

- 13.4. Termination for Breach.** Either party may terminate this Agreement at any time by giving thirty (30) days written notice ("Breach Notice") of termination to the other party in the event that the other party: (i) breaches the terms or conditions of this Agreement including, but not limited to, payment of the Monthly Service Fee, and fails to remedy such breach within thirty (30) days of the date of the Breach Notice; or (ii) becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, or if a receiver is appointed over such party's assets. In the event Acumera terminates this Agreement due to Breach, Participating Location agrees to pay an early termination charge according to Paragraph 13.3.
- 13.5. Termination for Change in Service.** In the event Acumera provides Participating Location with written notice pursuant to section 23 herein that it is no longer able to provide a material aspect of its Services, including but not limited to the Data Breach Financial Protection Program located at [www.Acumera.com/DBFP](http://www.Acumera.com/DBFP), and Acumera is unable to provide suitable alternative Services within thirty (30) days of notice of same, Participating Location shall within thirty (30) days of the date of such notice have the right to terminate this Agreement without penalty or early termination charge. In the event of such termination, Participating Location shall provide notice of termination to Acumera pursuant to section 23 herein.
- 14. Self-Service Portal Access/Communication/Participating Location Responsibilities/Data Access.**
- 14.1.** In the context of performing the services purchased through each Work Order, Acumera may grant self-service portal access ("Access") to and communicate with only those employees or agents of Participating Location ("Contacts") who are specified in the Account Permissions section of each Work Order or who have been added as Contacts by the person designated in each Work Order as Participating Location's Administrative Contact. The Access of Contacts will be limited by the permissions granted to them by the Administrative Contact.
- 14.2.** By Access, Participating Location is responsible for the review, download, and distribution of scans and logs.
- 14.3.** With respect to Access, Participating Location agrees to be bound by the Terms of Use and Privacy located at <http://www.Acumera.com>.
- 14.4.** Participating Location authorizes Acumera to share scan results, logs and other data regarding POS, PCI and compliance with Dairy Queen. No personal cardholder data is intentionally seen by Acumera, and no personal data from either Participating Locations or employees will be shared within this process without prior authorization.
- 15. Privacy and Confidentiality.** In the course of providing the deliverables, Acumera may be given access to, or be provided with, confidential information about Participating Location's business and/or Participating Location's website ("Business Information"), and personal information about Participating Location, Participating Location's employees, Participating Location's account and/or card holders and/or Participating Location's website ("Personal Information"). Participating Location authorizes such access and disclosure of Participating Location's Business Information to Acumera. Acumera will use reasonable efforts to keep Participating Location's Business Information confidential and will not disclose Participating Location's Business Information to any third party. To the extent that access to Personal Information by Acumera occurs, Participating Location authorizes such access and authorizes Acumera to use such Personal Information for the sole purpose of providing the services contemplated by this Agreement. Acumera will not use any such Personal Information for any other purposes than those specifically related to providing the services contemplated by this Agreement. As a Service Provider as defined under PCI-DSS regulations, Acumera acknowledges it is responsible for the security of cardholder data that it possesses, stores, processes, or transmits on behalf of the Participating Location, or to the extent it impacts the security of the Participating Location's cardholder data environment. Participating Location acknowledges that it is responsible for the security of cardholder data that is in its possessions or that it stores, processes, or transmits while it is in Participating Location's possession and care. Participating Location further acknowledges that it is responsible for complying with any applicable regulations.
- 16. Intellectual Property.** The intellectual property associated with any Equipment installed at Participating Location's Location(s) is and remains Acumera's property. By its possession and use, Participating Location acquires no rights or interests of any kind in the intellectual property and hereby expressly covenants that it will not disclose anything about Acumera's intellectual property or allow any physical access to Acumera's intellectual property. If Participating Location is subject to a claim or demand that the Services infringe a third party's property rights, Acumera will: (1) procure for Participating Location the right to continue to use the Services, replace the Services, or modify the Services to avoid infringement; and (2) indemnify Participating Location against damages and costs (including reasonable attorney's fees and legal expenses) incurred in connection with the alleged infringement.

- 17. Responsibility for PCI-DSS Compliance and Network Security.** Acumera supplies and manages the firewall and the configuration of that firewall required to provision its services. Acumera establishes firewall configuration and policy based on PCI-DSS recommendations, generally accepted industry best practices and in consultation with Dairy Queen. Participating Location acknowledges that:
- 17.1.** Once Dairy Queen and Acumera have established security configurations and policies for the Dairy Queen system, Acumera will not honor Participating Location requests to configure Equipment in ways that are contrary to those established configurations and policies unless and until Acumera receives a Configuration Exception from Dairy Queen.
  - 17.2.** "Configuration Exception" shall mean a written exception to a configuration policy from Dairy Queen, describing the Participating Location and the requested exception in sufficient detail to allow Acumera to fulfill the request.
  - 17.3.** Dairy Queen has agreed to respond to the request for a Configuration Exception within 2 business days.
  - 17.4.** Participating Locations may request information on Dairy Queen's established security configurations and policies from Dairy Queen.
  - 17.5.** Acumera may honor such approved Participating Location requests to configure the firewall and/or network in ways that may be contrary to Acumera's or PCI-DSS recommendations or may not adhere to generally accepted data security best practices and acknowledges that Acumera has no liability for any issues that may arise due to the fulfillment of these requests.
  - 17.6.** In accordance with PCI-DSS standards, Acumera recommends segmentation of the card data environment (CDE) to isolate it away from all other segments containing non-CDE network traffic.
  - 17.7.** Acumera will not entertain requests from Participating Locations to allow non-CDE network traffic within the CDE, unless and until Participating Location receives a Configuration Exception from Dairy Queen and provides it to Acumera.
  - 17.8.** Acumera does not recommend opening firewall ports to allow traffic or access for non-business related needs, including, by example, the use of insecure remote access tools, and Acumera will not carry out any request by a Participating Location to do so, unless and until Participating Location receives a Configuration Exception from Dairy Queen and provides it to Acumera.
  - 17.9.** Acumera provides both internal and external vulnerability scanning services administered by the third-party ASV for those Participating Locations subscribing to those services. Acumera provides limited advisory services to assist with the completion of PCI-DSS. Notwithstanding the aforementioned, Acumera does not warrant or assume any legal liability or responsibility concerning Participating Location's compliance with the PCI Data Security Standard. Acumera, is not responsible for the completion of Participating Location's Self-Assessment Questionnaire (SAQ), the filing or refiling of failed external ASV scan exceptions, the failure of scans due to Participating Location premise IP address changes, or any other PCI-DSS requirement that requires Participating Location's action or attestation.

Further, Participating Location acknowledges and agrees that Participating Location's use of Acumera's services does not guarantee PCI compliance or that the implementation of those services alone will make Participating Location's systems secure from unauthorized access. Participating Location is responsible for PCI compliance and notification of any suspected breach of its systems and Acumera is not responsible for any fines, penalties or registration fee imposed by any payment card association or its acquiring bank for Participating Location's failure to be PCI compliant.

**18. Limitation on Liability.**

- 18.1. Limitation on Direct Damages.** EACH PARTY'S TOTAL AGREEGATE LIABILITY (INCLUDING THE LIABILITY OF ANY AFFILITATE, SUPPLIER, EMPLOYEE OR AGENT), AND THE SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY THE OTHER PARTY IN AN AMOUNT NOT TO EXCEED THE FEES PAID BY PARTICIPATING LOCATION TO ACUMERA IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM HEREUNDER. UNDER NO CIRCUMSTANCES IS ACUMERA LIABLE FOR SERVICE FAILURES THAT ARE BEYOND THE REASONABLE CONTROL OF ACUMERA.

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- 18.2. No Indirect Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS ASSOCIATED WITH INTEGRATION, INTERRUPTION OF BUSINESS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 18.3.** THE LIMITATIONS IN THIS SECTION 18 DO NOT APPLY TO EITHER PARTY'S LIABILITY FOR ITS (OR ITS RESPECTIVE AGENT'S AND/OR SUBCONTRACTOR'S) GROSS NEGLIGENCE OR WILFULL MISCONDUCT, WILFUL FAILURE TO COMPLY WITH LAW, FRAUD.
- 18.4. Managed Firewall/SD-WAN Exclusions** In no event shall Acumera have any liability to Participating Location for any data breach that occurs:
- h. during any period in which the Acumera-provided or Acumera-approved firewall or SD-WAN device has yet to be initially connected or is disconnected or has been circumvented;
  - i. due to the failure to implement a security measure as recommended by PCI-DSS Standards;
  - j. in any Participating Location environment where POS system data traffic is not configured to be on an isolated network segment through the Acumera firewall;
  - k. when Participating Location requests that the isolated network segment containing POS data traffic is granted access to any system or service not directly related to processing POS transactions. However, this exclusion will not apply unless Participating Location received a Configuration Exception from Dairy Queen;
  - l. when Dairy Queen mandates implementation of a configuration, policy or procedure that Acumera recommends against (if Dairy Queen has been notified of the recommendation);
  - m. through any firewall in use, whether provided by Acumera or otherwise acquired by Participating Location, that has not passed its most recent Approved Scanning Vendor's scan (unless the issue has already been remediated);
  - n. in a manner that industry-standard firewall technology employed at time of breach is not able to prevent.
- 18.5.** In no event shall Acumera have any liability to Participating Location or any third party for Participating Location's VoIP system performance, including, but not limited to phone registration failures, call quality, dropped calls or other issues regardless of whether the VoIP traffic is configured to pass through the Acumera firewall. Participating Location acknowledges that Acumera does not provide and does not manage Participating Location's Internet circuit and is not responsible for the performance of said circuit and assumes no liability for issues with Internet speed or performance related to the Internet circuit. Furthermore, Participating Location's acknowledges that if their Internet connectivity is not a terrestrial (land-based) high-speed always-on cable, broadband, fiber, or dedicated circuit (i.e. T1 or similar), Acumera services may not perform optimally and that under such circumstances Acumera shall have no liability to Participating Location for issues caused by any inadequate or faulty Internet circuit.
- 18.6. ASV Scan Exclusion.** If applicable to the Services contracted pursuant to this Participation Agreement or any contract document(s), Acumera may agree to launch certain ASV scans and/or file or re-file external ASV scanning exceptions on behalf of the Participating Location following a specific request from Participating Location. In no event shall Acumera have any liability to Participating Location or any third-party related to launching said scan(s) or for filing or re-filing external ASV scanning exceptions on behalf of Participating Location. Participating Location is solely responsible for the validity of the information provided to Acumera in support of the filed exception(s). Participating Location further agrees to defend and indemnify Acumera in the event said information is inaccurate or changes without proper notification to Acumera.
- 18.7. VoIP Exclusion.** If applicable to the Services contracted pursuant to this Participation Agreement or any contract document(s), in no event shall Acumera have any liability to Participating Location or any third-party for Participating Location's VoIP system performance, including, but not limited to phone registration failures, call quality, dropped calls or other issues regardless of whether the VoIP traffic is configured to pass through the Acumera Equipment. Participating Location acknowledges that Acumera does not

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provide and does not manage Participating Location's Internet circuit and is not responsible for the performance of said circuit and assumes no liability for issues with Internet speed or performance related to the Internet circuit. Furthermore, Participating Location acknowledges that if their Internet connectivity is not a terrestrial (land-based) high-speed always-on cable, broadband, fiber, or dedicated circuit (i.e. T1 or similar), Acumera services may not perform optimally and that under such circumstances Acumera shall have no liability to Participating Location for issues caused by any inadequate or faulty Internet circuit. Customer acknowledges that if cellular data services are utilized by Customer, either for backup or primary connectivity, by a third-party, not covered under in this Agreement, Acumera shall not be responsible for any charges, including overage charges, incurred by Participating Location associated with the use of those services, including but not limited to circumstances where the data flows through the Equipment and/or the Equipment is managed or co-managed by Acumera to accommodate failover/failback or restrict the flow of said data.

- 18.8. Cellular Usage and Over Charge Fees.** Participating Location understands that there is a probability that an over usage will result when any traffic traverses a cellular backup circuit. Participating Location understands that it is solely responsible for paying any and all overage fees and associated taxes and fees that result from over usage associated with any of their devices, activated or not at the time of invoicing, regardless of the circumstances that caused the over usage to occur.
- 18.9.** The foregoing limitations, exclusions and disclaimers shall apply, regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise. Insofar as applicable law prohibits any limitation herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation permitted to the fullest extent possible under such law. The parties agree that the limitations on liabilities set forth herein are agreed allocations or risk constituting in part the consideration for Acumera's provision of Services to Participating Location, and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy and even if a party has been advised of the possibility of such liabilities.
- 19. Data Breach Financial Protection Program.** The Data Breach Financial Protection Program ("DBFP") is provided through the North American Data Security Risk Purchasing Group ("NADSRPG") and administered by RGS Limited LLC ("RGS"). The DBFP grants membership in the NADSRPG for merchants whose merchant ID numbers ("MIDS") are provided to the NADSRPG on a monthly basis. General information relating to the DBFP may be found at: [www.Acumera.com/DBFP](http://www.Acumera.com/DBFP). Full details of the DBFP are set out at [www.nadsrpg.com](http://www.nadsrpg.com). By entering this Agreement Participating Location confirms he/she has read and agrees to the terms of the Program as set out on the [www.nadsrpg.com](http://www.nadsrpg.com) webpage describing the limitations and requirements relating to coverage and claims (including requirements to be satisfied in order for payments to be made under the DBFP). The DBFP's standard policy provides levels of up to \$100,000 per MID/\$500,000 per Merchant of coverage per breach occurrence subject to the terms and conditions set out on the webpage. The total liability in relation to the DBFP is limited to the Program's stated amount of coverage. Participating Location hereby acknowledges that Acumera is merely facilitating access to the DBFP by providing MID reporting and payment services for Participating Location in connection with provision of the Services hereunder and Acumera shall in no way be held liable or responsible for any loss or damage of Participating Location or any merchant arising in connection with the Program.
- 20. No Benefit to Others.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.
- 21. Assignment.** Neither Participating Location nor Acumera may assign or transfer this Agreement to a third party without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, the Agreement may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of either party.
- 22. Integration; Amendment; Headings; Construction; Counterparts.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement, oral or written. This Agreement supersedes any prior written or oral agreements between the parties. This Agreement may be amended only if the amendment is in writing and is signed by both parties. The headings used in this Agreement are for convenience of reference only and form no part of this Agreement. This Agreement was negotiated by the parties, and, therefore, it shall not be strictly construed against either party as the drafter. This Agreement may be executed in one or more counterparts; if so, all counterparts constitute one agreement.
- 23. Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) upon receipt of overnight mail during business hours or the third business day after mailing using postal service first class mail; (iii) 24 hours after sending by confirmed email; or, for operational issues, to Participating Location at the email address given by Participating Location to Acumera. Notices to Acumera shall be

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addressed to the attention of its VP, Customer Service, with a copy to its General Counsel at the address set forth in the first paragraph of this Agreement. Notices to Participating Location are to be addressed to Participating Location at the address set forth in the first paragraph of this Agreement. A party can change the address for receipt of notice by sending written notice to the other party.

- 24. **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 25. **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, the provision shall be changed by the court or arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement by notice to the other party.
- 26. **Governance; Venue; Dispute Resolution.** This Agreement is governed by the law of Florida, and venue concerning any disputes arising hereunder is either Broward County, Florida or the county where the Participating Location resides.
- 27. **Entire Agreement and Construction.** This Agreement (including any exhibits, amendments, Work Orders, and addenda hereto which are incorporated herein by reference) and any confidentiality agreements entered into between the parties constitute the entire agreement between the parties as to the subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the parties against whom the modification, amendment, or waiver is to be asserted. In the event of any inconsistency between the provisions in this Agreement and any Exhibit, Work Order or incorporated web page, the terms of this Agreement shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions orally made to a Participating Location, or in any other Participating Location order documentation, or other written sales material, shall be incorporated into or form any part of this Agreement.

In witness whereof, intending to be legally bound, the parties hereto have executed this Agreement on the date(s) adjacent to their respective signatures below.

**Acknowledged and Agreed:**

**ACUMERA Inc**

**{PARTICIPATING LOCATION}**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## Statement of Work and Pricing

This Statement of Work and Pricing ("SOW") Exhibit is subject to and made a part of the Computer Network Service Agreement (CNSA) or Master Services Agreement (MSA) between \_\_\_\_\_ ("Customer") and Acumera Rigel LLC ("Acumera"). This SOW together with the CNSA/MSA governs the sale and purchase of the Services described below.

Following is the contractual pricing for services provided to the Customer by Acumera. Items added to the services provided during the initial and any renewal terms of the CNSA/MSA will be subject to the pricing schedule below or any associated Exhibits. By signing this SOW, Customer agrees to the pricing for the services listed below along with the payment options and terms and conditions contained within.

Order Type: New

Service Type: Managed

Location Brand Name: Dairy queen

Item	SKU	Services	QTY	Monthly Service Fee	One-time Setup Fee
1	752/757	BranchSDO CXD 3600 / BranchSDO CXD Orchestrator	1	\$ 50.00	\$ 399.00
2	758	BranchSDO CXD Management Pack	1	\$ 0.00	\$ 0.00
3	759	BranchSDO CXD PCI Compliance Readiness Pack	1	\$ 0.00	\$ 0.00
4	760/809	BranchSDO CXD Cloud NGFW Pack/BranchSDO CXD IVS	1	\$ 0.00	\$ 0.00
5	823	BranchSDO Cellular CXD 1Gb Failover Pack	1	\$ 15.00	\$ 0.00
6	685	BranchSDO Cellular Additional 1Mb data		\$ 0.025	\$ 0.00
7	917/828	External AP with Extended Management Pack****		\$ 12.00	\$ 129.00
8	917/828	External AP with Extended Management Pack****		\$ 10.00	\$ 129.00
Item	SKU	Add-on Services		Monthly Service Fee	One-time Setup Fee
1	918/798	BranchSDO CXD Switch 8-Port PoE/Switch management		Included	Included
2	448	On-Site Installation – Indoor and outdoor AP (Business Hours upto 4 Hours)**		\$ 0.00	\$ 420.00
3	448	On-Site Installation – Outdoor AP **		\$ 0.00	\$ 379.00
<b>**Additional charges may apply for extended hours and revisit fees</b>					
Item	SKU	Installation Options (per location)			One-time Fee
1	834	Remote Installation – Business Hours			Included in Setup Fee
2	835	Remote Installation – Extended Hours – Weekdays (each Hour)			\$149
3	836	Remote Installation – Extended Hours – Weekends (each Hour)			\$179
4	448	On-Site Installation – Business Hours (Upto to 2 Hours)			\$329
5	837	On-Site Installation – Extended Hours - Weekdays (Upto to 2 Hours)			\$399
6	838	On-Site Installation – Extended Hours - Weekends (Upto to 2 Hours)			\$499
7		Expedited Installation Fee			\$200
8		Equipment Shipment (minimum per shipment. Actual charges may be higher depending on weight or priority)			\$25
9		Reconfiguration Fee			\$200
Item	SKU	Additional Options and Fees			One-time Fee
1	842	Remote Installation Additional Hours (each Hour)			\$99
2	843	On-Site Installation Additional Hours – Business Hours (each Hour)			\$129
3	843	On-Site Installation Additional Hours – Extended Hours – Weekdays (each Hour)			\$149
4	843	On-Site Installation Additional Hours – Extended Hours - Weekends (each Hour)			\$179

<b>One-time Installation/Setup Fees</b>	\$ 399.00
<b>Recurring Payment Options (Required. Check Only One. If not checked, recurring payments will be quarterly)</b>	
<input checked="" type="checkbox"/> <b>Quarterly Recurring Payments</b> \$ 195.00	<input type="checkbox"/> <b>Annual Recurring Payments</b> \$ 780.00

- \*\*\*\*You require **Two** access points if you are using PAR tablets for line busting (one inside store and one outside) for optimal connectivity and performance

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All fees are per location and exclude any applicable taxes  
One-time fees payable upon shipment of Equipment or execution of SOW for Software items  
Billing interval for existing services at location will change to billing interval selected above

**Term.** The Services listed above commence on the day each instance of the Service becomes active. The Term for each instance of the Service is based on the deployment date of that particular instance of the Service, and is not necessarily coterminous with other Services. The Term for each service is in accordance with Section 10 of the MSA or CNSA.

**Software.** Any Software provided is subject to the End User License Agreement ("EULA") located at <http://www.acumera.com/eula>. The EULA is subject to change and Customer is responsible for review and compliance with current EULA.

**Intrusion Detection/Prevention System (IPS) and Data Throughput.** As is the case with all IPS systems, enabling IPS could have an impact on the speed of data through the firewall/CXD. Net Acumerasurion shall have no liability to Customer for issues or inconvenience caused by slow data throughput through a Acumera provided firewall or other network device.

**Cellular Backup Service, Cellular Data Usage, Pooling and Under/Over Usage.** Cellular services provided to Customer Acumera are provided expressly as a temporary backup circuit to be used at Customer's location only in circumstances where the primary data circuit becomes inoperable. Customer is expressly prohibited from using Acumera Cellular Backup Service as a replacement for or in place of Customer's primary data circuit at any Location. In the event Customer's primary circuit becomes inoperable, it is the Customer's responsibility to engage their primary data circuit provider to repair inoperable circuits and restore connectivity as quickly as possible. When Cellular Backup Service is purchased, Acumera configures deployed CXDs and Firewalls to automatically failover to the backup cellular circuit in circumstances where the primary circuit is detected to be inoperable and to fail back when the primary circuit is restored. Acumera further reserves the right to configure deployed firewalls to limit the throughput of data traffic through the cellular backup circuit to critical functions such as credit card processing and customer should have no expectation that all location connectivity will be available or operate at typically experienced speeds when the backup cellular circuit is in use. Customer is expressly prohibited from using a Acumera deployed cellular gateway if removed from its configured connection to the firewall. Customer acknowledges that they are responsible for all Over Usage.

Customer expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and that Customer is not a third-party beneficiary of any agreement between customer and the underlying carrier. Customer hereby waives any and all claims or demands therefor.

Individual Locations ("IL") that subscribe to a pooled cellular failover plan, are combined with other related Locations associated with the same individual Legal Entity ("LE") to create a "Data Pool." An LE consists of an individual legal entity contracted with Acumera and their subset of associated Locations within that legal entity that subscribe to a Acumera cellular failover plan. Every billing cycle, each IL first uses its plan's included domestic data usage ("Included Usage"). If an IL does not use all its Included Usage, it creates an underage in the amount of the unused MB of data usage ("Under Usage"). If an IL uses more than its Included Usage, it creates an overage in the amount of the excess MB of data usage ("Over Usage"). The Data Pool's Under Usage amounts for each IL and Over Usage amounts for each IL are then aggregated respectively within the LE and the totals are compared. If the aggregate Under Usage amount exceeds the aggregate Over Usage amount for the LE, then those ILs incurring an Over Usage will not be charged an overage fee. Any excess Under Usage will be forfeited. If the aggregate Over Usage amount exceeds the aggregate Under Usage amount for the LE, then each IL incurring Over Usage will be billed an Overage Fee for their individual Over Usage on a per MB basis at the additional cellular data rate defined above. Any partial MBs are rounded up to the next whole MB. CUSTOMER UNDERSTANDS THAT THERE IS A PROBABILITY THAT AN OVER USAGE WILL RESULT WHEN ANY TRAFFIC TRAVERSES THE CELLULAR BACKUP CIRCUIT. CUSTOMER UNDERSTANDS THAT IT IS SOLELY RESPONSIBLE FOR PAYING ANY AND ALL Overage FEES AND ASSOCIATED TAXES AND FEES THAT RESULT FROM OVER USAGE ASSOCIATED WITH ANY OF THEIR DEVICES, ACTIVATED OR NOT AT THE TIME OF INVOICING, REGARDLESS OF THE CIRCUMSTANCES THAT CAUSED THE OVER USAGE TO OCCUR.

Unlimited data plans are excluded from pooling. In the event location(s) within an ownership group have both limited plans for some locations and unlimited plans for others, pooling calculations will be performed using only the data plans for locations subscribed to limited plans.

Unless otherwise specified, all Acumera devices utilize a Cat1 cellular modem and throughput is capped at 10Mbps regardless if the device is connected to a 4G or 5G network.

**SIEM Disclaimer.** IF SIEM SERVICES ARE APPLICABLE TO THE AGREEMENT, ACUMERA MAY PERFORM REMEDIATION ACTIONS BASED ON RESPONSES TO CERTAIN THREAT THRESHOLDS AND CONFIGURATIONS PRE-DETERMINED BY ACUMERA AND CUSTOMER. CUSTOMER RECOGNIZES AND ACKNOWLEDGES THAT THREATS ARE CONSTANTLY EVOLVING AND EMERGING, AND WHILE ACUMERA WILL TAKE COMMERCIALY REASONABLE ACTIONS TO MODIFY ITS SOFTWARE AS NECESSARY, THIS SERVICE IS NOT A GUARANTEE OR WARRANTY THAT A SYSTEM CANNOT OR WILL NOT BE BREACHED. ACUMERA SERVICES ARE INTENDED TO BE A COMPONENT OF A BROADER NETWORK SECURITY PLATFORM. FURTHER, ACUMERA DOES NOT GUARANTEE OR WARRANTY THAT THERE WILL NOT BE UNINTENDED CONSEQUENCES RELATED TO REMEDIATION ACTIONS, INCLUDING BUT NOT LIMITED TO TERMINATION OF SYSTEMS, APPLICATIONS OR PROCESSES BELIEVED TO BE MALICIOUS ACTIVITY.

ACUMERA SHALL NOT BE LIABLE FOR CLAIMS BASED ON MODIFICATIONS OR ADAPTATIONS PERFORMED BY ANYONE OTHER THAN ACUMERA OR ITS REPRESENTATIVES. IN ADDITION, ACUMERA SHALL NOT BE LIABLE FOR CLAIMS BASED ON THE FAILURE TO INSTALL, PROPERLY INSTALL, OR RE-INSTALL A SENSOR ON A CUSTOMER ENDPOINT, AS INSTALLATION OF SENSORS IS SOLELY CUSTOMER'S RESPONSIBILITY. FURTHER, ACUMERA SHALL NOT BE LIABLE FOR ANY CLAIMS INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR INFRINGEMENT FOR EQUIPMENT NOT MANUFACTURED BY AND/OR OWNED BY ACUMERA.

**High-Risk Use.** CUSTOMER SHALL NOT USE THE SOFTWARE IN ANY APPLICATION OR SITUATION WHERE A SOFTWARE FAILURE COULD LEAD TO DEATH OR SERIOUS BODILY INJURY OF ANY PERSON, OR TO SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACUMERA AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH-RISK ACTIVITIES, AND ACUMERA AND ITS LICENSORS SHALL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE.

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The foregoing limitations, exclusions and disclaimers shall apply, regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise. Insofar as applicable law prohibits any limitation herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation permitted to the fullest extent possible under such law. The parties agree that the limitations on liabilities set forth herein are agreed allocations or risk constituting in part the consideration for Acumera's provision of Services to Customer, and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy and even if a party has been advised of the possibility of such liabilities.

**Circuit Monitoring and Repair Services.** Acumera will monitor designated end-user data circuits for connectivity. The end-user circuit is defined as the copper or fiber loop from the end user site (excluding any CPE). Upon detecting an outage, Acumera will generate an internal trouble ticket, typically within 6 minutes of detecting the outage. Acumera will provide email notification and attempt to contact the site during normal business hours to conduct local trouble shooting. In general, the process includes verifying power, modem/router light status and power cycling device(s). Note, there are some variables depending on last mile circuit type. If it is determined that there are no issues with the local environment and service has not been restored, Acumera will contact the circuit provider to open a service ticket. The Acumera support group will work with the provider through issue resolution. Certain last mile events will require a provider technician dispatch. When this occurs, it is common for the customer to experience a multi-day outage until the provider can isolate and solve the issue. In the event either party's performance is delayed, prevented, obstructed, or inhibited due to any Act of God, fire, casualty, flood, war, strike, lockout, epidemic, destruction or non-elective shut-down of facilities, riot, insurrection, governmental acts or directives, or any cause beyond either party's reasonable control, Acumera's performance will be excused and there will be no grounds for a declaration of default by either party.

**Installation Appointment Cancellation and Turn-Away Fees.** It is the Customer's responsibility to keep scheduled installation appointments. Remote installation appointment cancellations made less than two (2) business days in advance will result in a \$150 rescheduling fee. On-site installation appointment cancellations made less than two (2) business days in advance will result in a \$250 rescheduling fee. On-site installation appointments cancelled on the day scheduled for will result in an additional \$75 turn-away fee (\$325 total).

**Expedited Installations.** Acumera's standard turn-around to schedule and complete an installation, once all of the necessary documents and signatures have been completed and provided to Acumera by Customer, is ten (10) business days. Expedited turn-arounds are offered and can be completed in as little as three (3) business days subject to an Expedited Installation fee indicated above. Expedited installations cannot be scheduled until all of the necessary documents and signatures have been completed and provided to Acumera by Customer.

**Remote Installations.** Acumera will provide installation services in one (1) hour windows for CXD installs and two (2) hour windows for Firewall installs. Should the installation take longer than the scheduled window, Customer agrees to pay for any additional time needed to complete an installation at the additional hours fees noted in the schedule above. Additional hour fees are per additional hour billed in hourly increments. Business hour remote installations occur Monday through Friday between 7AM and 7PM EST local time. Extended hour remote installations that occur on weeknights occur Monday through Friday between 7PM and 12AM local time. Extended hour remote installations that occur on weekends occur Saturday and Sunday between 7AM and 5PM EST. The prices for access point, cellular gateway and switch installations assume the installation of these devices occurs at the time of firewall or CXD installation and exclude any cabling required.

**Customer Requirements for Remote Installations:**

- Installations take place during standard business hours (Monday thru Friday 7am to 7pm). Installations outside of standard business hours will be charged the Extended Hours rate indicated above.
- Customer must choose a location for the CXD or Firewall and any other Acumera provided equipment to be installed. Location(s) must be elevated, clean and such that the equipment is unlikely to be damaged due to spills or other misuse. CXD or Firewall location must be in close proximity to the customer's Internet modem/router and other network gear that must be connected to the CXD or Firewall.
- Acumera requests a 2-week lead time from the submission of all required paperwork (CNSAs, SOWs, Work Order, etc.) to ensure proper scheduling and material procurement.
- A list of all business applications must be provided to Acumera prior to installation to ensure the CXD or Firewall is configured properly to allow those applications to function as before.
- Contact information for vendors providing various connected systems (networked) must be provided to Acumera in the event troubleshooting is necessary to restore connectivity or troubleshoot other issues after the firewall installation.
- Customer must provide Acumera installation technician with Login credentials (username and password) for any existing routers, modems or firewalls currently in use at location.
- If a remote installation is to be performed, Customer must have administrative privileges for and access to a PC on the location's existing network.

**Remote Installation Scope of Work:**

- Customer will place/mount the CXD, firewall or other equipment (if applicable) in a suitable location (see requirements below), plug it in and connect appropriate patch cables for the Internet modem/router, POS device(s) and other connected systems to the CXD or firewall and vice versa and to patch panel (if any) as necessary for proper security configuration/segmentation.
- If an external wireless access point(s) is to be installed, customer will locate a suitable location and mount the access point(s). Customer will install PoE injector and connect it to cable running to access point(s).
- If an external cellular gateway is provided, the cellular gateway should be mounted on the wall near the firewall and must NOT be placed to rest directly on top of the firewall or any other electronic equipment as connectivity to the cellular network will be unreliable.
- Acumera installation technician will work remotely with on-site customer contact to configure the CXD or firewall.
- Acumera will work with an on-site contact to have them test each application specified for connectivity and to ensure they are functioning as they were prior to the installation of Acumera Services. Acumera is not responsible if applications are not functioning as they were prior to installation if they are not identified by the on-site contact for testing.

**Remote Installation Out of Scope Work:**

- Any other work not specifically stated in the Managed Services Installation Options detail above.

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- Additional time spent configuring the CXD or firewall to accommodate non-standard configurations will be billed at the appropriate T&M rates. Non-standard configurations include, but are not limited to:
  - Configuring the CXD or firewall to permit access to the cardholder data environment (CDE) by devices that are not dedicated POS terminals.
  - Configuring the CXD or firewall to permit remote access to internal systems such as DVRs, time clocks and other management devices.
  - Configuring or reconfiguring Customer's connected devices such as DVRs, VoIP phones and systems, digital menu boards, printers and other peripherals, etc.
- The set-up of VPNs requested by customer to occur at time of installation. Note: In packages where a site-to-site customer VPN is included, Acumera will set up the VPN at no additional charge, however it typically cannot be done during a standard installation window due to the additional time required and requests to do so will typically result in an additional hour's fee charged.
- Additional time spent due to items outside of Acumera's technician's control will be billed at the appropriate T&M rate.
- Additional time spent where Acumera is required to work with another of Customer's vendors (eg POS provider, ISP, third-party IT company, etc) to troubleshoot or resolve configuration or connectivity issues with other customer equipment or systems.
- All applicable taxes will be added at time of invoicing.

**Acumera will not be responsible for:**

- Circumstances where the installing technician is late but is still able to complete the installation in the allotted timeframe.
- Circumstances where the technician is unable to complete the installation due to issues caused by others (Owner, Operator, Owner/Operator employees or designees, etc.)
- Circumstances where the installing technician is turned away upon arrival or the installation is unable to be completed due to the site's lack of readiness or failure of customer to provide information needed to successfully complete installation.
- Post-install connectivity or access issues associated with Business applications that Acumera was not made aware of prior to installation. Acumera can only configure for and test applications that we are aware of and cannot troubleshoot or resolve issues where contact with another vendor is needed but not provided.

**On-Site Installation.** Acumera provides on-site installation services through partners based on a defined Scope of Work. Acumera charges for these services on a time and materials basis. Acumera will make all commercially reasonable efforts to complete on-site installation work in the duration specified on any Statements of Work. Notwithstanding, Customer acknowledges it may not be possible for installations to be completed in the time specified or in accordance with Customer expectations due to factors beyond Acumera's control and Customer acknowledges responsibility for paying any and all fees associated with time spent performing on-site installations.

Acumera will provide on-site installation services in one (1) hour windows for CXD installs and two (2) hour windows for Firewall installs. Should the installation take longer than the scheduled window, Customer agrees to pay for any additional time needed to complete an installation at the additional hours fees noted in the schedule above. Additional hour fees are per additional hour billed in hourly increments. Business hour on-site installations occur Monday through Friday between 7AM and 7PM EST. Extended hour on-site installations that occur on weeknights occur Monday through Friday between 7PM and 12AM EST. Extended hour on-site installations that occur on weekends occur Saturday and Sunday between 7AM and 5PM local time EST. The prices for access point, cellular gateway and switch installations assume the installation of these devices occurs at the time of firewall or CXD installation and exclude any cabling required.

**Customer Requirements for On-Site Installations:**

- All requirements listed above for remote installations
- All areas of work to be completed will be accessible to installer with minimal delays.
- On-Site installations take place during standard business hours (Monday thru Friday 7am to 7pm). Installations outside of standard business hours will be charged the Extended Hours On-Site rate indicated above.

**On-Site Installation Scope of Work:**

- On-site technician will work with customer to locate an area in the back office where the Acumera provided equipment (e.g. CXD or firewall) will be placed. Location must be in close proximity to the customer's Internet modem/router and other network gear that must be connected to the CXD or firewall.
- On-site technician will place/mount the CXD or firewall and other equipment, if applicable, in the location determined, plug it in and connect appropriate patch cables for the Internet modem/router, POS device(s) and other connected systems to the CXD or firewall and vice versa and to patch panel (if any) as necessary for proper security configuration/segmentation.
- If an external wireless access point(s) are to be installed, on-site technician will work with customer to locate a suitable location and mount the access point(s). On-site technician will install PoE injector and connect it to cable running to access point.
- On-site technician will work with remote Acumera installation technician to configure the CXD or firewall
- On-site technician does not test business applications following installation. Acumera will work with an on-site location contact to have them test each application specified for connectivity and to ensure they are functioning as they were prior to the CXD or Firewall install. Acumera is not responsible if applications are not functioning as they were prior to installation if they are not identified by the on-site contact for testing.

**On-site Installation Out of Scope Work:** The customer shall negotiate directly with Onsite Engineer/technician for any work that is considered to be out of scope including labor and materials as required. On-site installation work is subject to the conditions noted below:

- Any other work not specifically stated in the On-Site Installation Scope of Work detail above including, but not limited to, cabling services necessary for wireless access points or cellular modems.
- Additional time spent configuring the CXD or firewall to accommodate non-standard configurations will be billed at the appropriate T&M rates. Non-standard configurations include, but are not limited to:
  - Configuring the CXD or firewall to permit access to the cardholder data environment (CDE) by devices that are not dedicated POS terminals.
  - Configuring the CXD or firewall to permit remote access to internal systems such as DVRs, time clocks and other management devices.



- Configuring or reconfiguring Customer's connected devices such as DVRs, VoIP phones and systems, digital menu boards, printers and other peripherals, etc.
- The set-up of VPNs requested by customer to occur at time of installation. Note: In packages where a site-to-site customer VPN is included, Acumera will set up the VPN at no additional charge, however it typically cannot be done during a standard installation window due to the additional time required and requests to do so will typically result in an additional hour's fee charged.
- Cleaning up or rerunning wires beyond the work necessary to connect the CXD or firewall or other Acumera provided equipment to the network and network devices to the CXD or firewall is out of scope and will not be performed.
- Additional time spent where Acumera is required to work with another of Customer's vendors (eg POS provider, ISP, third-party IT company, etc) troubleshoot or resolve configuration or connectivity issues with other customer equipment or systems.
- Any required permit fees will be passed on to the customer at cost plus 20%.
- Delay time due to items outside of Acumera's or Technician's control will be billed at the appropriate T&M rate.
- No physical labor to be completed during the survey visit.
- Any union locations will be billed at the appropriate union T&M rates and marked up 20%.
- Out of scope work / delay time will be handled through a change order process.
- Any required man lifts will be passed on to the customer at cost plus 20%.
- All applicable taxes will be added at time of invoicing.

**Acumera Inc**

**Customer**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Reviewed by Orders:

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# WORK ORDER

This Work Order provides information on a new location or services to be provisioned on behalf of \_\_\_\_\_ (“Customer”) and is subject to and made a part of the Master Service Agreement (“MSA”) between Customer and Acumera Rigel LLC (“Acumera”), dated \_\_\_\_\_. This Work Order, together with the MSA and any associated Exhibits govern the sale and purchase of the Services described below.

### CUSTOMER INFORMATION

Customer Name (must match legal entity name on MSA): \_\_\_\_\_  
Customer Address: \_\_\_\_\_

### BILLING INFORMATION

Billing Entity Name: \_\_\_\_\_  
Billing Address Same as (check one):  Customer Address  Installation Location Address  
Billing Address: \_\_\_\_\_  
Transaction Authorization Agreement Form is (check one):  Attached  On File

### INSTALLATION LOCATION INFORMATION

Common Business Name: \_\_\_\_\_ Store / Unit Number: \_\_\_\_\_  
Installation Location Phone: \_\_\_\_\_ Order Type: <sup>New</sup> \_\_\_\_\_  
**Merchant ID Number** (required for enrollment in Data Breach Financial Protection Program (DBFPP). Locations will not be enrolled in the program if a valid MID number for each is not provided): \_\_\_\_\_  
Installation Address is same as:  Customer Address  
Installation Address: \_\_\_\_\_

### SHIPPING INFORMATION (Required. Where Acumera will ship equipment)

Ship-To Address Same as (check one):  Customer Address  Billing Address  Installation Location Address  
To Attention of: \_\_\_\_\_ Phone: \_\_\_\_\_  
Alternative Address: \_\_\_\_\_  
Special Instructions: \_\_\_\_\_



# WORK ORDER

## CONTACT INFORMATION

It is imperative that the appropriate people be designated with the permissions necessary to install, support, and authorize changes to Acumera services at this location(s). Due to data security best practices, Acumera is only able to modify or grant permissions if the requestor is an Administrator for the Customer location. Administrators may grant Admin access to others.

- **Password Delivery.** Acumera verifies the identity of users by sending them an authentication code via SMS text to their cell phone and/ or via email to their email address. Acumera also sends a One-time Password ("OTP") to users via SMS text or email when they attempt to log in to a Acumera portal. This OTP needs to be entered on the portal to complete the login.
- **Reseller** indicates that the contact is an employee of or contractor to the company that is selling Acumera services to this location.
- **Employed by Owner** indicates that the contact either owns the business that operates this location or is employed by the owner.
- **Third Party** indicates that this contact is not a Reseller or Owner and has some other affiliation to this location.

### Description of Permissions:

Role/Permission	Description
<b>Admin</b>	Grants user permission to authorize all changes to the account and its associated Managed Firewall & Orchestrator portal, hardware, features, and contacts. <b>THERE MUST BE ONE ADMIN CONTACT PER LOCATION.</b>
<b>Support</b>	Enables the user to receive alerts and grants the user permission to 1) be given sensitive network information 2) to authorize the addition of Rogue Devices to the firewall's Baseline and 3) Activates alerts to be emailed to the contact.
<b>Installation Coordinator</b>	Person authorized to work with Acumera to coordinate the equipment installation. <b>THERE MUST BE ONE INSTALLATION COORDINATOR PER LOCATION.</b>
<b>Remote Access</b>	If you purchased Secure Remote Access, you must select Remote Access permission for each contact that will use this service. Grants user Remote Access to any enabled machines. N/A for BranchSDO SD-Branch
<b>Sensor Download</b>	If you purchased our Advanced Threat Protection Sensor download service you must designate a contact to receive an email with a link and instructions to install the ATP sensors on the devices for this Location.
<b>Advanced Threat Protection (ATP)</b>	If you purchased ATP, grant user permissions to receive email reports and alerts and access the Advanced Threat Protection portal and device log files. If you subscribe to SIEM at Edge then you will also receive critical notifications via phone call.
<b>FIM Sensor and Portal</b>	If you purchased the File Integrity Monitoring (FIM) service, you must designate at least one contact who will receive the email with the link and instructions to install the FIM sensors and have access to the FIM portal.
<b>Primary PCI</b>	If you purchased a PCI package, you must designate a single contact as the Primary PCI Contact. The Primary PCI Contact will be 1) responsible for managing the Self-Assessment Questionnaire (SAQ) and external vulnerability scanning 2) will receive compliance alerts via email 3) will be granted access to the PCI Compliance Manager Portal to access SAQ tools and scan results. <b>THERE CAN ONLY BE ONE PCI CONTACT PER LOCATION.</b>
<b>Read-only PCI</b>	Will be granted read-only access to the compliance portal to view SAQ and ASV Scan results, but will not be able to edit any items or receive alerts.
<b>Cellular usage alerts</b>	Enables the user to receive alerts associated with LTE usage for each location (Maximum 2 contacts)
<b>BranchSDO Orchestrator/Portal Access</b>	
<b>BranchSDO Portal</b>	Grants user <b>READ-ONLY</b> access to BranchSDO Orchestrator portal, for hardware, features, and site visibility.
<b>BranchSDO Alerts</b>	Enables the user to receive alerts associated with BranchSDO events.

### CONTACT 1

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Office Phone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ Carrier: \_\_\_\_\_

Affiliation with Location:  Reseller  Owner or Owner Employee  Third Party

Password Delivery:  SMS Text  Email

Permissions/Role (check all required for contact):

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Admin (must be one per location)                   | <input type="checkbox"/> Support                                | <input type="checkbox"/> Installation Coordinator (must be one per location) |
| <input type="checkbox"/> Primary PCI Contact (can only be one per location) | <input type="checkbox"/> Read-only PCI Contact                  | <input type="checkbox"/> Remote Access.                                      |
| <input type="checkbox"/> BranchSDO Alerts                                   | <input type="checkbox"/> Sensor Download                        | <input type="checkbox"/> BranchSDO Portal Access                             |
| <input type="checkbox"/> Advanced Threat Protection                         | <input type="checkbox"/> FIM Sensor and Portal                  | <input type="checkbox"/> Cellular Usage Alerts                               |
| <input type="checkbox"/> Primary WAN Offline                                | <input type="checkbox"/> LTE Offline                            | <input type="checkbox"/> CXD Offline   |
| <input type="checkbox"/> VPN/NGFW Offline                                   | <input checked="" type="checkbox"/> LTE Usage Threshold Reached | Select threshold <u>75%</u>  |



# WORK ORDER

## CONTACT 2

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Office Phone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ Carrier: \_\_\_\_\_

Affiliation with Location:  Reseller  Owner or Owner Employee  Third Party

Password Delivery:  SMS Text  Email

Permissions/Role (check all required for contact):

- Admin (must be one per location)
- Support
- Installation Coordinator (must be one per location)
- Primary PCI Contact (can only be one per location)
- Read-only PCI Contact
- Remote Access.
- BranchSDO Alerts
- Sensor Download
- BranchSDO Portal Access
- Advanced Threat Protection
- FIM Sensor and Portal
- Cellular Usage Alerts
- Primary WAN Offline
- LTE Offline
- CXD Offline
- VPN/NGFW Offline
- LTE Usage Threshold Reached
- Select threshold 75%

Technical or other notes:

## ACKNOWLEDGEMENT

Customer submits this work order and acknowledges the following terms:

1. Providing the information requested on this Work Order accurately and completely is critical for Acumera to successfully perform the installation and configuration of our services. Information that is inaccurate or missing will likely result in delays installing Acumera services and will likely cause greater business disruption during and after the installation.
2. Customer locations subscribing to a Acumera Service that includes the Data Breach Financial Protection Program (DBFPP) must provide Acumera with a valid merchant ID number ("MID") for each Customer location to facilitate enrollment of that location in the Program. It is the Customer's obligation to provide MID numbers to Acumera for each location and Customer understands that locations will not be enrolled in the program if a valid MID number is not provided. Customer further understands that locations that do not subscribe to a Acumera service that includes the DBFPP are not eligible for enrollment in the Program.
3. It is the Customer's responsibility to keep scheduled installation appointments. Remote installation appointment cancellations made less than two (2) business days in advance WILL result in a \$150 rescheduling fee. On-site Installation appointment cancellations made less than two (2) business days in advance WILL result in a \$250 rescheduling fee.
4. Acumera will only grant portal access to or communicate with persons specified as authorized contacts or who have been added as a Contact by an authorized Admin Contact. Each Contact will only be allowed the permissions that are designated for them.
5. Customer is responsible for review and download of scans through Acumera self-service portals as needed.
6. Distribution of scans to appropriate parties is the responsibility of the Customer at their discretion.
7. If Internet connectivity is not a terrestrial high-speed always on standard DSL, fiber, broadband, or dedicated circuit (i.e. T1 or similar), Acumera services may not perform optimally. Acumera does not manage your Internet circuit. Unless you subscribe to our "Circuit Monitoring and Resolution" services Acumera is not able to repair or engage your Internet service provider to assist you with repairs.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Reviewed by Orders team:

## PARTICIPATION AGREEMENT

This Participation Agreement (the “**Agreement**”) is entered into on \_\_\_\_\_, between the customer named on the signature page of this Agreement (“**Customer**”) and Cineplex Digital Media Inc., successor to EK3 Technologies Inc. (“**Vendor**”), pursuant to that certain Master Service Agreement and Software License dated December 16, 2015, as amended (the “**MSA**”), between Vendor and American Dairy Queen Corporation (“**ADQ**”). Pursuant to the MSA, ADQ has engaged Vendor to provide to Participating Sites (as defined in the MSA), certain services relating to the ADQ interior digital menu board signage program (the “**DMB Program**”). All capitalized terms used in this Agreement have the definitions given to them in the MSA unless otherwise defined herein.

In consideration of the mutual covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree as follows:

1. Vendor shall provide the Services to operate the DMB Program at the Customer’s Participating Site.
2. Customer shall pay the fees set forth in Schedule A attached hereto in the manner set forth therein. To activate the commencement of the Services, Customer shall deliver an executed copy of this Agreement to Vendor, together with payment of the total fees for Equipment and Installation and one year’s worth of monthly Services for the Participating Site, on a pro-rated basis for the remainder of the calendar year. Vendor will then invoice the Customer for the annual Service fees for the following year on our before the start of the next calendar year, or date to be determined by Vendor in its sole discretion, and Customer shall pay such amounts within thirty (30) days of receipt of the invoice. If Vendor changes its billing practice from billing on the anniversary of the Installation Date to a fixed date or other payment cycle, it shall provide Customer with at least sixty (60) days prior written notice. If Customer’s total annual fees are greater than \$300, and Customer pays the total balance owing in advance of the due date will receive a 2% discount off their total annual fees.
3. Customer acknowledges and agrees that the Service fees are non-refundable in the event the franchise is sold or assigned, and that all paid-up Service fees will be transferred to the new owner once this Agreement has been successfully assigned. Service fees will be refunded on a pro-rata basis in the event that a store closes.
4. For Participating Sites in Canada, CDN will use an US/Canadian exchange rate of 1.21 (\$100 USD = \$121 CDN). The exchange rate shall be reviewed quarterly against the rate set by the Bank of Canada, and the fees will be adjusted if the rate is five points above or below the exchange rate set out above. CDN will provide thirty (30) days prior written notice of any fee adjustments.

5. This Agreement begins when fully executed by both Customer and Vendor, and continues for a period of five (5) years, unless earlier termination of this Agreement or the expiration or termination of the MSA. Customer may terminate this Agreement for convenience, upon thirty (30) days written notice to CDM. In the event Customer terminates this Agreement for convenience, CDM will refund, on a pro-rated basis, any fees previously paid for services that have not been delivered as of the date of termination of this Participation Agreement. In the event of termination by Customer, Customer shall reimburse Vendor for any warranties that were paid in advance on behalf of Customer on a pro-rated basis from the amount paid by Customer prior to the date of termination (this amount will be provided by Vendor to Customer when notice of termination is given to Vendor).
6. Vendor will use all commercially reasonable efforts to make the Subscription Services available 24/7/365, except for (a) planned maintenance; (b) any unavailability caused by circumstances described in Section 8 below; or (c) any unavailability caused by any failure on the part of ADQ, Customer or any other person (other than Vendor and its contractors). Customer shall make all requests for support or assistance to the Help Desk.
7. In order for Vendor to perform its Help Desk Services in an effective and efficient manner, and to help ensure minimal incidents with the Equipment and Digital Signage Network, Customer is responsible for the following at the Participating Site:
  - a) Following the installation of any Equipment, ensuring the proper and ongoing operation of the Equipment on a 24/7 basis, including ensuring Equipment is properly plugged into an appropriate surge protector and power source and that the power is turned on, and ensuring that each Media Player and Display, where applicable, is connected to the Internet and the Media Players are connected to the Display at all times, as well as paying all third party costs associated with such power and connectivity.
  - b) Ensuring and/or verifying at the request of a Help Desk service representative that the hardware/appliance components of the equipment interfacing with or connecting to the Subscription Services are turned on and have a functioning power source in a timely manner.
  - c) Ensuring and/or verifying that all Customer-provided Internet services at the Participating Location are fully functional, and if not, engaging its Internet Service Provider to resolve the issue.
  - d) Power cycling any of the DMB Program equipment upon request by Vendor's Help Desk.
  - e) Co-operating with Vendor or its representatives, including Level 1 Help Desk service representatives, on a timely basis to help ensure that the Subscription Services, Equipment and Digital Signage Network are functioning to the best of

their capacity, including the provision of relevant information and completion of rudimentary tasks as reasonably requested by the Level 1 Help Desk service representative. Customer will ensure that any dispatched technician to the Participating Site is provided with immediate access to the equipment interfacing with or connecting to the Subscription Services and is otherwise provided with such assistance or resources as they might reasonably request.

- f) Routine cleaning and aesthetic maintenance of all Equipment, including the removal of dust, grime or dirt using a non-abrasive cleaning agent, and the replacement of Media Player filters if and when required.
  - g) Complying with all operating, maintenance and other instruction or best practices contained in documentation, including any Equipment user manual or otherwise made known to them.
8. Customer will be charged additional fees of one hundred fifty U.S. dollars (US\$150) per hour for any work Vendor Support Team performs on non-Eligible Incidents. Customer will be charged additional fees of one hundred fifty U.S. dollars (US\$150) per hour for any work Vendor Support Team performs on equipment not purchased through Vendor. Customer will be charged additional fees of one hundred fifty U.S. dollars (US\$150) per hour for any work Vendor Support Team performs on equipment purchased through Vendor but whose warranty has expired.
  9. Neither Vendor nor its contractors will be liable to Customer for failure or delay in fulfilling any of its obligations if that failure or delay is attributable to circumstances beyond its reasonable control, including any act of God, fire, labour dispute or government measure.
  10. The Subscription Services and the software comprised therein constitute Vendor's valuable intellectual property. Customer agrees not to sell, share, distribute, or transfer the Subscription Services or the software comprised therein or any copies thereof to or with any person in any manner. Customer also agrees not to attempt to copy, reverse engineer or decompile the software comprised in Subscription Services in any way.
  11. Any non-public information pertaining to Customer or Vendor, which comes into the other's possession will be held in confidence and not used for any purpose unrelated to this Agreement.
  12. Vendor will indemnify Customer against any claim by a third party that the Subscription Services or Software infringe the intellectual property rights of that third party and for any damages, costs and expenses (including reasonable attorney fees) attributable to Vendor's gross negligence or willful misconduct in performing services under this Participation Agreement.

13. Customer will indemnify Vendor and its affiliated and subsidiary companies and their respective officers, directors, employees, agents, suppliers, successors and assignees from and against any and all third party claims and the damages, losses, fines, penalties, costs, and other amounts (including reasonable attorneys' fees actually incurred) arising from or in connection with any actual or threatened third party claim, demand, investigation or cause of action (each, a "Claim") arising from or relating to bodily injury (including death) or damage to or loss of any tangible property unless caused by the acts, negligence, or Omissions of the Vendor, its employees, contractors, representatives or those for whom it is responsible at law.
  
14. Customer shall maintain at its own sole expense throughout the Term of this Participation Agreement a comprehensive general liability insurance policy with minimum coverage of at least one million dollars (\$1,000,000) per occurrence and at least two million dollars (\$2,000,000) in the aggregate, covering bodily and personal injury, including death, and property damage. Such coverage shall cover Vendor as an additional insured. Customer will provide copies of all insurance policies evidencing such coverage to the Vendor upon request. Customer's failure to maintain the required insurance coverage shall constitute a material breach of this Agreement.
  
15. If Customer breaches any of the Customer's obligations under this Agreement, Vendor may suspend or terminate the Customer's right to access and use the Subscription Services and software.
  
16. Customer may not assign any of Customer's rights or obligations under this Agreement to any person without the prior written consent of Vendor.
  
17. Customer agrees that all terms and conditions described in this Agreement are binding and will therefore abide to its provisions.

The parties have executed this Agreement on the date first written above.

<b>CINEPLEX DIGITAL MEDIA INC.</b>		<b>CUSTOMER NAME:</b>	
<i>X Jessica Larue</i>		X _____	
Per:		Per:	
	Name: Jessica Larue		Name:
	Title: Director, Account Services		Title:
Per:		Per:	
	Name:		Name:
	Title:		Title:
I/We have the authority to bind the corporation		I/We have the authority to bind the corporation	

**SCHEDULE A  
TO THE PARTICIPATION AGREEMENT  
FEES**

	2024 FLEX ME USD	2025 FLEX ME USD	2026 FLEX ME USD	2024 FLEX Fusion SOC USD	2025 FLEX Fusion SOC USD	2026 FLEX Fusion SOC USD
	3% Increase	3% Increase each year	3% Increase each year	3% Increase	3% Increase each year	3% Increase each year
<b>1 Displays</b>						
Total Monthly	\$ 54.11	\$ 55.73	\$ 57.40	\$ 22.29	\$ 22.96	\$ 23.65
Annual Total	\$ 649.27	\$ 668.75	\$ 688.81	\$ 267.47	\$ 275.49	\$ 283.76
<b>2 Displays</b>						
Total Monthly	\$ 99.29	\$ 102.27	\$ 105.34	\$ 44.58	\$ 45.92	\$ 47.29
Annual Total	\$ 1,191.50	\$ 1,227.25	\$ 1,264.07	\$ 534.94	\$ 550.99	\$ 567.52
<b>3 Displays</b>						
Total Monthly	\$ 102.28	\$ 105.35	\$ 108.51	\$ 66.87	\$ 68.87	\$ 70.94
Annual Total	\$ 1,227.35	\$ 1,264.17	\$ 1,302.09	\$ 802.41	\$ 826.48	\$ 851.28
<b>4 Displays</b>						
Total Monthly	\$ 105.27	\$ 108.42	\$ 111.68	\$ 89.16	\$ 91.83	\$ 94.59
Annual Total	\$ 1,263.19	\$ 1,301.09	\$ 1,340.12	\$ 1,069.88	\$ 1,101.98	\$ 1,135.04
<b>5 Displays</b>						
Total Monthly	\$ 108.20	\$ 111.45	\$ 114.79	\$ 111.45	\$ 114.79	\$ 118.23
Annual Total	\$ 1,298.42	\$ 1,337.37	\$ 1,377.49	\$ 1,337.35	\$ 1,377.47	\$ 1,418.80
<b>6 Displays</b>						
Total Monthly	\$ 111.18	\$ 114.51	\$ 117.95	\$ 133.74	\$ 137.75	\$ 141.88
Annual Total	\$ 1,334.14	\$ 1,374.16	\$ 1,415.39	\$ 1,604.82	\$ 1,652.97	\$ 1,702.56
<b>7 Displays</b>						
Total Monthly	\$ 114.21	\$ 117.63	\$ 121.16	\$ 156.02	\$ 160.71	\$ 165.53
Annual Total	\$ 1,370.48	\$ 1,411.59	\$ 1,453.94	\$ 1,872.29	\$ 1,928.46	\$ 1,986.32

	2024 FLEX ME CAD	2025 FLEX ME CAD	2026 FLEX ME CAD	2024 FLEX Fusion SOC CAD	2025 FLEX Fusion SOC CAD	2026 FLEX Fusion SOC CAD
	3% Increase	3% Increase each year	3% Increase each year	3% Increase	3% Increase each year	3% Increase each year
<b>1 Display</b>						
Total Monthly	\$ 68.17	\$ 70.21	\$ 72.32	\$ 31.20	\$ 32.13	\$ 33.10
Annual Total	\$ 817.98	\$ 842.52	\$ 867.80	\$ 374.38	\$ 385.62	\$ 397.18
<b>2 Displays</b>						
Total Monthly	\$ 123.50	\$ 127.20	\$ 131.02	\$ 62.40	\$ 64.27	\$ 66.20
Annual Total	\$ 1,481.96	\$ 1,526.42	\$ 1,572.22	\$ 748.77	\$ 771.23	\$ 794.37
<b>3 Displays</b>						
Total Monthly	\$ 128.02	\$ 131.86	\$ 135.82	\$ 93.60	\$ 96.40	\$ 99.30
Annual Total	\$ 1,536.22	\$ 1,582.31	\$ 1,629.78	\$ 1,123.25	\$ 1,156.85	\$ 1,191.55
<b>4 Displays</b>						
Total Monthly	\$ 131.35	\$ 135.29	\$ 139.34	\$ 124.79	\$ 128.54	\$ 132.39
Annual Total	\$ 1,576.15	\$ 1,623.43	\$ 1,672.13	\$ 1,497.54	\$ 1,542.46	\$ 1,588.74
<b>5 Displays</b>						
Total Monthly	\$ 135.29	\$ 139.35	\$ 143.53	\$ 155.99	\$ 160.67	\$ 165.49
Annual Total	\$ 1,623.49	\$ 1,672.19	\$ 1,722.36	\$ 1,871.92	\$ 1,928.08	\$ 1,985.92
<b>6 Displays</b>						
Total Monthly	\$ 139.11	\$ 143.29	\$ 147.58	\$ 187.19	\$ 192.81	\$ 198.59
Annual Total	\$ 1,669.34	\$ 1,719.42	\$ 1,771.00	\$ 2,246.31	\$ 2,313.70	\$ 2,383.11
<b>7 Displays</b>						
Total Monthly	\$ 143.19	\$ 147.49	\$ 151.91	\$ 218.39	\$ 224.94	\$ 231.69
Annual Total	\$ 1,718.29	\$ 1,769.84	\$ 1,822.93	\$ 2,620.69	\$ 2,699.31	\$ 2,780.29

# OLO AGREEMENT

## MASTER SERVICES AGREEMENT

This Master Services Agreement (the “Agreement”), effective as of September 28, 2023 (the “Effective Date”), is made by and between Olo Inc., a Delaware corporation with a business address at 99 Hudson Street, Floor 10, New York, NY 10013 (“Olo”) and American Dairy Queen Corporation, with a business address at 8331 Norman Center Drive, suite 700, Bloomington, MN 55437 (“Customer”). Customer and Olo may be referred to herein together as the “Parties,” or individually as a “Party.”

### RECITALS

WHEREAS, Olo offers e-commerce, delivery enablement, payment solutions, and other associated solutions and services; and

WHEREAS, Customer desires to use, and (to the extent applicable) enable Authorized Operators to use, the Services (as defined below) in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

#### 1. Definitions

“Authorized Operator” means a franchisee or licensee of Customer that uses the Services.

“Borderless” means Olo’s account management and checkout facilitation product and service that provides End Users the ability to opt into a secure checkout experience across different Customer brands using Olo products and services by creating an account with Olo and saving certain information on file with the account. Olo will notify Customer when Borderless may be enabled for Customer’s End Users.

“Confidential Information” means any information that is directly or indirectly disclosed or made accessible by, or on behalf of, one Party to the other Party in connection with this Agreement, and which is identified as “confidential” or “proprietary” or which, given the nature of the information or circumstances surrounding the disclosure, should reasonably be understood by the receiving Party to be confidential or proprietary, but does not include information that the receiving Party can demonstrate it already rightfully knew or possessed, becomes public through no fault of the receiving Party, is obtained by the receiving Party from a third party with the legal right to disclose it, or can be shown to have been independently developed by the receiving

Party without reference to the discloser’s Confidential Information.

“Customer Data” means all data transmitted through, or collected by, the Services that concerns Customer’s business, including all End User PII that Customer or any Authorized Operator receives, generates, or obtains in connection with Customer’s or such Authorized Operator’s use of the Services.

“Customer Third Party Provider” means a third party used and/or directed by Customer that interfaces with the Services for the purpose of providing services to Customer or Authorized Operator, including without limitation any payment processor, loyalty program provider or Marketplace.

“End User(s)” means the consumers who access the Services, directly or indirectly, typically in conjunction with placing a digital or in-person order for the Product(s).

“Launch Date” shall have the meaning given to such term in the applicable Order Form(s) or if not defined there, the first calendar day after the end of the applicable deployment period as specified in the applicable Order Form(s).

“Law” means any law, rule, or regulation.

“Licensed Applications” means the products and services that are developed and operated by Olo to provide e-commerce, Marketplace integration, delivery enablement, payment solutions, front of house solutions, engagement solutions, and other associated services to its customers generally (through web, mobile web, mobile applications, voice ordering and call center solutions as applicable), and other related products and services which may be added from time-to-time, including any consumer account management and checkout facilitation products and services (including Borderless), any associated application program interfaces (“API(s)”), and any enhancements or modifications thereto.

“Marketplace” means an entity that offers End Users the ability to order Products (as defined below) from a range of different brands via a unified consumer-facing mobile application, website, storefront, or other means.

“Order Form” means an order form entered into under this Agreement between Customer and Olo setting forth the fees, charges, and any other terms and conditions for Customer and its Authorized Operators’ use of the specified Services.

Olo MSA 04.18.2023

**“Personally Identifiable Information” or “PII” means** (a) any information that identifies or is associated with a specific End User; and (b) any other information made available to Olo by Customer in connection with the Services that constitutes **“personal data,” “personal information,” or “personally identifiable information” as defined by applicable data protection law.**

**“Product” means the food, beverage and/or any other good or services provided by the Customer and/or Authorized Operator for order by an End User.**

**“Services” means the Licensed Application(s) that Olo provides to Customer.**

**“Transition Assistance Period” is defined as the period of time mutually agreed by the Parties, for the orderly transition of the Services to Customer or another vendor of Customer, beginning upon the notice date of termination of the Agreement and ending no later than six (6) months following the date of expiration or termination of this Agreement.**

**“Transition Assistance Services” means the Services that are provided by Olo to Customer during the Transition Assistance Period, along with any new services that Customer may require to transfer the affected Services to Customer or another third party.**

## 2. Services

2.1 **Use of this Agreement.** The Services shall be specified in the applicable Order Form(s). To the extent applicable, Customer shall comply with the terms and conditions specific to each selected Licensed Application and the Services set forth in Addendums attached hereto. The Services shall also include any required, usual, appropriate or acceptable methods to perform activities related to the Services, including without limitation (a) conducting analytics and other product improvement activities, (b) carrying out the Services or the business of which the Services are a part, (c) carrying out any benefits, rights and obligations related to the Services, (d) maintaining records relating to the Services, and (e) complying with any legal or self-regulatory obligations related to the Services. Customer shall (i) use commercially reasonable efforts to facilitate the deployment and activation of the applicable Services at all locations owned or operated by the Customer that are accounted for in the applicable Order Form as soon as practicable (in no event later than the end of the Deployment Period (as defined in the applicable Order Form)); and (ii) provide Olo, on the Effective

Date, with contact, tax, and deployment-related information (such as contact name, email, phone number, address, legal name, entity name, and tax ID) and any other similar information reasonably requested by Olo (such information, the **“Deployment Information”**) for each of its owned or operated locations, provided, that the Deployment Information shall be deemed Confidential Information; and (iii) promptly notify Olo of any changes to the Deployment Information for its owned or operated locations (e.g., changed or additional locations) and provide updates thereto to ensure such Deployment Information is accurate and complete. To the extent any Services permit Customer to communicate with End Users via short message service messaging (the **“SMS Services”**), **Customer will only use the SMS Services in compliance with the terms of this Agreement, any other applicable terms of the third party services providers for the SMS Services (including Twilio’s Acceptable Use Policy, currently located at <https://www.twilio.com/legal/aup>, as may be amended from time to time), and the laws of the jurisdiction from which Customer sends messages, and in which the messages are received.**

2.2 **Accessibility.** Olo will use commercially reasonable efforts to ensure that any public-facing technology it provides (**“Public-Facing Technology”**) is usable by individuals with disabilities (including those who use screen readers) utilizing WCAG 2.1 AA as a guide. Olo does not represent that Public-Facing Technology will fully conform to WCAG 2.1 AA. Olo shall not be responsible for any content or technology supplied by Customer or third parties that is not usable or accessible to individuals with **disabilities, or that cause Olo’s Public-Facing Technology to be not usable or accessible by individuals with disabilities.**

2.3 **Custom Services.** From time to time during the Term of the Agreement, the parties may mutually determine that additional custom integration services or other development work (the **“Custom Services”**) may become necessary. Olo shall perform any such Custom Services pursuant to a mutually acceptable professional services agreement.

2.4 **Authorized Operators.** **Customer’s** Authorized Operator(s) may use the Services either (x) in accordance with the terms and conditions of this Agreement; provided, that Olo is under no obligation to invoice or pay any such Authorized Operators directly, or (y) by agreeing to the **“Authorized Operator Terms & Conditions”** substantially in the form attached hereto as **Exhibit A** to adopt the pricing

terms and assume payment obligations under this Agreement and/or the applicable Order Form(s), and Olo will directly invoice and pay such Authorized Operators. In the event Customer enables any of its Authorized Operators to use the Services, Customer shall (i) use commercially reasonable efforts to encourage the deployment and activation of the applicable Services at all locations of its Authorized Operators accounted for in the applicable Order Form as soon as practicable ); and (ii) authorize Olo to contact and engage with its Authorized Operators in connection with the deployment and activation of the applicable Services, provided, that Olo shall use commercially reasonable efforts to keep Customer informed with respect to any communications between Olo and the Authorized Operators. Customer agrees that Olo may disclose the terms of this Agreement and/or any applicable Order Form(s) to Customer's Authorized Operators in connection with deployment; provided, that, for the avoidance of doubt, Customer will be solely responsible for notifying its Authorized Operators of any modifications to this Agreement or the applicable Order Form(s) (including, for clarity, pricing updates and changes with respect to Services).

2.5 **Borderless.** If Customer (or Customer's Third Party Service Provider on behalf of Customer) maintains and operates a customized web site or mobile application (the "Custom Frontend") to interface with End Users for its e-commerce business and integrates such Custom Frontend with Olo's Services via Olo API(s), Customer may choose to: (i) implement all Borderless functionality (including Borderless account creation, management and sign-in functions for End Users) in its Custom Frontend in accordance with any documentation or specifications provided by Olo or as the parties may otherwise agree; and (ii) provide any notice to or obtain any consent from End Users in connection with Olo's provision of Borderless in a manner specified by Olo in its sole discretion, including any data collection, language, and the display for or of such notice or consent.

### 3. **License; Proprietary Rights; Data**

3.1. **License.** Subject to the terms and conditions of the Agreement and the applicable Addendums, Olo hereby grants to Customer, during the Term, a non-exclusive, non-sublicensable (except as permitted hereunder), non-transferable (except pursuant to Section 10.4) license to install (to the extent required), access, and use for itself, its Authorized Operators

and its End Users, the Services. Customer shall not (a) assign this Agreement to any third party (it being understood that any such assignment shall be void ab initio); or (b) transfer, sell, or assign the right to use the Services, including for the avoidance of doubt to any Customer Third Party Provider (except pursuant to Section 10.4, and it being understood that Customer may permit its Authorized Operators to access the Services pursuant to the terms hereof solely for the expressed purpose of this Agreement). Olo reserves the right, in its sole discretion, to promulgate commercially reasonable standards that must be adhered to by Customer Third Party Providers (including, but not limited to, Olo's certification of all integrations to the Olo APIs), and Customer shall be responsible for any such Customer Third Party Provider's installation, access to, and use of the Services to the extent related to such Customer Third Party Provider's provision of services to Customer and/or its Authorized Operators. Any Customer Third Party Provider's breach or suspected breach of data security or confidentiality, abuse, or malicious or suspected malicious activities, may (at Olo's sole discretion) necessitate the immediate suspension, and possible termination, of Customer Third Party Provider's access to the Services. Olo will use commercially reasonable efforts to notify Customer of any such Customer Third Party Provider's suspension or termination as soon as reasonably practicable. A breach of the obligations set forth in this Section 3.1 by Customer may constitute a material breach of this Agreement.

3.2. **Proprietary Rights.** As between Customer and Olo, Customer hereby acknowledges and agrees that Olo owns all right, title and interest, including all copyrights and other intellectual property and proprietary rights, in and to the Licensed Applications, and all custom developed documents, designs, computer programs, computer systems, computer documentation, recommendations, feedback, input, and other work product authored or prepared by Olo upon the request of Customer or otherwise arising out of the Services (collectively, "Olo IP"). If Customer or any of its employees or contractors sends or transmits any communications or materials to Olo by mail, email, telephone, or otherwise, suggesting or recommending changes to the Olo IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Olo is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Customer hereby assigns to Olo on

Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Olo is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Olo is not required to use any Feedback.

### 3.3. Data.

(a) General. Olo hereby acknowledges and agrees that as between Olo and Customer, Customer owns all Customer Data. Olo and Customer agree to the terms of the Olo Data Processing Addendum (“DPA”) set forth at <https://www.olo.com/data-processing-addendum>, which are hereby incorporated by reference into this Agreement. If any defined terms used in this Section 3.3 are not defined herein, such terms shall have the meanings ascribed to them in the DPA. Customer grants Olo the right to collect, use and disclose Customer Data (i) that is De-Identified Data for Olo’s business purposes; (ii) to provide, manage, maintain, enhance, optimize, improve, and add to the Services; (iii) as directed by Customer in writing (email acceptable) in connection with Customer’s use of the Services (including, to Customer Third Party Providers whose services Customer elects to use) provided that Olo shall have no liability to Customer for the disclosure or misuse of Customer Data by any such Customer Third Party Provider, and Customer shall fully indemnify Olo pursuant to the terms of Section 7.2; and (iv) to enforce Olo’s rights under this Agreement but only as permitted by applicable data protection Laws. For any of Olo’s subprocessors, Olo will remain fully liable for any subcontracted services and will enter into a written contract with the subprocessor that requires it to meet Olo’s data obligations in this Agreement and the DPA. In the event of any conflict between the DPA (including any updated version of the DPA), and the terms of this Agreement, the terms of this Agreement shall prevail.

(b) Borderless. Customer understands that Olo and Customer are independent data controllers with respect to data regarding any End User that opts into Borderless (“Borderless Customer Data”), including any information heretofore collected by Olo from or about such End User pursuant to any and all agreements between Olo and Customer (“Legacy Data”) to the extent the End User expressly directs Olo to combine such Legacy Data with the data Olo collects in connection with the End User’s account (once Legacy Data is so combined, it becomes

Borderless Customer Data for which Olo is an independent data controller), and may use it for Olo’s business purposes, including without limitation, (i) analytics to provide, manage, maintain, enhance, optimize, improve and add to Olo’s business, the Services or the Licensed Applications and as may be reasonably required for Olo to provide the Services or Licensed Applications, including to service providers that enable Olo’s provision of the Services or Licensed Applications; (ii) in connection with Olo’s demonstration of or efforts to sell additional Licensed Applications or features to Customer; (iii) as elected by Customer in writing (email acceptable) in connection with Customer’s use of the Services or Licensed Applications (including, to Customer Third Party Providers whose services Customer elects to use) provided that Olo shall have no liability to Customer for the disclosure or misuse of Borderless Customer Data by any such Customer Third Party Provider; and (iv) to enforce Olo’s rights under the Agreement. Olo must comply with all data protection laws in its processing of Borderless Customer Data, including providing clear notice that the data is being provided to Olo and an Olo privacy notice that complies with all applicable Laws to those End Users opting into Borderless so they understand that the data collection and processing is governed by Olo’s privacy practices in addition to Customer’s. Notwithstanding anything to the contrary in the Agreement, Olo shall have the right to use Borderless Customer Data and any other data provided by Customer or Authorized Operators to link or combine user information with other End User PII in order to provide the Services or Licensed Applications. The parties agree that since Olo is an independent data controller of Borderless Customer Data, that Customer is not selling Borderless Customer Data to Olo.

3.4. Trademark License. Each party acknowledges that the ownership, right, title and interest in and to the other party’s trademarks rests with the other party, and both parties agree that neither will do anything inconsistent with such ownership or use the other party’s Trademarks in any way that would disparage or injure such party’s reputation. Customer may use, and permit Authorized Operators to use, the slogan “Skip the Line®” in marketing materials and store displays in reference to the order ahead program utilizing the Licensed Applications; provided however that any such display clearly denotes the slogan as a registered trademark of Olo. Customer shall not publish press announcements or other publicity in respect of the

parties' business relationship without the prior written consent of Olo, which consent shall not be unreasonably withheld or delayed. During the Term, Customer hereby grants to Olo a non-exclusive, non-sub licensable, non-transferable right to use **Customer's trademarks, service marks, logos, trade names, trade dress and URLs ("Trademarks")** in connection with the Licensed Applications, on customer lists and informational materials, in broad distribution marketing materials for the Services contemplated herein, as part of sales and marketing materials in written form or otherwise, in earnings or press releases or communications with regulatory **bodies, and displaying Customer's logo or other Trademarks on Olo.com, any sub-domain thereof, and any social media accounts maintained by Olo.** Olo shall abide by any Trademark usage guidelines made available by Customer, provided that Customer shall provide advance notice of any material changes to such Trademark usage guidelines.

#### 4. Fees & Payments

4.1. Payments to Olo. Customer agrees to accept the Services and pay to Olo amounts due under the Agreement in accordance with the payment terms and conditions as set forth in the applicable Order Form(s).

#### 5. Confidentiality; Security; Privacy

5.1. A Party receiving Confidential Information may only use Confidential Information to exercise its rights and fulfill its obligations under this Agreement and will take reasonable measures to avoid unauthorized disclosure or misuse of the Confidential Information, including, but not necessarily limited to, taking such security precautions as it takes to protect its own Confidential Information. During and after the Term, the receiving Party agrees not to disclose Confidential Information, except (a) to its employees, agents, independent contractors, or professional advisors who have a need to know the same and who are legally bound to keep it confidential; (b) to a **potential acquirer of the receiving Party's relevant assets, stock, or business** under a strict duty of confidentiality, but only to the extent such potential acquirer has executed a term sheet, letter of intent or other similar agreement to negotiate such acquisition, and (c) as required to be disclosed by applicable Law (including the regulations of any securities exchange), or judicial or other governmental or regulatory order (provided that the disclosing Party

must use reasonable efforts to notify the other Party, unless legally prohibited, prior to disclosure in order to afford such other Party the opportunity to at its own expense seek a protective order or otherwise prevent or limit the disclosure). For the avoidance of doubt, the terms of this Agreement are Confidential Information belonging to both parties. Notwithstanding the foregoing, Customer may disclose Olo's **Confidential Information** to Authorized Operators that use or are interested in using the Services, and Customer will not be responsible or liable, in any manner for such Authorized Operators' failure to keep such information confidential; provided, that Customer may only share Olo Confidential Information with Authorized Operators interested in using the Services to the extent such information is necessary for such Authorized Operators to determine whether to sign up for the Services.

#### 5.2. Security.

(a) **The terms of Olo's Security Policy, available at [www.olo.com/security-policy](http://www.olo.com/security-policy), are attached hereto as Exhibit B** and hereby incorporated by reference.

(b) Customer has the right to terminate this Agreement immediately if Olo has more than one Breach of Security during the Term of this Agreement.

5.3. Privacy. (a) Olo shall not retain, use, or disclose PII other than as permitted under this Agreement, as directed by Customer, or as otherwise permitted or required by applicable Law.

(b) Customer shall (i) ensure that Customer Data acquired by Customer is acquired in accordance with applicable privacy Laws and (ii) not interfere with any independent efforts by Olo to provide notice or obtain End User consent for Borderless Customer Data. Customer will have, and ensure that each of **Customer's ordering website, mobile application or other digital property** contains, an easily accessible and discoverable privacy policy that complies with all applicable Laws governing notice to End Users and discloses usage of third-party technology to collect and use data in connection with the Services.

#### 6. Representations and Warranties

6.1. Each party represents and warrants that (a) it has the legal power and authority to enter into this Agreement; (b) it will not violate, or use or provide the Services (as applicable) in violation of, any

applicable Laws, including any applicable privacy laws, or any third party right; (c) it will use or provide the Services (as applicable) in compliance with its agreements with third parties; and (d) it will comply with the terms of the Olo Security Policy, which are incorporated into this Agreement by reference. Olo further represents and warrants that (i) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof, and (ii) its Security Policy will be no less stringent throughout the Term, and for two (2) years following the termination of this Agreement, than is as described at [www.olo.com/security-policy](http://www.olo.com/security-policy). Customer further represents and warrants that, (x) it owns or has obtained, and hereby grants to Olo, all necessary rights and licenses in and to Customer's sites and other digital properties used in connection with the Services in order for Olo to provide the Services; (y) it has or otherwise obtained the necessary rights and consents in and relating to the Customer Data for Olo to store, collect, use and disclose such Customer Data in accordance with this Agreement and Customer's privacy policy (currently available at <https://www.dairyqueen.com/en-us/privacy-statement/>, as may be updated by Customer from time to time), including consents required under applicable privacy Laws and if applicable, Laws related to text messaging and email communications; and (z) Customer will be solely responsible for all use of the Services by Customer. Notwithstanding the foregoing, or anything to the contrary under this Agreement, Customer will not be responsible or liable in any manner for the use of the Services, acts and/or omissions of Authorized Operators under this Agreement.

6.2. **No Viruses or Malicious Code.** Olo uses commercially reasonable efforts to ensure that the Services and the software used by Olo to provide the Services do not contain, and that Olo will maintain industry standard security to prevent infection with, any virus or other software routine designed to erase, disable, or otherwise harm the Licensed Applications or Customer's, Authorized Operators', or End Users' equipment, data, or other software.

6.3. OLO MAKES NO REPRESENTATION OR WARRANTY OTHER THAN THOSE SET FORTH IN THIS AGREEMENT. THE WARRANTIES STATED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES

OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 7. Indemnification

7.1. Each Party (in such capacity, the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors and employees (each an "Indemnified Party") from all damages finally awarded against the Indemnified Party, costs, expenses, claims and liabilities (including reasonable outside attorney's fees) arising out of or relating to the Indemnifying Party's (i) negligent acts or omissions including the negligent acts or omissions, or willful misconduct of its employees, subcontractors or representatives and with respect Customer, its Third Party Providers (to the extent related to such Customer Third Party Provider's provision of services to Customer and/or its Authorized Operators); (ii) breach of Section 3, 5 or 6; or (iii) infringement or misappropriation of a third party's trade secret, or United States patent, trademark or copyright in connection with (a) with respect to Olo, the software or other technology Olo uses to provide the Services to Customer hereunder and (b) with respect to Customer, the technology, data, or other materials Customer provides or uses with the Services ("Customer Materials") (the indemnification obligation of each Party described in this clause (iii), the "IP Infringement Obligation"). The previous sentence states the sole liability of the Indemnifying Party, and the sole remedy of the Indemnified Party, with respect to any third-party claim arising out of the Indemnifying Party's negligent acts or omissions, breach of Section 5 or 6, or misappropriation or infringement of intellectual property.

7.2. Additionally, Customer shall defend, indemnify and hold harmless Olo and its officers, directors and employees (each, an "Indemnified Party") from all third-party claims and liabilities (including reasonable outside attorney's fees) arising out of or relating to (i) any action against Olo arising out of any Customer Third Party Provider's disclosure or misuse of Customer Data or related to Olo's release of such Customer Data, including PII, if the release of such information was requested in writing by Customer; (ii) Customer's failure to properly collect and remit taxes or other government payments or fees associated with its usage of the Services, which shall be the sole responsibility of the Customer and, if applicable, the Authorized Operators; and (iii) any Customer Third Party

**Provider's access to or use of the Services** to the extent related to such Customer Third Party **Provider's provision of services to Customer and/or** its Authorized Operators.

7.3. The Indemnified Party must (a) promptly notify the Indemnifying Party in writing of any third-party claim (provided that a failure to promptly notify will not relieve the Indemnifying Party of its indemnification obligations, except to the extent it has been prejudiced by such failure); (b) reasonably cooperate with the Indemnifying Party in the defense of the matter; and (c) give the Indemnifying Party primary control of the defense of the matter and negotiations for its settlement. The Indemnified Party may, at its own expense, join in the defense with counsel of its choice. The Indemnifying Party may not enter into a settlement unless it (i) involves only the payment of monetary damages by the Indemnifying Party, and (ii) includes a complete release of liability in favor of the Indemnified Party; any other settlement will be subject to the written consent of the Indemnified Party (not to be unreasonably withheld).

7.4. **Olo's IP Infringement Obligation will not apply to claims to the extent arising from (i) Customer's use of the Licensed Applications or Services in violation of this Agreement, (ii) the Customer Materials' infringement or misappropriation of a third party's trade secret, or U.S. patent, trademark, or copyright, or (iii) to the extent the infringement claim is based on the combination, operation, or use of the Service(s) with any product, service or material not provided by Olo or on Olo's behalf. Customer's IP Infringement Obligation will not apply to claims to the extent arising from (a) Olo's provision of the Service in violation of this Agreement, or (b) Olo's infringement or misappropriation of a third party's trade secret, or U.S. patent, trademark, or copyright. If a Service is, or in Olo's reasonable opinion is likely to be, ruled by a court of competent jurisdiction as infringing upon a third party's intellectual property, Olo will promptly notify Customer and, at Olo's sole option and expense, either: (a) procure the right to continue providing the Service as contemplated by this Agreement, (b) modify the Service to render it non-infringing, or (c) replace the Service with a substantially equivalent, non-infringing service. If none of the foregoing options is commercially practicable, then each Party will have the right to**

terminate this Agreement with respect to the infringing Service.

#### 8. **Limitation of Liability**

**EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF CONFIDENTIALITY, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, EVEN IF ONE OR BOTH PARTIES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT WILL NOT EXCEED FOUR (4) TIMES THE AGGREGATE AMOUNT OF FEES PAID OR PAYABLE TO OLO BY CUSTOMER AND ALL AUTHORIZED OPERATORS IN CONNECTION WITH OLO'S PROVISION OF THE SERVICES DURING THE TWELVE (12) MONTHS BEFORE THE DATE WHEN THE LIABILITY AROSE. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION 8 REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY.**

#### 9. **Term and Termination**

9.1. Term – Generally. The Term of this Agreement shall begin on the Effective Date and shall remain in force for a period that shall expire once the Order Form(s) have terminated and the Transition Assistance Period is complete. This Agreement may terminate earlier as provided in Section 9.2, Section 2(g) of the Digital Ordering Terms & Conditions Addendum, or as the parties may otherwise agree in writing.

9.2. Termination for Cause; Reasonable Opportunity to Cure Breach. If a party materially breaches any material provision of this Agreement, the non-breaching party may terminate this **Agreement by giving thirty (30) days' notice to the other party, except that such a termination shall not**

take effect if the breaching party cures the breach before the end of such thirty (30) day period. Material provisions shall include, but not be limited to, breaches of 3.1 (License), 3.2 (Proprietary Rights), 3.4 (Trademark License), and 5 (Confidentiality; Security; Privacy).

9.3. Immediate Termination. Either Party may immediately terminate this Agreement upon written notice to the other Party if:

(a) the other Party (i) files for bankruptcy or its **creditors file for the other Party's involuntary** bankruptcy, and the bankruptcy is not dismissed within ninety (90) days, (ii) is the subject of any proceedings not dismissed within ninety (90) days related to its liquidation, insolvency or the appointment of a receiver or similar officer for the other Party, (iii) makes an assignment for the benefit of all or substantially all of its creditors, (iv) takes any corporate action for its winding-up, dissolution or administration, or (v) is no longer able to pay its debts in the ordinary course of business;

(b) the other Party, or any of its directors or officers, is charged with or convicted of a felony or any administrative, criminal or civil action alleging fraud, unfair or deceptive practices, or comparable allegations, or becomes the subject of any federal or state level governmental action which, in the Party's sole judgment, may inure or bring discredit upon the Party, its trademarks, or the goodwill associated with them;

(c) the other Party has a third default within any twelve (12) month consecutive period; or

(d) the other Party breaches any provision of this Agreement or an Order Form that provides for immediate termination.

9.4. Suspension of Access. Olo reserves the right to **suspend Customer's access to all or any portion of the Services ("Service Suspension") without notice if**

(a) Olo reasonably determines that there is a threat or attack on the Service or the Licensed Applications, (b) **Customer's use of the Services or Licensed Applications** disrupts or poses a security risk to the Services or Licensed Applications or to any End User or vendor of Olo, or (c) Customer is using the Services or Licensed Applications for fraudulent or illegal activities. Olo shall use commercially reasonable efforts to inform Customer of any Service Suspension and to provide updates regarding resumption of access to the Services and/or Licensed Applications following any Service Suspension. Olo will have no liability for any damage, liabilities,

losses (including any loss of data or profits), or any other consequences the Customer or any third party may incur as a result of a Service Suspension.

9.5. Effect of Termination.

(a) The termination or expiration of this Agreement terminates all Statements of Work, Order Forms and the provision of Services to all Authorized Operators.

(b) Notwithstanding termination of this Agreement, any provisions of this Agreement that by their nature are intended to survive, will survive termination (including for the avoidance of doubt the provisions of Section 3.3, 5, 6, 7, 8).

(c) In connection with the expiration or termination of this Agreement, any Statement of Work, and/or any Order Form hereunder for any reason, and notwithstanding any dispute between the Parties, Olo will provide to Customer Transition Assistance Services for the Transition Assistance Period or as otherwise agreed upon between Customer and OLO as follows:

(i) Applicable Requirements and Access. Olo will provide to Customer the applicable requirements, standards, policies, operating procedures or other documentation that Olo, in its sole discretion, deems: (y) reasonably relate to the affected Services, and (z) are required to execute the orderly transition of such Services. Olo will also answer all reasonable and pertinent verbal or written questions from Customer regarding the Services on a commercially reasonable "as needed" basis. Customer will be responsible for **any such information provided to Customer's** designated third-party service provider in accordance with Section 5 of this Agreement;

(ii) Development of Transition Assistance Plan. Olo and Customer will work together to develop a mutually agreed transition assistance plan, methodology and timeline;

(iii) Comparable Prices. Olo will not raise prices for continuing Services during the Transition Assistance Period, and will charge fair market value prices for services that were not performed for Customer prior to termination or expiration of the Agreement; and

(iv) Absolute Obligation. Olo agrees that it has an absolute and unconditional obligation to provide Customer with Transition Assistance Services, and Olo's quality and level of performance during the Transition Assistance Period will continue to adhere to all requirements of this Agreement.

## 10. Insurance

10.1. Required Coverage. At all times during the Term, Olo shall procure and maintain, at its sole cost and expense, insurance coverage in the following types and amounts:

(a) Commercial General Liability, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, written on a comprehensive form and including coverage for premises and operations, **including coverage for independent contractors' liability**; products and completed operations; personal injury liability; broad form property damage liability; and contractual liability to cover liability assumed under this Agreement.

(b) Professional Cyber Liability / Technology Errors and Omissions with a limit of no less than \$10,000,000 in the aggregate and providing coverage for Olo employees, including part time, temporary, leased, and seasonal employees, as well as contractors of Olo, who are acting within their scope of employment. Cyber Liability shall include coverage for loss or damage due to an act, error, omission, or negligence. This policy shall include coverage for tech and professional services wrongful acts, tech product wrongful acts, media wrongful acts, and data and network wrongful acts, breach response costs, regulatory defense and penalties, payment card liabilities and costs, including PCI fines, and, first party data and network loss. Data breach response costs include, but are not limited to, consumer notification, computer forensic investigations, public relations and crisis management firm fees, and credit monitoring, identity monitoring, or other personal fraud or loss prevention solutions for individuals whose Personal Data was potentially impacted by a data breach.

(c) Worker's Compensation and employers' liability insurance with limits no less than the greater of either \$1,000,000 or the minimum amount required by applicable Law for each accident and occupational illness claim.

(d) Umbrella Liability coverage with a limit of no less than \$5,000,000 in the aggregate, and \$5,000,000 per occurrence. Umbrella Liability coverage does not apply to the Professional Cyber Liability / Technology Errors and Omissions policy described above.

10.2. Policy Terms. All insurance policies required pursuant to this Section 10 shall:

(a) be issued by insurance companies with an AM Best's Rating of no less than A-VIII;

(b) name Customer as an Additional Insured on **the Commercial General Liability, Worker's Compensation, and Umbrella Liability** policies;

(c) for policies the Customer is named as an Additional Insured on, Olo shall waive any right of subrogation of the insurers against the Customer, or any of its Affiliates;

(d) for policies the Customer is named as an Additional Insured on, Olo agrees those policies shall be primary insurance and any similar insurance in the name of and/or for the benefit of Customer shall be excess and non-contributory.

10.3. To the extent any insurance coverage required under this Section 10 is purchased on a "claims-made" basis, such insurance shall cover all prior acts of Olo during the Term and any additional periods during which Olo does or is required to perform the Services.

10.4. Olo shall provide Customer with a certificate of insurance for any insurance coverage required by this Section 10 within **30 days following Olo's receipt** of a written request for such certificate(s) from Customer.

10.5. This Section 10 is not intended to and shall not be construed in any manner as to waive, restrict, or limit the liability of either party for any obligations under this Agreement, including any provisions hereof requiring a party to indemnify, defend, and hold harmless the other party.

## 11. Miscellaneous

11.1. Notices. All notices and other communications sent under this Agreement must be in writing (including by email) and will be deemed effective when delivered. All notices shall be sent to the applicable mailing address or email address set forth on the signature page hereof.

11.2. Governing Law. This Agreement is governed by and construed in accordance with the laws of New York, without regard to the conflicts of law rules thereof. The parties consent to the exclusive jurisdiction and venue of courts in New York County, New York for all disputes hereunder.

11.3. Assignment. Neither party may assign or transfer any part of this Agreement without the prior written consent of the other Party except that this Agreement may be assigned without consent: (a) to a

person or entity who acquires all or substantially all of the assigning Party's assets, stock or business, and (b) to any affiliate or subsidiary of a Party; in each case, so long as the assignee accepts the obligations hereunder in writing. Any purported assignment of rights or obligations, except as expressly permitted herein, will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.

11.4. Severability. If any provision of the Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

11.5. Relationship of Parties. The Parties are independent contractors, and this Agreement does not create an agency, partnership, or joint venture. Each Party to this Agreement acknowledges that such Party has been represented by legal counsel in preparation of this Agreement. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

11.6. Amendment/Modification. This Agreement may be modified or amended only by a separate writing signed by Olo and Customer expressly so modifying or amending this Agreement.

11.7. Certain Remedies. The parties acknowledge that the breach of Sections 3 and 5 will give rise to irreparable injury to the non-breaching party inadequately compensable in damages. Accordingly, the parties agree that injunctive relief will be an appropriate remedy to prevent violation of the parties' respective rights and/or obligations under those two sections. However, nothing in this Section 10.8 shall limit a party's right to any other remedies in equity or at law, including the recovery of damages.

11.8. Force Majeure. Neither party will be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of service, resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, fires, cyber terrorism, cyber-attacks or brute force attacks, espionage, sabotage, other catastrophes, and other causes beyond its reasonable control (a "Force Majeure Event"). If a Force Majeure Event continues for longer than thirty (30) days, either party may terminate the Agreement by providing written notice to the other party.

11.9. Interpretation. If there is an inconsistency between the terms of this Agreement and the terms of an Order Form, the terms of the Order Form shall control.

11.10. Counterparts. This Agreement may be executed in two counterparts, which together shall constitute but one and the same instrument. Executed counterparts transmitted electronically (via email or e-signature software) shall constitute originals for all intents and purposes.

11.11. Waiver. A waiver by either party of any term or condition of this Agreement in one or more instances will not constitute a permanent waiver of the term or condition or any other term or condition of this Agreement or a general waiver.

11.12. Entire Agreement. Each Order Form (each of which is incorporated herein by reference), all terms and conditions which are referenced herein and are available at olo.com, and this Agreement (including each of the applicable Addendums), constitute the entire agreement between the parties and supersedes any prior oral or written agreements between the parties concerning the subject matter hereof.

*[signature page follows]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers.

American Dairy Queen Corporation
By <u><i>Kevin Baartman</i></u> <small>Kevin Baartman (Sep 29, 2023 11:35 CDT)</small>
Name <b>Kevin Baartman</b>
Title <b>E.V.P. - Information Technology</b>
Mailing Address for Notices:  8331 Norman Center Drive, suite 700 Bloomington, MN 55437 Attn: Legal Dept.  Email Address for Notices: Elisa.Edlund@idq.com

Olo Inc.
By <u><i>Noah Glass</i></u> <small>Noah Glass (Sep 29, 2023 12:37 EDT)</small>
Name <b>Noah Glass</b>
Title <b>Founder &amp; CEO</b>
Mailing Address for Notices:  99 Hudson Street, Floor 10 New York, NY 10013 Attn: Olo Legal Dept  Email Address for Notices: notices@olo.com

**Digital Ordering Terms & Conditions Addendum**

This Addendum forms a part of the Agreement and is applicable upon execution of an Order Form pursuant to which the Licensed Applications will power Customer’s direct **digital ordering solution (“Digital Ordering”)**. For **avoidance of doubt, Digital Ordering does not include indirect digital orders processed through Olo’s Rails** solution. In the event that this Addendum conflicts with the Agreement or there is an inconsistency, this Addendum shall control. Unless otherwise defined herein, capitalized terms have the meanings ascribed to such terms in the Agreement.

1. **Exclusivity.** During the Term, Olo shall be Customer’s preferred provider of Digital Ordering applications to the DQ system. Customer and/or Authorized Operators (if applicable) shall have the right to use Marketplaces at their sole discretion.
2. **Service Level.** During the Term, Digital Ordering will be operational and available to Customer at least 99.9% of the time in any calendar month (the “SLA”). The SLA thresholds and applicable service credits are as follows:
  - a. If Olo does not meet the SLA, and if Customer meets its obligations under the Agreement and this Addendum, Customer will be eligible to receive the Service Credits described below. This **SLA states Customer’s sole and exclusive remedy for any failure by Olo to meet the SLA.**
  - b. Definitions. The following definitions shall apply to the SLA:
    - i. **“Downtime” means the period of time during which Digital Ordering fails to be operational and available to End Users to place a digital order (for reasons other than those set forth below) until Digital Ordering again becomes operational and available to End Users.**
    - ii. **“Permitted Downtime” means the period of time during which Digital Ordering fails to be operational and available due to software upgrades and scheduled maintenance, conducted on a regular basis between 3:00 a.m. and 6:00 a.m. Eastern Time, of which Olo will use commercially reasonable efforts to give Customer and Authorized Operator a minimum of twenty-four (24) hours advanced notice. Notwithstanding the foregoing, Olo shall be permitted to take up to five (5) minutes of downtime on any day during the calendar year between 4:00 a.m. and 6:00 a.m. Eastern Time without prior notice to Customer.**
    - iii. **“Monthly Uptime Percentage” means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.**
    - iv. **“Service Credit” means the following:**

Monthly Uptime Percentage	Service Credit*
99.9% - 99.5%	10% reduction in Digital Ordering Monthly Fee (defined below)
99.49% - 98.0%	20% reduction in Digital Ordering Monthly Fee
97.99% - 96.0%	30% reduction in Digital Ordering Monthly Fee
95.9% - 93%	50% reduction in Digital Ordering Monthly Fee
<93%	100% reduction in Digital Ordering Monthly Fee

\*Service Credit shall be calculated using the fixed monthly fee charged to Customer for Digital Ordering (the "Digital Ordering Monthly Fee") for the month in which Olo does not meet the SLA, and shall be applied to the following month's invoice.

- c. The aggregate maximum Service Credit to be issued by Olo to Customer for all Downtime (not including Permitted Downtime) that occurs in a single calendar month shall not exceed one hundred percent (100%) reduction in the next month's fees.
- d. The SLA does not apply to any Downtime to the extent it was caused by: (i) Customer or Authorized Operator environment issues affecting connectivity or interfering with Digital Ordering, **including without limitation, Customer or Authorized Operator's connection to the Internet (i.e., problems with the Customer or Authorized Operator's Internet Service Provider, modem, cable, DSL or dial-up connection, mobile phone connection or other Customer or Authorized Operator Internet connectivity issues)** or any other Customer or Authorized Operator equipment or software (including third party attacks, including without limitation, hacks, intrusions, distributed denial-of-service attacks or any other third party actions intended to cause **harm to or disrupt Customer's Third Party Providers, including without limitation, e-commerce software, payment gateways, Marketplaces, and loyalty or rewards providers, that are integrated into the Olo APIs), Customer or Authorized Operator's firewall software, hardware or security settings, Customer or Authorized Operator's configuration of anti-virus software or anti-spyware or malicious software, Customer's use of or placement of Javascript code and/or other tracking or measurement software or code (including Google Analytics), or operator error of Customer or Authorized Operator;** (ii) directly or indirectly integrating any Marketplace orders into the POS; **(iii) Customer or Authorized Operator's Point of Sale (POS) failure(s) or the failure to properly maintain the POS environment, including updating the POS firmware or version of the software running on the POS as recommended by either Olo, a third party POS reseller or servicer, or the POS provider themselves;** (iv) third party outages, verified bugs of any third party software used by Customer, Authorized Operator, or Olo in conjunction with Digital Ordering, or failure of third party professional services not provided by Olo; (v) outages of any third party vendors selected by Customer or Authorized Operator; (vi) force majeure events as described in Section 10.9 of the Master Services Agreement or any other events not foreseeable or preventable by Olo **despite Olo's commercially reasonable efforts;** (vii) issues related to third party domain name system (DNS) errors or failures; (viii) emergency maintenance of the Licensed Applications, including without limitation, suspension of Licensed Applications in response to a Breach of Security, or due to Olo following its incident response plan in response to a suspected Breach of Security, or a voluntary election by Olo to suspend services for a limited period of time to address a serious malfunction, for which Customer or Authorized Operator may not receive advanced notice; (ix) Permitted Downtime; or (x) any Service Suspension.
- e. Olo will post notifications publicly to <https://status.olo.com> of any outages in production systems under its control and that may impact multiple customers for more than one (1) minute in any twenty-four (24) hour period other than as permitted under Section 2(b)(ii) above. Olo may occasionally post notifications of significant outages at third party providers, which may include **Customer Third Party Providers, outside of Olo's control, such as payment, POS, loyalty, Delivery Service Providers, or Marketplaces.** Olo cannot be relied upon for comprehensive **reporting of outages at third party providers and makes no representation that Olo's information is accurate or up to date.** Olo's incident response procedures prioritize triaging and problem resolution over public communication, which may result in delays in posting status updates. Timestamps on status updates may not reflect the actual times of an incident.
- f. If Olo does not meet a Monthly Uptime Percentage of 99%, as defined herein, in any three consecutive months during the Term, the Customer has the right to terminate the Agreement with thirty (30) days written notice to Olo.

## Dispatch Services Terms & Conditions Addendum

This Addendum forms a part of the Master Services Agreement and is applicable upon execution of an Order Form in which the parties have agreed that Olo will provide the Customer with its delivery platform allowing for the scheduling and billing of delivery services (“Dispatch”). **In the event that this Addendum conflicts with the Agreement, or there is an inconsistency, this Addendum shall control.** Unless otherwise defined herein, capitalized terms have the meanings ascribed to such terms in the Agreement.

### **1. Definitions**

**“Available Delivery Service Providers” shall mean the Delivery Service Providers who have been selected and approved by Olo to create a Profile on the Platform and are available to Customer (to the extent applicable) to make deliveries to End Users in a given Delivery Area on behalf of Customer.**

**“Confirmed Delivery Response” shall mean that the Platform has transmitted an End User delivery request to a Selected Delivery Service Provider(s) that has responded back with an acceptance of that delivery request.**

**“Delivery Area” shall mean the area(s) in which a Delivery Service Provider offers delivery service to End Users.**

**“Delivery Fees” shall mean the fees that are quoted by Olo as “delivery service fees” plus a tip (if any) added to the payment form the End User fills out for the delivery of the Product.**

**“Delivery Guidelines” shall mean the rules and responsibilities associated with the delivery of the Product to the End User, which are located at [www.olo.com/delivery-guidelines](http://www.olo.com/delivery-guidelines) and which may be updated by Olo from time to time.**

**“Delivery Service Providers” shall mean the providers of delivery services, selected by Olo and given access to the Platform by Olo, that use their own employees or independent delivery drivers.**

**“Delivery Requirements” shall mean the requirements established by Customer in the Platform relating to the selection of the Delivery Service Providers who may be Available Delivery Service Providers for Customer.**

**“Platform” means the system operated by Olo that allows Customers to provide Delivery Requirements and place requests with Olo to deliver Products to End Users and facilitates through those Delivery Service Providers who meet the Delivery Requirements, including any associated application program interfaces and technology and any enhancements or modifications thereto.**

**“Profile” means the information provided by a Delivery Service Provider for review by Olo and as updated by Olo quarterly or upon material changes, in order to allow the Delivery Service Provider to participate on the Platform.**

**“Selected Delivery Service Provider” means an Available Delivery Service Provider that is selected by Olo on behalf of Customer (based on the Delivery Requirements established by Customer) to deliver a given order for Products to End Users on behalf of the Customer in the Delivery Area.**

### **2. Selection of Delivery Service Providers**

**2.1 Available Delivery Service Providers.** As part of the Platform, Olo allows Delivery Service Providers to sign up for use of the Platform and complete a Profile. Customer may access a list of Available Delivery Service Providers based on the Delivery Requirements.

**2.2 Selection of Available Delivery Service Providers.** Olo will select the Selected Delivery Service Providers based on the Delivery Requirements and the Profiles of Available Delivery Service Providers in each Delivery Area. Notwithstanding the foregoing, to the extent that Customer does not provide any parameters for Olo to choose an Available Delivery Service Provider, one shall be selected automatically by Olo. Customer may change its Delivery Requirements at any time in its sole discretion.

### **3. Delivery**

**3.1 Quotes.** Olo provides Customers with access to the Platform in order to request and receive delivery quotes (delivery time and pricing) and Olo will provide such quotes if there is an Available Delivery Service Provider available for a given order.

**3.2 Availability.** The Customer may seek a bid for the delivery to a given End User of the Product(s) ordered by that End User through the Platform. Each Selected Delivery Service Provider who is available to make a delivery in a given Delivery Area may respond to the request for a delivery and the delivery order will be assigned based upon the Delivery Requirements provided by Customer. If a delivery response does not meet that **Customer's Delivery Requirements, or any additional filters or criteria which may be applied by Olo** from time to time, then delivery may not be available for that End User order.

### **4. Additional Obligations**

**4.1 Olo Obligations.** In addition to the other obligations set forth in this Agreement, Olo shall also use commercially reasonable efforts to: (a) require that the Delivery Service Providers maintain an accurate Profile; (b) require that the Delivery Service Providers maintain and enforce strict guidelines for their drivers, including any independent delivery drivers; (c) require that the Delivery Service Providers' use of the End User data is subject to Olo's privacy policy in effect at the time; (d) require that no End User PII is used by Delivery Service Providers to market any additional products or services to those End Users; and (e) require that all End User PII will be secured from unauthorized access, use, disclosure, loss and theft using industry standard security practices and technologies.

**4.2 Customer Obligations.** In addition to the other obligations set forth in this Agreement, Customer and/ Authorized Operators as applicable, shall also use commercially reasonable efforts to: (a) ensure they comply **with the Delivery Guidelines; (b) ensure that they promptly respond to all End Users' inquiries; (c) use the** Platform to promptly respond to all End User issues, including cancellations and refunds; and (d) use best efforts to create tickets in Dashboard or the Olo API, as applicable, for Selected Delivery Service Providers for issues related to the order or delivery in question. To the extent Customer integrates directly with the Olo API, Customer hereby agrees to any additional terms of service that may be applicable to its Selected Delivery Service Providers. Customer shall not create any obligation of the Delivery Service Provider or Olo to provide any refund other than as specifically set forth in the Delivery Parameters and Refund Matrix located at [www.olo.com/delivery-parameters-and-refund-matrix](http://www.olo.com/delivery-parameters-and-refund-matrix).

### **5. Third Party Beneficiaries**

To facilitate direct dispute resolution between Customer and each Selected Delivery Service Provider in **connection with Customer's use of delivery services, Customer's Selected Delivery Service Providers are third-party beneficiaries of Customer's obligations as set forth herein, and Customer is a third-party beneficiary of Customer's Selected Delivery Service Providers' obligations as set forth in their agreements with Olo. Olo will** indicate to Customer through the Platform which Delivery Service Providers are subject to such third-party **beneficiary obligations. Olo's Delivery Service Providers which have contractually committed to such third-party** beneficiary obligations have agreed not to assert a defense based on lack of privity against any Customer seeking

to enforce their third-party beneficiary rights hereunder. For avoidance of doubt, this Section 5 shall only apply to the extent Customer does not have a direct contractual relationship with a Delivery Service Provider.

**6. Disclaimer.**

OLO MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OF ANY PROFILE INFORMATION AND OLO MAKES NO INDEPENDENT VERIFICATION OF THE INFORMATION PROVIDED BY A DELIVERY SERVICE PROVIDER (OTHER THAN THE REPRESENTATIONS AND WARRANTIES MADE BY THAT DELIVERY SERVICE PROVIDER AS TO THE ACCURACY OF THE PROFILE INFORMATION). OLO MERELY MAKES A PLATFORM AVAILABLE TO FACILITATE THE INTERACTIONS BETWEEN DELIVERY SERVICE PROVIDERS AND CUSTOMERS. OLO IS NOT RESPONSIBLE FOR THE PERFORMANCE OF DELIVERY SERVICE PROVIDERS. OLO DOES NOT PROVIDE THE DELIVERY SERVICES, AND THEREFORE DOES NOT ASSUME, AND EXPRESSLY DISCLAIMS, ANY LIABILITY ARISING FROM CUSTOMER'S USE OF THE DELIVERY SERVICES AND THE SELECTED DELIVERY SERVICE PROVIDERS' PROVISION OF THE DELIVERY SERVICES.

### **Rails Terms & Conditions Addendum**

This Addendum forms a part of the Master Services Agreement and is applicable upon execution of an Order Form in which the parties have agreed that Olo will provide Customer with its Marketplace integration and management platform (“Rails”). **In the event that this Addendum conflicts with the Agreement, or there is an inconsistency, this Addendum shall control.** Unless otherwise defined herein, capitalized terms have the meanings ascribed to such terms in the Agreement.

“Rails” means the service, provided by Olo, and utilized by Customer and/or Authorized Operator (to the extent applicable) at their sole discretion, in which Marketplaces connect to the Olo platform in order to (a) receive Customer Data including, but not limited to, store location data, menu item availability, menu modifier and sub-modifier information, product make times, available capacity, and item pricing; (b) transmit orders made by End Users on Marketplace website or mobile application to the Customer’s Point of Sale systems (POS) through the Olo APIs; (c) monitor and report Marketplace activity; and, at Customer’s sole discretion, (d) control order flow into the store.

In order for Customer to utilize Rails, Customer consents to allow Olo to transfer, or otherwise provide access to, certain Customer Data, including but not limited to, menu information and general restaurant information to each Marketplace selected by Customer. Olo will not share any PII with the Marketplace. Any Customer Data transferred to the Marketplace may only be used by such Marketplace for the limited purpose outlined above, namely use of Rails. Customer agrees that Olo shall have no liability to Customer for the granting of access to, or the misuse of such data, by any Marketplace, or any other claims arising out of or related to the granting of access to the data.

**During the Term, Olo shall be Customer’s preferred provider of integration services for Marketplace ordering platforms to the DQ system.**

**Support Services Addendum**

**1. Definitions**

“Platform Incident” means a functional issue, performance degradation, or fault of the Services. See the classification of these Platform Incident Escalations in Section 3.

“Support” means technical and operational assistance related to the Services provided by Olo to Customer and Authorized Operators.

**2. Support Resources, Availability & Response Time**

<b><u>Resource</u></b>	<b><u>Availability</u></b>	<b><u>Initial Response Time</u></b>
Technical Support Email and Olo.com Help Center Requests	9:00 AM ET - 12:00 AM ET (7 Days a Week)	24 Hours
Technical Support Phone Requests	9:00 AM ET - 6:00 PM ET (Weekdays)	Based on availability; 24 Hours
Deployment and Customer Success Manager Support Requests	9:00 AM ET - 6:00 PM ET (Weekdays)	1 Business Day
Platform Status	24 X 7 via status.olo.com	N/A

**3. Platform Incident Escalations**

Escalation support matrix. Standard support matrix applies excluding P1, P2 or P3 as detailed below. Support priorities and for all services provided to Customer and its Authorized Operators under the following schedule:

<b>Priority</b>	<b>P1</b>	<b>P2</b>	<b>P3</b>
<b>Definition</b>	Critical or Emergency Fault	Non-Escalated Medium Risk Fault	Low Risk Fault
<b>Initial Response Time</b>	1 Hour	2 Hours	Next Business Day
<b>Restoration</b>	2 Hours	24 Hours	Commercially Reasonable Time
<b>Priority Definition Level</b>	Critical or Emergency Fault shall mean: 1) Services are unavailable, and such	Medium Risk Fault shall mean Olo services are unavailable and key	Low Risk Fault shall mean a fault where performance is not

	<p>unavailability directly contributes to a problem that prohibits End Users from placing a digital order; and/or</p> <p><b>2) a problem wherein Olo's services result in a rapid increase of calls over a short period to the Customer's third party helpdesk (10 or more calls in 15 minutes) thus demonstrating a trend.</b></p>	<p>functionality of the Services are interrupted or unavailable to an End User at a single Customer or Authorized Operator location. In such cases, Olo will direct Authorized Operator to contact their Service Desk.</p>	<p>affected or an issue does not negatively impact End Users.</p>
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**EXHIBIT A**  
**AUTHORIZED OPERATOR TERMS & CONDITIONS (ADOPTING)**

These Authorized Operator Terms & Conditions (“AO T&Cs”) govern the use of the Services by the authorized DQ® franchisee that is accessing or using the Services (“Authorized Operator”).

On 09/28/2023, Olo, Inc. (“Olo”) and American Dairy Queen Corporation (“Customer”) entered into a Master Services Agreement (as amended, supplemented or otherwise modified from time to time, the “Master Services Agreement”). Olo and Customer have also entered into one or more Order Forms (as amended, supplemented or otherwise modified from time to time, each an “Order Form” and, collectively with the Master Services Agreement, the “Agreement”) in connection with Olo’s provision of Services (as defined in the Agreement) to Customer and its Authorized Operators.

Authorized Operator desires to use the Services in accordance with the terms of the Agreement and intends to adopt certain terms of the Agreement, including certain liability provisions, for Olo to bill Authorized Operator directly with respect to fees and charges incurred in connection with Authorized Operator’s use of the Services. Authorized Operator’s access to and use of the Service is conditioned on its acceptance of and compliance with these AO T&Cs. By accessing or using the Service, Authorized Operator agrees to be bound by these AO T&Cs.

1. Adoption and Amendments. Authorized Operator hereby adopts and approves the terms of the Agreement, subject to the amendments specified in this Section 1 below (such amended Agreement, the “Adopted Agreement”), and agrees to be bound by the terms of the Adopted Agreement:
  - a. References to Customer in the Adopted Agreement shall be changed to Authorized Operator. Any capitalized terms used but not defined herein shall have the meanings ascribed to them pursuant to the Adopted Agreement.
  - b. The Adopted Agreement shall be coterminous with the Agreement, unless these AO T&Cs are terminated earlier in accordance with Section 3 below.
  - c. The notice contact information for Authorized Operator under the Adopted Agreement shall be the contact information provided by Authorized Operator to Olo during the onboarding process.
  - d. The Adopted Agreement shall exclude any terms in the Agreement relating to rights or obligations applicable to Customer Data, press releases, Customer Trademarks, obligations with respect to franchisees, or service credits. Any such terms in the Agreement shall be deleted in the Adopted Agreement.
  - e. The Adopted Agreement shall only include any fees or charges under the Agreement that are (i) charged on a per location or per transaction/order/unit basis, and (ii) applicable to the use of the Services by the Authorized Operator or by locations operated by the Authorized Operator (including any fees or charges associated with transactions/orders/units conducted with locations owned or operated by the Authorized Operator). All other fees or charges set forth in the Agreement shall be deemed deleted in the Adopted Agreement.
  - f. Subject to clause (d) of this Section 1, the Adopted Agreement shall automatically incorporate any change, supplement, amendment, amendment and restatement, or other modifications made to the Agreement by Olo and Customer and the Adopted Agreement shall be deemed to have been changed or modified accordingly; provided, that Customer will be solely responsible for notifying Authorized Operator of any modifications to the Agreement (including, for clarity, pricing updates and changes with respect to Services that are mutually agreed in writing by Customer and Olo). Authorized Operator hereby ratifies such changes or modifications.