandalism, accident, Customer misuse or improper operation of the Systems that causes a System failure, or oil that causes an Oil System failure or any other liability. Customer shall bear the costs of operating the Systems including providing any electrical power runs and/or telecommunication lines required for the Systems to function or for access to and use of the TOM Services (e.g. cell phones and email).

2.5. Title, Risk of Loss, Insurance. Risk of loss of the Systems (but not title) shall pass to Customer upon installation. Title to, and risk of loss of, the Fresh Oil passes to Customer on delivery. Customer shall, at its own expense, maintain policies of insurance covering the replacement value of the Systems for all normal business and property risks. Customer shall also insure the Systems as to any public liability under Customer's policy. Customer will name Restaurant Technologies as an additional insured loss payee and provide the certificate of said insurance that is reasonably acceptable to Restaurant Technologies on or before the Effective Date and from time to time as

Restaurant Technologies may request.

2.6. No Conflict. Customer represents, warrants and covenants that its execution, delivery and performance of this Agreement and the installation, operation and use of the Systems, Fresh Oil, Waste Oil, TOM Services and services will not: (a) result in a breach of, conflict with, or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Customer is a party or by which it or any of its properties may be bound, or result in the creation of any lien thereunder; or (b) require the consent or waiver by any landlord or other third party, require the waiver of any lien, or cause the Systems, Fresh Oil or Waste Oil to be included in any collateral base.

3. Pricing and Payment Terms; Adjustments.

3.1. Non-Refundable Fees. The price and payment terms for the leases, purchases and services set forth herein are set forth in the coversheet or an Addendum. Customer shall make payment for the leases and other fees due hereunder as set forth herein. Fees paid are non-refundable and, except in the event of termination for cause by Customer, payment obligations are non-cancelable.

3.2. Increases. Restaurant Technologies may increase prices as set forth in the coversheet or an Addendum. In addition, for each renewal Lease Term for each System, Restaurant Technologies may increase the fees.

3.3. Offset Rights. Restaurant Technologies may hold any unapplied cash and credit from Customer and offset such amounts against future payments due, provided that any excess amount remaining after non-renewal or termination of a Lease Term or expiration or termination of this Agreement shall be returned by Restaurant Technologies to Customer after offsetting any other amounts due hereunder.

3.4. Additional Remedies. If at any time Customer is delinquent in the payment of any invoice, Restaurant Technologies may, at its discretion, and without prejudice to its other rights, (a) demand adjustment in any payment terms and seek additional assurance from Customer as to payment, including without limitation requiring Customer to convert the payment terms to the terms of Restaurant Technologies EFT (ACH) Payment program, (b) cease all efforts on services until such payment is received (unless Customer makes such payment within five (5) days of written notice from Restaurant Technologies of such failure) including revoking Customer access to the TOM Services, and refer the account to a collection agency or attorney to pursue collection of the delinquent amount (**Customer hereby consents to and waives notice and opportunity to cure** and Customer shall be responsible for any and all collection costs, including attorney's fees, collection agency fees, statutory fees and court costs incurred by Restaurant Technologies as a result of Customer's failure to pay any amounts due under this Agreement), and/or (c) terminate this Agreement pursuant to Section 4.3. If at any time Restaurant Technologies reasonably determines that Customer's financial condition has undergone a material adverse change, Restaurant Technologies may, in its discretion, and without prejudice to its other rights, demand adjustment in any payment terms and seek additional assurance from Customer as to payment.

4. Term and Termination.

4.1. Lease Term. The "Lease Term" for each of the Oil Systems and FFM Systems (as applicable) leased is initially the period specified on the coversheet or Addendum commencing on the applicable installation date for the System, and commencing on the effective date and will be automatically renewed for additional one year periods unless either party gives the other party written notice of its non-renewal of the Lease Term for such Oil Systems or FFM Systems at least thirty (30) days prior to expiration of the then-current Lease Term or unless terminated earlier as set forth herein. If the Lease Term for Oil Systems at a Site are terminated, the Lease Term for the FFM Systems at such Site must also be terminated.



4.2. Term of this Agreement. This Agreement shall commence on the Effective Date and shall expire on the last to expire Lease Term unless earlier terminated as set forth herein. Addenda may have different start and end dates, as stated therein.

4.3. Early Termination. If either party materially breaches this Agreement and does not cure such breach within thirty (30) days' notice thereof (ten (10) days for failure to pay and without the right to cure for breach of Section 2.1 Sections 2.1 or 7.1), or if bankruptcy or insolvency proceedings are commenced by or against either party, the non-breaching party may, at its discretion, and without prejudice to its other rights (except where stated to be exclusive), terminate this Agreement (including all Lease Terms).

4.4. Effect of Non-Renewal or Termination. On non-renewal of a Lease Term or any expiration or termination of this Agreement, as applicable:

(a) Return of Systems and Oil. Customer shall return the Systems, Fresh Oil and Waste Oil to Restaurant Technologies in good repair, condition, and working order, ordinary wear and tear excepted, by providing Restaurant Technologies with access to the Site(s), upon reasonable notice and demand from Restaurant Technologies, for the purpose of removing the Systems, Fresh Oil and Waste Oil. If, after receiving prior written notice of such removal, Customer denies Restaurant Technologies reasonable access to the Site(s) for such purposes, at Restaurant Technologies' discretion: (i) Restaurant Technologies may take possession of the Systems, Fresh Oil and Waste Oil without demand or notice, wherever the Systems are located, without any court order or other process of law; and/or (ii) Customer shall be responsible for any and all collection and removal costs and attorneys' fees and court costs incurred with respect to the removal of the Systems, Fresh Oil and Waste Oil or enforcement of subsection (i).

(b) Removal Fee. Customer shall pay to Restaurant Technologies a removal fee for removal of the Systems from each installed Site, as liquidated damages, regardless of which party initiates the non-renewal or termination, and without Restaurant Technologies having to present any evidence of the amount or character of actual damages sustained, and not as a penalty. The applicable removal fee is set forth on the coversheet or additional applicable Addendum.

(c) Survival. The following terms in these Terms and Conditions, as well as relevant terms in the coversheets and other applicable parts of this Agreement, shall survive expiration or termination of this Agreement: Sections 1.1 (last sentence), 1.2(f)(ii), 2.2, 2.5 (first sentence), 3, 4.4, 5, 6.3, 6.4, 6.5 and 7.1.2(f)(ii), 2.2, 2.5 (first sentence), 3, 4.4, 5, 6.4, 6.5, 6.6 and 7.

(d) Miscellaneous. Non-renewal of a Lease Term or expiration or termination of this Agreement does not release either party from any liability or obligation that, at the time of termination or expiration/non-renewal, has already accrued to the other party.

(e) Remedies. All rights and remedies of Restaurant Technologies under this Agreement shall be cumulative and not exhaustive.

5. Intellectual Property: Confidential Information.

5.1. Ownership. Customer acknowledges that Restaurant Technologies IP embodies proprietary intellectual property owned or licensed by Restaurant Technologies. This Agreement is not intended to, and shall not, convey any license, by implication, estoppel or otherwise, under any patent, copyright or other intellectual property rights of Restaurant Technologies not expressly granted. **"Restaurant Technologies IP"** means each System and the TOM Services, their software, components, content and methods of operation, data analyses, the metrics and analytics used to collect, analyze and present the TOM Data, all software, methods, procedures, processes and products supporting the services performed hereunder and System(s), and all intellectual property rights therein, and all formulae,

formulations, recipes, flavors, ingredients and other intellectual property and intellectual property rights in the oil.

5.2. Restrictions on Use. Restaurant Technologies reserves all rights in and to the Restaurant Technologies IP not granted herein. Without limiting the generality of the foregoing, except as expressly permitted herein, Customer shall not, and shall not permit any user or other third party to:

(a) incorporate, merge or interface the TOM Services or Systems into any products or services;

(b) upload, download, recreate, display, perform, post, copy, reproduce, replicate, frame, mirror, disclose, publish, modify, create derivative works of, or translate the Restaurant Technologies IP, in whole or in part, or attempt to reverse assemble, reverse compile, reverse engineer, decompile, disassemble, dismantle or access the source code for the Restaurant Technologies IP;

(c) use the Restaurant Technologies IP, in whole or in part, except as permitted herein. Without limiting the foregoing, use in the operation of a service bureau or on an application or software as a service provider basis to support anyone or to store any content other than the TOM Data collected automatically as a result of permitted use of the TOM Services is prohibited;

(d) rent, lease, sublicense, sell, assign, market, transfer, distribute or loan by any means the Restaurant Technologies IP;

(e) allow access to the Restaurant Technologies IP to parties other than users permitted or contemplated hereunder;

(f) design or create any software program or product, content or services, in whole or in part, with features or functions similar to the features or functions of any of the services or Restaurant Technologies IP through use, evaluation, or viewing of the services or Restaurant Technologies IP;

(g) export or re-export, directly or indirectly, the Restaurant Technologies IP into any country prohibited by the applicable laws and regulations in the United States of America; or

(h) take any action that compromises Restaurant Technologies' or its suppliers' rights in the Restaurant Technologies IP.

Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Restaurant Technologies regarding future functionality or features.

5.3. Confidentiality. Each party, as receiving party, agrees that at all times, during the term of this Agreement and thereafter, such party will hold in strictest confidence using no less than reasonable safeguards, and will not use or disclose to any third party, any of the other party's Confidential Information, except as permitted herein. The term "**Confidential Information**" means all non-public information that either party, as disclosing party, designates, either in writing or verbally, as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential.

"**Confidential Information**" does not include information that: (a) was known to the receiving party prior to disclosure without obligation of confidentiality; (b) becomes publicly available through no fault of the receiving party; (c) the receiving party learns from a third party with no duty of confidentiality to the disclosing party; or (d) is independently developed by the receiving party with no use of the Confidential Information of the disclosing party. For clarity, Restaurant Technologies IP and this Agreement are Restaurant Technologies' Confidential Information. The receiving party will not (i) use Confidential Information for any purpose other than for performing, or receiving the benefits, under this Agreement, and (ii) share any Confidential Information with any third parties for any reason except with employees, agents and subcontractors who have a need to know and are subject to confidentiality obligations substantially similar to those contained in this Section. If a receiving party is served with a court order compelling disclosure of any Confidential Information or with notice of proceedings for such an



order, such party shall (A) give the disclosing party reasonable notice prior to such disclosure to allow the disclosing party a reasonable opportunity to seek a protective order or equivalent, and (B) at the disclosing party's discretion, either assist the disclosing party in opposing the order or provide the disclosing party the opportunity to intervene before the receiving party files any response to the order or notice. The receiving party acknowledges that any breach of this Section cannot reasonably or adequately be compensated by damages in an action at law and that a breach or threatened breach of such provision shall cause the disclosing party irreparable injury and damage. The receiving party agrees that disclosing party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of this Section. This Agreement shall supersede and terminate any nondisclosure agreement between the parties with respect to confidential information disclosed after execution of this Agreement.

5.4. Referrals. Restaurant Technologies may refer to Customer as a customer in sales presentations and use Customer's logo and name on Restaurant Technologies' websites and in sales materials for such purpose. Customer further agrees: (a) if requested by Restaurant Technologies, Customer and Restaurant Technologies will mutually agree (with such agreement not to be unnecessarily withheld or delayed) on a press release regarding the transaction that is the subject of this Agreement; and (b) to participate in Restaurant Technologies' reference program as may reasonably be requested by Restaurant Technologies from time to time. Within thirty (30) days of the Effective Date of this Agreement, Customer will provide Restaurant Technologies with complete contact information of Customer's restaurant and franchise owners. Customer will update such information as needed, but not less frequently than quarterly.

6. Warranties; Mutual Indemnification; Limitations on Liability.

6.1. Mutual Warranty. Each party represents and warrants that its execution, delivery and performance of, or use of the benefits under, as applicable, this Agreement will not violate or contravene any provision of the articles or certificate of incorporation, bylaws or other organizational documents of such party.

6.2. Limited Performance Warranty. Restaurant Technologies warrants to Customer that Restaurant Technologies shall perform the installation and maintenance services for the Systems in a workmanlike manner.

6.3. Limited Oil Warranties. Restaurant Technologies hereby warrants that (a) all Fresh Oil supplied hereunder to Customer shall, as of the time and place of delivery, be in accordance with the specifications provided with such Fresh Oil ("Specifications"), and (b) Restaurant Technologies has the right to transfer title to the Oil to Customer on delivery, and that such title shall be free and clear of any liens and encumbrances whatsoever. Any claim by Customer (i) that any Fresh Oil does not conform to the Specifications or (ii) made otherwise with respect to the Fresh Oil, whether based on breach of warranty, contract, negligence, strict liability or other tort shall be made promptly by Customer upon Customer's notice or knowledge of any such claim and shall be deemed to be waived unless received, in writing, by Restaurant Technologies within sixty (60) days after Customer reasonably determines that the Fresh Oil was nonconforming.

6.4. DISCLAIMER. THE OIL, WEBSITE AND TOM SERVICES ARE PROVIDED BY RESTAURANT TECHNOLOGIES ON AN AS IS BASIS. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 6.1 AND 6.2, 6.1, 6.2, and 6.3 RESTAURANT TECHNOLOGIES DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, DIRECT AND INDIRECT, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES (a)

OF SUITABILITY, WORKMANSHIP, ADEQUACY, DURABILITY, DESIGN, OPERATION OR CONDITION OF THE SYSTEMS OR ANY PART THEREOF, UPTIME, ACCURACY OR USE FOR THE WEBSITE, TOM SERVICES AND TOM DATA, (b) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND (c) ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. RESTAURANT TECHNOLOGIES DOES NOT WARRANT THAT THE SYSTEMS AND SERVICES WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OR USE OF THE SYSTEM AND SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER IS SOLELY RESPONSIBLE FOR ADDRESSING CHANGES TO BE MADE OR OTHER IMPACTS AS A RESULT OF REVIEW OF THE TOM DATA.

6.5. Mutual Indemnification.

(a) Subject to Customer's obligations in Section 6.5(b) and the applicable limitations in Section 6.6, Restaurant Technologies hereby agrees to defend Customer against any and all third party claims against Customer, and indemnify Customer against any damages awarded, or agreed to in a settlement by Restaurant Technologies, in such third party claim, alleging: (i) breach of the warranty in Section 6.3(a) (except to the extent caused by Customer or its personnel or invitees), (ii) personal injury or property damage to the extent due to Restaurant Technologies' negligence or willful misconduct when performing the services of delivery or removal of oil hereunder or installing, repairing, maintaining, or de-installing the Systems at the Site (except to the extent caused by Customer or its personnel or invitees and not due to the oil itself); or (iii) that the use of the Systems as permitted infringe the intellectual property right of such third party enforceable in the United States of America; provided, however, that the foregoing shall not apply to the extent the claim is caused by (1) other goods or services not provided by Restaurant Technologies or its agents which have been combined with the Systems, (2) any modification to the Systems not made by Restaurant Technologies or its personnel, (3) use of the Systems contrary to written specifications, (4) third-party components not provided or installed by Restaurant Technologies, or (5) TOM Data.

(b) Customer hereby agrees to indemnify and hold harmless Restaurant Technologies and its affiliates, directors, officers, employees, contractors and agents from and against any and all claims, actions, proceedings, suits, damages, losses, expenses and costs (including reasonable attorneys' fees and expenses) arising out of Customer's negligent use or misuse of the Systems, Fresh Oil, Waste Oil, TOM Services or other services, Customer's willful misconduct, or any breach of Customer's covenants, representations or warranties hereunder.

(c) Each party as indemnified party shall: (i) give the other party prompt written notice of the claim; (ii) give the other party as indemnifying party sole control of the defense and settlement negotiations for the claim (provided that neither party shall admit liability on behalf of the indemnified party without the indemnified party's prior written consent), and (iii) reasonably cooperate with the indemnifying party in the defense of the claim, at the indemnifying party's expense.

6.6. LIMITATIONS ON LIABILITY.

(a) RESTAURANT TECHNOLOGIES' LIABILITY FOR ANY DEFECTS IN ITS PERFORMANCE HEREUNDER INCLUDING BREACH OF THE WARRANTY IN SECTION 6.2 SHALL BE LIMITED TO REPLACEMENT OF THE DEFECTIVE SYSTEMS, OR PARTS THEREIN, OR RE-PERFORMANCE OF THE APPLICABLE DEFICIENT SERVICES.

(b) NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, THIS AGREEMENT



INCLUDES A CAP ON ALL LIABILITY OF RESTAURANT TECHNOLOGIES, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS AND SUPPLIERS (“RESTAURANT TECHNOLOGIES GROUP”) COLLECTIVELY FOR CLAIMS UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING. THE AGGREGATE LIABILITY OF RESTAURANT TECHNOLOGIES GROUP SHALL BE LIMITED AS FOLLOWS:

i. FOR CLAIMS RELATING TO OIL, THE AGGREGATE LIABILITY WILL NOT EXCEED THE GREATER OF ONE HUNDRED THOUSAND DOLLARS (\$\$100,000) OR THE MONEY PAID TO RESTAURANT TECHNOLOGIES FOR THE APPLICABLE OIL DELIVERY; AND

ii. FOR CLAIMS RELATING TO THE SYSTEMS, SERVICES OR ANY OTHER CLAIM, THE AGGREGATE LIABILITY WILL NOT EXCEED THE GREATER OF ONE HUNDRED THOUSAND DOLLARS (\$\$100,000) OR THE MONEY PAID TO RESTAURANT TECHNOLOGIES FOR SYSTEMS AND SERVICES DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE MOST RECENT EVENT GIVING RISE TO THE FIRST CLAIM.

THIS LIMIT OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

(c) IN NO EVENT SHALL ANY OF THE RESTAURANT TECHNOLOGIES GROUP BE LIABLE FOR CLAIMS UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING:

i. FOR ANY LOST PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOSS OR CORRUPTION OF DATA OR THE LIKE, OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY THIRD PARTY; OR

ii. FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OR LOSSES.

(d) THE FOREGOING APPLIES WHETHER UNDER CONTRACT, TORT, WARRANTY, INDEMNIFICATION, STRICT LIABILITY OR ANY OTHER THEORY, EVEN IF RESTAURANT TECHNOLOGIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION ON LIABILITY PROVISION CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OR ANY OF THE EXCLUSIVE REMEDIES PROVIDED FOR UNDER THIS AGREEMENT.

7. General.

7.1. Transfer to a Third Party. Customer shall not assign or otherwise transfer the Systems, Fresh Oil, Waste Oil or this Agreement, in whole or in part, to a third party (including to affiliates or as a result of a merger, reorganization, change in control or sale of all or part of Customer’s business) without the prior written authorization of Restaurant Technologies. Customer shall not assign or otherwise transfer the Systems, Fresh Oil, Waste Oil, or this Agreement, in whole or in part, to a third party (including to affiliates) without the prior written authorization of Restaurant Technologies. A change in control or merger of Customer shall be deemed an assignment for purposes of this Section. Notwithstanding any assignment, Customer shall remain liable for all of the obligations hereunder, to the extent not fulfilled by the assignee. In the event of any purported transfer without such authorization, Restaurant Technologies will have all of the remedies set forth herein for early termination (without any right to cure), and Customer shall indemnify and hold Restaurant Technologies harmless from any and all costs, expenses and damages, including reasonable attorneys’ fees and expenses, incurred by Restaurant Technologies in relation thereto,

including any claims from the third party to which the purported transfer was to be made. Restaurant Technologies will authorize an assignment by Customer in connection with the transfer of all or substantially all of Customer’s assets or stocks (or membership interests) by reason of acquisition, merger, change in control or consolidation, or if Customer transfers all of its rights in a Site to a third party, if Customer meets all of the following conditions: (a) Customer delivers a copy of this Agreement to the third party prior to such transfer; (b) the third party agrees, in a written statement delivered to Restaurant Technologies, to accept and abide by all the terms and conditions of this Agreement pertaining to the affected Site(s) acquired by such third party; (c) Customer has paid all fees due under this Agreement; and (d) the third party meets Restaurant Technologies’ then-current credit standards. Upon any such assignment, any fees contained in this Agreement relating to the affected Site(s) acquired by the third party shall revert to Restaurant Technologies’ then current list price to the extent they are discounted prior to Customer’s assignment. In connection with any permitted assignment of this Agreement by Customer to a third party, Restaurant Technologies reserves the right to change payment terms set forth herein, including, without limitation, the right to require the third party to make payments according to the terms of the Restaurant Technologies EFT (ACH) Payment program.

7.2. Dispute Resolution; Governing Law. This Agreement is governed by the laws of the State of Minnesota without reference to its conflicts of law provisions. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of or relating to this Agreement must be brought solely and exclusively in the United States federal courts located in Minnesota and/or Minnesota state courts, and each party irrevocably submits to the sole and exclusive personal and subject matter jurisdiction and venue of such courts with respect to any such dispute, and hereby waives all objections to such jurisdiction and venue for such purposes. Notwithstanding the foregoing, Restaurant Technologies may seek injunctive and other equitable relief in any court of appropriate jurisdiction with respect to any actual or alleged breach of Restaurant Technologies’ intellectual property or proprietary rights. **THE PARTIES HERETO WAIVE ALL RIGHTS TO A JURY TRIAL FOR ANY DISPUTES ARISING UNDER THIS AGREEMENT, INCLUDING DISPUTES AS TO WHETHER ATTORNEY’S FEES OR OTHER DAMAGES ARE DUE HEREUNDER.** While any dispute is pending, Customer shall continue to make payments hereunder or, at Restaurant Technologies’ option, shall provide Restaurant Technologies with access to the Site(s) for the purpose of removing the Systems, Fresh Oil and Waste Oil.

7.3. Miscellaneous. This Agreement may be modified only in writing, signed by an authorized representative of each party. If any provision of this Agreement is determined to be unenforceable, it shall be stricken from the Agreement, but such unenforceability shall not invalidate any other provisions of this Agreement. No waiver of a breach of any term contained in this Agreement shall be deemed to be or construed as a continuing waiver of such breach or waiver of a future breach, nor shall it be effective unless in a signed writing. Unless otherwise specified herein, all notices hereunder shall be in writing and shall be delivered personally or by fax or mailed by registered or certified mail, first class, postage prepaid, to the parties hereto at their addresses specified herein, subject to the right of either party to change its address by written notice. Any communication required or permitted hereunder shall be deemed delivered upon personal delivery, and faxing (with fax conformation sheet), or 48 hours after deposit in any official post box. The prevailing party in a legal action shall be entitled to recover its reasonable attorneys’ fees, costs and expenses incurred in such action. Restaurant Technologies shall not be liable for any loss, interruptions or delays in performance arising from an event of force majeure, including, but not limited to,



delay, interruption or failure of telecommunication or internet transmission links and hardware or software failures, software viruses, power failure, acts of God and any other events outside Restaurant Technologies' reasonable control.

