



System Terms and Conditions

XENIAL, INC. PROVIDES THE SERVICES AND THE APPLICATIONS (AS DEFINED BELOW) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THESE SYSTEM TERMS AND CONDITIONS (AS AMENDED OR SUPPLEMENTED, THE “**SYSTEM TERMS**”) AND ON THE CONDITION THAT YOU UNCONDITIONALLY ACCEPT AND COMPLY WITH ALL PROVISIONS OF THE SYSTEM TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THE SYSTEM TERMS YOU MAY NOT ACCESS OR OTHERWISE USE THE SYSTEM OR THE SERVICES. THESE SERVICE TERMS GOVERN USE OF THE SYSTEM AND THE SERVICES, INCLUDING PRODUCTS OR SERVICES LICENSED TO YOU UNDER PREVIOUS VERSIONS OF THESE SYSTEM TERMS. BY CLICKING YOUR ACCEPTANCE AND/OR DOWNLOADING AND USING THE SYSTEM OR THE SERVICES YOU (A) ACCEPT THESE SYSTEM TERMS AND AGREE THAT YOU ARE LEGALLY BOUND BY THESE TERMS; AND (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THE SYSTEM TERMS ON BEHALF OF YOURSELF AND, IF APPLICABLE, YOUR EMPLOYER OR OTHER ENTITY THAT YOU REPRESENT (COLLECTIVELY, “**CUSTOMER**”, “**YOU**”, “**YOUR**”). WITHOUT LIMITING THE FOREGOING, YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU HAVE READ THESE SYSTEM TERMS AND THAT YOU AND YOUR ORGANIZATION ARE BOUND BY THE TERMS AND CONDITIONS OF THESE SYSTEM TERMS.

1. GENERAL

1.1. Terms. These System Terms govern the acquisition and use of the Xenial System specified in, and are incorporated into and made a part of, each order, Sales or Lease Agreement (as amended or supplemented, the “**Sales Agreement**”) between Xenial, Inc. or one of our subsidiaries or affiliates (collectively, “**Xenial**”, “**us**”, “**we**” or “**our**”) and You, which references these System Terms. The applicable Sales Agreement, together with these System Terms, are referred to herein collectively as this “**Agreement**”. By accepting this Agreement, either by (i) clicking a box indicating your acceptance; (ii) executing the Sales Agreement that references and incorporates these System Terms or (iii) accessing or using the System, you agree to the terms and conditions contained herein and acknowledge that this Agreement supersedes any prior or contemporaneous terms and conditions, including any purchase order you may provide, and any such additional or different terms or conditions shall have no force or effect. If your Sales Agreement indicates a Trial Period (as defined in Schedule A), this Agreement will apply to the extent of such trial, as described more fully in Schedule A.

1.2. System. These System Terms apply to (i) your purchase, lease, or subscription of Xenial equipment and other hardware (the “**Hardware**”); (ii) your Use (as defined in Section 2.1) of Xenial software (the “**Software**” and, in combination with the Hardware, the “**System**”) in connection with the Software Service (as defined in Section 2.1); and (iii) your purchase or lease of installation, implementation, training, and other services related to the initiation of the System (the “**Implementation Services**”) and maintenance and support services related to the System (“**Support Services**” and, collectively with the Software Service and Implementation Services, the “**Services**”), in each case as applicable as specified in the Sales Agreement.

1.3. Supplemental System Terms. Certain Xenial Systems or Services may require additional terms and conditions, which are set forth in Schedule A and/or Schedule B to these System Terms and by this reference are incorporated into these System Terms, to the extent applicable.

2. ACCESS AND USE

2.1. Use. Subject to all terms and conditions of this Agreement, including compliance with these System Terms and payment of all applicable Fees (as defined in Section 5.1), we grant you a limited, non-exclusive, non-sublicensable, non-transferable (except as set

forth below under Section 12 (*Assignment and Transfer*)) right during the Subscription Term (as defined in Section 4.1) or, as applicable, a perpetual license, to access, use and, as applicable, install and run (collectively, “**Use**”) the object code versions of the Software (any such versions provided by us to you for installation, “**Installed Software**”), and their accompanying documentation, as part of the System as made available by us (“**Software Service**”) in accordance with these System Terms and any additional Use restrictions (including any limitations on the number of authorized users identified by your administrator and approved by us (“**Authorized Users**”), downloads, copies or installations or on the scope of authorized Use) set forth in Schedule A attached hereto. We will use commercially reasonable efforts to make available any Software Service that we provide to you on a subscription basis (“**Subscription Software**”) for remote electronic authorized Use by you and your Authorized Users (as defined in Schedule A attached hereto), except for (i) scheduled downtime (of which we shall give advance electronic notice); (ii) service downtime or degradation due to a Force Majeure Event (as defined in Section 11); (iii) any other circumstances beyond our reasonable control, including your use of Third Party Materials (as defined in Section 3.9); (iv) Use of the Software Service other than in accordance with these System Terms; or (v) any suspension or termination of your Use of the Services as contemplated by this Agreement.

2.2. Authorized Restaurant Location(s). You may Use the Software Service only at the restaurant location(s) operated by you as set forth in the Sales Agreement (the “**Authorized Restaurant Location(s)**”) and only for your internal business purpose, specifically the management and processing of data from the operations of your restaurant(s) at the Authorized Restaurant Location(s). For the avoidance of doubt and without limiting the generality of the foregoing, you are specifically prohibited from acting as a “service bureau” to process data of any other restaurant location or restaurant operator.

2.3. Access Credentials. We will issue you access credentials (e.g., a user name and password) that will enable you to log into and use the System (“**Access Credentials**”). Your Access Credentials will enable us to authenticate you as an authorized user of the System and to provide appropriate authorizations regarding the scope of your use of the System. Any information you provide us in connection with access to or use of the System must be accurate, current and complete. You are solely responsible for maintaining the confidentiality and security of your Access Credentials, and for restricting access to the Authorized Users and Authorized Restaurant Locations so that others may not access protected portions of the System. You may not share your Access Credentials with any third party, including other employees of your organization. You are responsible for any use of, or access to, the System and any activities conducted therein via your Access Credentials. If you become aware of any unauthorized use of or compromise of your Access Credentials, you must notify us immediately. We may revoke your Access Credentials at our discretion including, without limitation, if the applicable Sales Agreement terminates, or if you engage in conduct that is in breach of this Agreement or that threatens to cause harm or disruption to Xenial, your organization, or other users of the System. Once your Access Credentials are revoked or disabled, you no longer will have access to the System.

2.4. Updates. You acknowledge that the Software consists of subscription-based products or, as applicable, products that are licensed on a perpetual basis and that Xenial may make changes to the Software from time to time. From time to time, Xenial may make available to you updates, bug fixes, upgrades, patches and/or new versions of the Software (collectively, “**Updates**”). You agree to promptly install such Updates when they become available to you. You acknowledge and agree that Xenial is permitted to install such Updates to the Software without prior notice to You. You understand and agree that Updates may include necessary functionality and/or fixes to protect the security of the Software and that your failure to promptly install such Updates may compromise your ability to use the

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Software or the System and/or result in the disabling of your Access Credentials. In addition, your Brand may from time to time request or direct that Xenial install menu Updates at your Authorized Restaurant Locations without prior notice to you, and you agree to permit such menu Updates and release Xenial from any liability related to such menu Updates. Xenial shall have no liability to you for any loss or damage resulting from your failure to timely accept such Updates, or as a result of Xenial's installation of such Updates. You acknowledge and agree that You are responsible for ensuring that all Updates have been installed, regardless of whether such Updates are installed by You or by Xenial.

2.5. Training. You may also, with our prior written consent, obtain additional rights to Use the Software Service for training purposes only at an offsite training location.

3. PROPRIETARY RIGHTS; LICENSES; CONFIDENTIALITY

3.1. Ownership. You acknowledge that the Software and all specifications, documentation, systems, information, data, documents, materials, designs, plans, works, content, devices, methods, processes, software (including application program interfaces (“APIs”)) and other technologies that are provided or made available in connection with, or that otherwise comprise or relate to, the Software or Services, and all improvements, enhancements or modifications thereto or derivative works thereof (all of the foregoing, collectively, the “**Xenial Materials**”), are the sole property of Xenial or our licensors. As between us and you, ownership and title to (i) the Xenial Materials; (ii) any software, applications, inventions or other technology or materials developed or delivered in connection with the Services; and (iii) all intellectual property rights related to any of the foregoing (as well as all intellectual property rights in the System) shall remain with us. The Software and Services, as applicable, are made available to you under license for the authorized Use, and are not sold to you, and you have no intellectual property rights therein, other than the limited rights expressly granted hereunder. You acknowledge that Xenial holds all right, title, and interest in and to all tangible and intangible intellectual property contained in the Xenial Materials, including all trade secrets, copyrights, and other intellectual property rights pertaining thereto. You have only the limited revocable right to use the Xenial Materials, during the term of this Agreement, as expressly stated in this Agreement. All rights not expressly granted herein are reserved to Xenial. Ownership and title to your data shall remain with you.

3.2. Customer Data. “**Customer Data**” means any data, content or other materials of any type that you upload, submit or otherwise transmit to or through the System, including but not limited to menu pricing and data concerning or relating to your customers. You represent and warrant that (i) you have obtained all necessary rights, releases and permissions to provide all Customer Data to Xenial and to grant the rights granted to Xenial in this Agreement and (ii) Customer Data and its transfer to, and use by, Xenial as authorized by you under this Agreement does not violate any laws (including without limitation those relating to export control and electronic communications) or the rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies. Xenial assumes no responsibility or liability for Customer Data, and you shall be solely responsible for Customer Data and the consequences of using, disclosing, storing, or transmitting it. Customer shall defend, indemnify, and hold harmless Xenial and its employees, directors, shareholders and agents from and against any claims, actions or demands, losses, liabilities, including, without limitation, all reasonable attorney’s fees and costs, made by any third party arising from or relating to Customer Data, including but not limited to any claim brought by a third party alleging that Customer Data, or your use of the System in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law.

3.3. Licenses. You grant us and our authorized subcontractors (i) a worldwide, perpetual (but revocable hereunder) royalty-free license to host, copy, transmit and display the Customer Data, and any Third Party Materials (as defined in Section 3.9) created by or for you using the System or for use by you with the System, each as is reasonably necessary for your Use as contemplated by this Agreement; and (ii) a worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free license to use, copy, modify, prepare derivative works of and incorporate into the System and Services (and any modifications or derivatives thereof, any of our other products and services and any documentation or other materials related to the foregoing) any suggestion, enhancement request, recommendation, correction or other feedback provided by you relating to the operation, functionality or performance of the System or Services. Subject to the limited licenses granted herein, neither us nor our authorized subcontractors acquire any right, title or interest from you or your licensors under this Agreement in or to any of your data or Third Party Materials.

3.4. Our Use of Data. Notwithstanding anything to the contrary herein, you unconditionally accept and acknowledge that Xenial may collect, use, sell, transfer and disclose non-identifying data and other information relating to the provision, Use and performance of the System and related systems and technologies, Customer Data, and information about your and your customers’ use of the System. As used herein, “non-identifying data” means data that does not identify an individual. As used in this paragraph, “transfer” includes transmission by Xenial or the Software Service to a third party (including, but not limited to, your Brand), another software agent, or hardware device. Xenial may aggregate and anonymize Customer Data or traffic and usage data with similar data of other customers (collectively, “Aggregated Data”) and use or disclose such Aggregated Data for a variety of purposes, including but not limited to, monitoring and improving the performance, features and functionality of the System for purposes of conducting industry trend analysis, describing our services to prospective partners and other third parties, or for any other lawful purposes determined by Xenial. For the avoidance of doubt, Xenial owns all right, title, and interest in and to the Aggregated Data. Xenial may also disclose Customer Data if required to do so by law, legal process, litigation and/or requests from governmental authorities. In addition, we reserve the right to disclose, share and/or otherwise transfer Aggregated Data in connection with a corporate merger, acquisition, consolidation, the sale of a portion of our business or the sale of substantially all of Xenial’s assets, or other fundamental corporate change, whatever form it may take.

3.5. Security. Xenial implements security procedures to help protect Customer Data from security attacks. However, you understand that use of the System necessarily involves transmission of Customer Data over networks that are not owned, operated or controlled by us, and we are not responsible for any of the Customer Data lost, altered, intercepted or stored across such networks. We cannot guarantee that our security procedures will be error-free, that transmissions of Customer Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third party service providers. In addition, you acknowledge that the installation of single sign-on or other System authentication measures may defeat Xenial’s System security and you agree to be responsible for any data security incident involving the unlawful access, loss, destruction, restriction, anonymization and/or deletion of Customer Data or Personal Data resulting therefrom.

3.6. Confidential Information. For purposes of this Agreement, the term “**Confidential Information**” means any information disclosed by one party (“**Disclosing Party**”) to the other party (“**Recipient**”), regardless of format or medium, including, but not limited to, the Disclosing Party’s financial information, technical and non-technical data, services, products, processes, operations, reports, analyses, test results, technology, samples, specifications, protocols, performance standards, formulations, compounds, know-how, methodologies, trade secrets, trade practices, marketing plans and materials, strategies, forecasts, research, concepts, ideas, and

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names, addresses and any other characteristics or identifying information of the Disclosing Party's existing or potential licensors, suppliers, customers or employees, the terms of this Agreement (including pricing terms) or any information derived from any of the foregoing; *provided* that such information is either (i) clearly designated as "Confidential" in writing (if communicated orally or in writing) or at the time of disclosure (if disclosed orally or visually) or (ii) of the nature and type that it should reasonably be regarded as confidential. Our Confidential Information includes the Services and the Xenial Materials (including any benchmarking results or data). Confidential Information shall not include any information that the Recipient can demonstrate (i) is or becomes available to the public other than as the consequence of a breach of any obligation owed to the Disclosing Party; (ii) is actually known to, or in the possession of, Recipient without any breach of any obligation owed to the Disclosing Party; (iii) is rightfully received from a third party in possession of such information who is not under obligation to the Disclosing Party not to disclose the information; or (iv) is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information. The burden of proving the applicability of these exceptions shall be on Recipient.

3.7. Non-Disclosure of Confidential Information. Recipient shall (i) hold in strict confidence and trust all Confidential Information, using the same degree of care that it uses to protect the confidentiality of its own confidential information, and in any event no less than a reasonable degree of care; and (ii) not disclose, sell, rent or otherwise provide or transfer, directly or indirectly, any Confidential Information to any individual or entity ("**Person**") without the prior written consent of the Disclosing Party. Notwithstanding the preceding sentence to the contrary, Recipient may disclose Confidential Information to its or its affiliates' employees, agents, contractors, legal counsel and accountants who need to know such information, only to the extent reasonably necessary, consistent with the obligations of the parties under this Agreement and who are bound by confidentiality obligations no less stringent than those set forth in this Agreement; *provided that*, with respect to agents or contractors, we consent to such access promptly following our receipt of written notice. Recipient shall use the Confidential Information only in connection with the intent of this Agreement and not for any other purpose whatsoever. Recipient shall require any of its representatives who obtain Confidential Information to comply with this Agreement and shall be responsible for any breach of this Agreement by such representatives. Each party understands and agrees that, notwithstanding any other provision of this Agreement, breach of this Non-Disclosure of Confidential Information provision may cause the other party irreparable damage for which recovery of money damages would be inadequate, and that each party shall therefore be entitled to seek, from a court of competent jurisdiction, timely injunctive relief to protect such party's rights under this Agreement in addition to any and all remedies available at law.

3.8. Compelled Disclosure. Notwithstanding the foregoing, Recipient shall be permitted to disclose Confidential Information pursuant to a court order, government order or any other legal requirement of disclosure, or pursuant to the listing rules of any stock exchange to which such party is subject, in each case if no suitable protective order or equivalent remedy is available; *provided that*, to the extent permitted, Recipient gives the Disclosing Party written notice of such court order, government order, legal requirement or listing rule requiring disclosure immediately upon knowledge thereof and allows the Disclosing Party a reasonable opportunity to seek to obtain a protective order or other appropriate remedy prior to such disclosure to the extent permitted by law; and *further provided* that Recipient shall furnish only that portion of the Confidential Information which it is advised by a written opinion of counsel is legally required, and will exercise its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

3.9. Third Party Materials. The System may enable Authorized Users to link to, transmit data to or otherwise access applications, websites, specifications, documentation and systems and any and all

other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software (including APIs) and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided by you or a third party (and are non-proprietary to us) and that interoperate with the System ("**Third Party Materials**"). Except to the extent otherwise expressly set forth in the applicable Sales Agreement, we do not control and are not responsible for Third Party Materials. You acknowledge that (i) the nature, type, quality and availability of Third Party Materials may change at any time and (ii) features of the System that interoperate with Third Party Materials depend on the continuing availability of APIs for use with the System. We may update, change or modify the System as a result of a change in, or unavailability of, Third Party Materials, including APIs. If any third party ceases to make its Third Party Materials, including APIs, available on reasonable terms for the System, as determined by us in our sole discretion, we may cease providing access to the affected Third Party Materials without any liability to you. Any changes to Third Party Materials, including APIs (including their availability or unavailability), does not affect your obligations under this Agreement, and you will not be entitled to any refund, credit or other compensation due to any such changes (except as otherwise expressly agreed by the parties in writing). In addition, any Third Party Materials not embedded in the System may be subject to separate license agreements or terms directly between you and the third party licensor. You agree to, and will take all actions necessary or required by such third party licensor in connection with, any such third party agreements or terms. Except as expressly stated otherwise in this Agreement, (i) we are not responsible for providing any Third Party Materials to you and (ii) licenses, warranties and support for Third Party Materials, if any, will be given by the relevant third party licensors in their license agreements, and not by us. For Third Party Materials embedded in the System, if any, we grant you a limited, non-exclusive, revocable, non-transferable, non-sublicensable sublicense to use such Third Party Materials, solely as embedded in the System, solely to the extent necessary and for the purpose to properly Use the System in accordance with this Agreement.

3.10. Data Processing and Transfer.

3.10.1. Data Processing. Each of Customer and Xenial acknowledges and understands that "personal data" ("**Personal Data**") as defined in any applicable data protection, data privacy and data security laws (collectively, the "**Data Protection Laws**") shall be collected, used and/or disclosed pursuant to this Agreement as set out in the Data Protection Laws.

3.10.2. Customer Acknowledgements and Responsibilities. Customer (i) acknowledges that Xenial is headquartered in the United States and that data collected by Xenial from Customer's Systems may, subject to the terms of this Agreement, be transferred into and processed in the United States or other locations; (ii) expressly consents to such transfer and processing; and (iii) agrees that Xenial may provide a summary or copy of this Agreement, along with information regarding the processing of Personal Data by Xenial and/or its sub-processors, to relevant governmental authorities (including the U.S. Department of Commerce and the U.S. Federal Trade Commission). If Customer uses Software to process, transmit, or store any Personal Data, Customer shall (a) limit the sharing of such Personal Data to the minimum extent necessary for management of its operations and (b) comply with the Data Protection Laws. Customer shall defend, indemnify, and hold harmless Xenial and its employees, directors, shareholders and agents from and against any claims, liabilities, losses, costs or expenses arising out of Customer's failure to comply with the foregoing obligations or the Data Protection Laws.

4. TERM AND TERMINATION

4.1. Term.

4.1.1. Agreement Term. These System Terms commence on the date these System Terms are accepted by you and will continue until terminated as permitted herein or in any Sales

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Agreement (the “**Agreement Term**”). Either party may terminate these System Terms when there are no active Sales Agreements by providing the other party with thirty (30) days prior written notice.

4.1.2. Subscription Term. The term of the Software Service shall be as set forth in the applicable Sales Agreement, and in any event shall continue while any subscriptions are in effect, subject to earlier termination in accordance with this Section 4 (as extended by any renewal, the “**Subscription Term**”). Except as expressly stated otherwise in the Sales Agreement, the Subscription Term shall automatically renew for additional periods of the same duration as the initial Subscription Term at then-current Fees unless either party provides written notice at least sixty (60) days prior to the expiration of the then-current Subscription Term of its election to terminate the subscription(s).

4.1.3. Support Term. The term for which we will provide Support Services (as extended by any renewal, “**Support Term**”) shall be as specified in the Sales Agreement, unless terminated sooner in accordance with this Section 4. If the initial Support Term for Support Services is not stated in the Sales Agreement, it shall be one (1) year from shipment of the Hardware or, if earlier, any Installed Software. Customer may elect to not renew the Support Term for an additional one (1) year (each a “**Renewal Support Term**”) and in such case Customer must notify Xenial in writing at least sixty (60) days prior to the expiration of the then-current Support Term or Renewal Support Term of its election to terminate Support. If we continue to offer Support Services to you, then approximately thirty (30) days prior to expiration of the initial or then-current Support Term, we will invoice you for a renewal period (not to exceed one (1) year without our prior written approval) at our then-current Fees for such Support Services.

4.2. Termination. In addition to any other remedies either party may have, either party may terminate this Agreement (i) upon thirty (30) days’ prior written notice if the other party materially breaches any of the terms or conditions of this Agreement and such breach remains uncured at the expiration of such period (*provided, however,* with respect to your failure to pay Fees, upon five (5) days’ prior written notice and such breach remains uncured at the expiration of such period); (ii) immediately if the other party (w) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (x) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law (which proceeding, if involuntary, is not dismissed within thirty (30) days); (y) makes or seeks to make a general assignment for the benefit of its creditors; or (z) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take change of or sell any material portion of its property or business; (iii) notwithstanding clause (i) above, immediately if the other party’s breach directly relates to any of Section 3 (*Proprietary Rights; Licenses; Confidentiality*) or Section 7.1 (*Restrictions*); and (iv) in accordance with Section 11 (*Force Majeure*) upon a qualified Force Majeure Event (as defined in Section 11).

4.3. Effect of Termination.

4.3.1. Termination of the Subscription Term. In the event of termination of the Subscription Term, (i) you shall immediately cease Use of any Xenial Materials and return or destroy (and certify such destruction of) all Xenial Confidential Information and all Installed Software, including removal of the Installed Software from all computerized data storage devices or components (including any hard-drive or database); and (ii) all Authorized User access to the Software Service, including any portal, reporting or other functionality, will be disabled.

4.3.2. Termination of the Support Term. In the event of any expiration or termination of the Support Term, effective as of such expiration or termination, our obligations set forth in Section 6 (*Support Services*) shall immediately cease to apply (except for any obligations therein to the extent expressly subject to a different time period), and you shall no longer be able to make, receive or access additions or Updates to any Installed Software.

4.4. Fees Upon Termination. All Fees are non-cancellable and all amounts paid are non-refundable; *provided, however,* that if this Agreement is terminated by you in accordance with Section 4.2 (*Termination*), we will refund to you any prepaid Fees under the Sales Agreement on a pro-rated basis covering the remainder of the Sales Agreement after the effective date of termination. If this Agreement is terminated by us in accordance with Section 4.2 (*Termination*), you will pay to us any unpaid Fees covering the remainder of all Sales Agreements. In the event of any expiration or termination of the Support Term (other than by you in accordance with Section 4.2 (*Termination*)) or you otherwise allow the Support Term to lapse, we may require you to make payments for all lapsed periods as a condition of resuming Support Services. In no event will termination or expiration relieve you of your obligation to pay any Fees payable to us for periods prior to the effective date of termination or expiration.

4.5. Suspension. In addition to any other remedies we may have, in lieu of termination, we may elect to immediately suspend your, or any Authorized User’s, Use of the System in the event and for the duration of our belief in good faith after reasonable inquiry that (i) you breached any of Section 2.1 (*Use*), Section 2.2 (*Authorized Restaurant Location(s)*), Section 3 (*Proprietary Rights; Licenses; Confidentiality*), Section 5 (*Fees*), Section 7.1 (*Restrictions*) or Section 7.2 (*Responsibilities*); (ii) you are engaged in fraudulent, infringing or unlawful activities; or (iii) any Use of the System or Services by or on behalf of you is reasonably likely to lead to any injury, property damage, violation of law or third party agreements or terms or any liability on the part of us or any of our affiliates, licensors or contractors. Any suspension under this Section 4.5 shall not relieve you of your obligation to pay Fees or to comply with any other restrictions or obligations under this Agreement.

4.6. Surviving Provisions. All sections of this Agreement which by their nature should survive termination will survive termination, including accrued rights to payment, ownership, confidentiality obligations, warranty disclaimers, and limitations of liability.

5. FEES

5.1. Fees. As a condition of your purchase, lease, or subscription of the Hardware and receipt of the Services hereunder, you shall pay to us the fees and other amounts set forth in the Sales Agreement (“**Fees**”) in the manner specified in the Sales Agreement. Subject to Section 4.4 (*Fees Upon Termination*), all Fees are non-cancellable and all amounts paid are non-refundable. If your use of the System or Services exceeds the number of Authorized Restaurant Locations set forth on the Sales Agreement or otherwise requires the payment of additional Fees (per the terms of this Agreement), you will be invoiced for such additional usage and you shall pay the additional Fees in the manner provided therein. We reserve the right to change the Fees and to institute new charges and Fees at the end of the initial Subscription Term or Support Term or then-current renewal Term, as applicable, upon thirty (30) days prior written notice to you (which may be sent by email). If you believe that we have billed you incorrectly, you must contact us no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be made in accordance with the notice provisions of Section 13.9 (*Notice*).

5.2. Method of Payment. Unless otherwise specified in the Sales Agreement, (i) payment for the System shall be made in full in advance and (ii) we will invoice you annually during the Support Term and payment must be made in full (without any setoff, recoupment, counterclaim, deduction, debit or withholding), in each case in U.S. dollars (by check, credit card, wire transfer or ACH in accordance with the instructions set forth in the Sales Agreement). All payments shall be received by us within thirty (30) days after the mailing date of the invoice or, if you elect to pay the Fees by credit card, you shall provide us with valid and updated credit card information and authorize us to charge such credit card account for all Services set forth in the Sales Agreement for the initial Support Term and any renewal Support Term(s), and such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the Sales

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Agreement. Unpaid amounts are subject to a finance charge of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum rate permitted by law, whichever is lower, plus all costs and expenses incurred in connection with collection of unpaid amounts. You are responsible for providing complete and accurate billing and contact information to us and promptly notifying us of any changes to such information.

5.3. Taxes. You shall be responsible for, pay when due, and shall indemnify and hold Xenial harmless from and against any liability, obligation, cost or expense relating to any sales, value-added, use, ad valorem, intangible, transfer, excise, documentary stamp, importation/exportation or other taxes, duties, fees, tariffs, levies or other governmental charges, including any penalties and interest thereon (collectively, “**Taxes**”) (A) payable in connection with and/or relating to the System, the Services and the related actions to be taken by the parties pursuant to these System Terms other than taxes based on our net income and (B) payable in connection with and/or relating to any use of the System and the Services and any related sales, including Taxes arising from any incorrect or insufficient data entered into the Services by you, or a third-party marketplace facilitator or marketplace provider, other than Taxes based on our net income. If you provide us with satisfactory evidence of a tax exemption, we will not bill you for taxes to which the exemption applies. To the extent that any Taxes are subsequently imposed on Xenial, you shall promptly pay such Taxes and indemnify and hold Xenial harmless for and against such Taxes. You shall also indemnify, defend and hold the Indemnified Parties (as defined below) harmless from and against, any liability, obligation, cost or expense relating to your failure to comply with Section 7.2(v) of these System Terms. The indemnification provisions under this Section 5.3 shall be covered under Section 10.3 of this Agreement.

5.4. Additional Terms. We reserve the right to charge you applicable late fees plus the list price of any replacement items if any Hardware is not returned to us (unless otherwise mutually agreed in writing) within forty-five (45) calendar days after shipment of the replacement items to you. Our late fees, which are subject to change in our discretion, are set forth in the *Support Services Price List* provided to you separately. All late fees are in addition to other charges and are non-refundable. We may also decline to replace additional Hardware unless and until you comply with the applicable Hardware return/destruction procedures.

5.5. Title; Risk of Loss. You agree that the title, risk and responsibility for all Hardware purchased by you under this Agreement shall transfer from Xenial to you upon shipment of the Hardware (i.e. FOB at the point of shipment). It is further clarified that Xenial shall not be liable for any loss or damage that occurs to any of the Hardware during shipment of the Hardware to you.

6. SUPPORT SERVICES

Subject to your payment of all applicable Fees, your compliance with the restrictions and responsibilities under Section 7 (*Your Restrictions and Responsibilities*), and the other terms of this Agreement, we are responsible for and agree to (during the Support Term unless a different time period is specified) provide the following Support Services:

- (i) Respond to support calls from our customers, including you, on an as-available basis based on the criteria of first-come-first-served and relative degree of need as determined by us (in particular, emergencies will take priority over general questions). Support Services are not intended to include general training of your personnel or assistance with major Customer database conversions or upgrades. Training and other Services beyond normal support may be purchased separately.
- (ii) Make commercially reasonable efforts to resolve System problems reported by you. We are not responsible for problems related to, or arising from, third party or your systems, hardware, software, networks, connections or infrastructure, or unauthorized installers of Hardware or Xenial Materials, or any modification or unauthorized or improper use of the System.

- (iii) For Authorized Restaurant Locations within the U.S., provide 24-hour a day, 365-day per year support for the System through our hotline telephone number based on the following schedule: (x) 24 x 7 x 365 for technical service and support with respect to System issues; (y) normal business hours, for general questions: Monday through Friday (other than holidays), 8:00 a.m. through 5:00 p.m., local time in the geography of the Authorized Restaurant Location; and (z) if there is no response at the hotline number, you should dial our main number. For Authorized Restaurant Locations outside of the U.S., unless explicitly stated in the Sales Agreement or the *Support Services Price List*, provide support for the System through our hotline telephone number during normal business hours: Monday through Friday (other than holidays), 8:00 a.m. through 5:00 p.m., local time in the geography of the Authorized Restaurant Location.

- (iv) Make available, as applicable, at no extra charge to you (y) during the Subscription Term, the current version of the Software Service (excluding Installed Software or any corrections, Updates, enhancements or new releases thereof), as made generally available to other supported customers during such period; or (z) during the Support Term, corrections, Updates, enhancements and new releases of Installed Software, as made generally available to other supported customers during such period. If we charge a fee for a new version of the Software Service to our supported customers generally within the Brand (as defined in Section 7.2 (*Responsibilities*)), then that version will be made available to you at the same prevailing fee.

- (v) Replace or substantially correct (in our sole discretion) materially nonconforming Hardware and Installed Software that is under valid warranty during the applicable Warranty Period, at no charge to you (other than shipping, handling, and taxes). Replacement items may be new, used, refurbished, or reconditioned in our sole discretion.

- (vi) Subject to any exclusions in Section 9 (*Limitation of Liability*) and any exclusions in our then-current *Support Services Price List*, replace or substantially correct (in our sole discretion) malfunctioning Hardware and Installed Software after the applicable Warranty Period, at the rates and prices set forth in our then-current *Support Services Price List*, as it may be revised by us from time to time in our discretion. Replacement items may be new, used, refurbished, or reconditioned in our sole discretion.

7. YOUR RESTRICTIONS AND RESPONSIBILITIES

Our support and other obligations under this Agreement are further conditioned on your performance of your obligations and responsibilities hereunder, including those set forth below.

7.1. Restrictions. You shall not, and shall not permit any other Person to, access or use the System except as expressly permitted by this Agreement. You shall use the System strictly in accordance with the terms of this Agreement and the Sales Agreement and in compliance with all applicable laws, rules, and regulations. For purposes of clarity and without limiting the generality of the foregoing, you shall not, nor permit any other Person to, do any of the following in connection with the System (or any portion or component thereof or documentation or other materials associated therewith), except as this Agreement or our applicable documentation expressly authorizes: (i) except to the extent specifically mandated by applicable law, copy, download, modify or create derivative works or improvements of the Services or Xenial Materials; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Xenial Materials (or any Authorized User Access Credentials) to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (iii) except to the extent specifically mandated by applicable law, reverse engineer, disassemble, decompile, decode, or adapt the Services or Xenial Materials or otherwise attempt (x) to derive or gain access to the source code thereof, (y) to re-identify methodologies or processes used therein, or (z) to extract any ideas, algorithms or procedures therefrom, in each case in whole or in part; (iv) bypass or breach any security device or protection used by or in connection with the System or Use the Subscription Software or Xenial Materials other than by an

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Authorized User through the proper use of his/her own then-valid access credentials; (v) install or run any software other than the Software on the Hardware (or on any other platform used for the Software) without our prior written consent; (vi) input, upload, transmit or otherwise provide to or through the System (or any related systems, software, hardware, data, materials or services (collectively, "**Related Applications**")) any information or materials that are unlawful or injurious or any virus, worm, malware or other malicious computer code designed to disrupt, disable or harm the Xenial Materials or the System (or any Related Applications); (vii) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the System (or any Related Applications) or our provision of any products or services to any third party, in whole or in part; (viii) remove, delete, alter or obscure any trademarks, specifications, documentation, end user license agreement, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices in connection with the Xenial Materials; (ix) Use the Xenial Materials or the System (or any Related Applications) in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any third party or that violates any applicable law or that is obscene, defamatory, harassing, high-risk (i.e. where failure could lead to death or serious bodily injury or physical or environmental damage), unsolicited, misleading, harmful or otherwise inappropriate or unauthorized; (x) Use, modify, integrate or distribute the Xenial Materials or the System (or any Related Applications) in any manner that does or is reasonably likely to subject the foregoing to any open source license terms; or (xi) Use the Xenial Materials or the System (or any Related Applications) for purposes of competitive analysis of the System or Xenial Materials, the development, provision or use of a competing software service or product, or for any other purpose or in any other manner that is to our detriment or commercial disadvantage or that is not expressly authorized under this Agreement. Any act inconsistent with the full and complete protection of Xenial's copyright and common law rights in the System is expressly and strictly prohibited by this Agreement.

7.2. Responsibilities. You shall comply with the *Site Readiness Specifications* relating to Implementation Services provided to you separately. You warrant that you have obtained all necessary consents under the Data Protection Laws for the collection, recording, storage, use, transfer and other processing of Personal Data covered by this Agreement. In addition to any Customer responsibilities set forth in Schedule A attached hereto, you shall (i) use the System (together with any associated content) in compliance with (y) any applicable agreements between you and your applicable franchisor, licensor or brand associated with the Authorized Restaurant Location(s) (together with its affiliates, the "**Brand**"), and (z) your published policies then in effect and all applicable laws and regulations; (ii) provide and maintain, at your expense, a physical, electrical, operational and communications environment that complies with any applicable specifications needed to connect to, access or otherwise Use the System (including hardware, modems, servers, software, operating systems, networking, broadband capacity, supported web browsers, web servers and similar equipment, site, storage, electrical, operational, configuration, security and installation requirements compliant with our specifications made available to you (including the configuration of firewalls to allow communication via TCP ports designated by us to the extent applicable to the Services) (the line and any associated communications hardware must pass a Xenial communication test and if the required connection is not available when we are requested to provide assistance, you will be billed for additional support time at our then-current rates, and your support request may be given lower priority)); (iii) provide and maintain, at your expense, the security of any equipment, accounts, passwords, Access Credentials (including administrative and Authorized User Access Credentials), credentials and files and for all access and Use of the System; (iv) maintain an agreement for Support Services continuously in force; (v) be responsible for the accuracy, quality and legality of your data and the means by which you collect,

acquire, record, store, use, process, transfer or otherwise provide it (including the regular monitoring and verification of the accuracy of your data input and output and the accuracy and completeness (and reporting) of data (including tax and sales data) entered into the System), and make commercially reasonable efforts to prevent unauthorized Use of your data or the System (including the alignment of the databases containing your data in the event that the System is Used in connection with multiple Authorized Restaurant Locations); (vi) make commercially reasonable efforts to identify and resolve identified problems prior to calling our support personnel; (vii) make commercially reasonable efforts to provide trained personnel familiar with the System to assist our support personnel during support calls; (viii) adhere to the support schedule specified in clause (iii) of Section 6 (*Support Services*); (ix) provide prompt notice of, and return to us, all malfunctioning Hardware that we have agreed to replace under clauses (v) and (vi) of Section 6 (*Support Services*) within forty-five (45) calendar days after our shipment of replacement equipment to you; (x) promptly coordinate scheduled dates with us, as applicable, for installation of Installed Software upgrades; (xi) obtain and maintain any licenses, registrations and authorizations that may be required for the import, installation, maintenance or other use of the System under the laws and regulations applicable in the jurisdiction where each Authorized Restaurant Location is located; and (xii) designate a qualified individual responsible for coordination and facilitation of System configurations, Updates, changes and maintenance.

7.3. Future Functionality. Except as otherwise expressly provided in Section 6 (*Support Services*), you agree that your purchase, lease, or subscription of the Hardware and of receipt and Use of the Services are not contingent on the delivery or availability of any future functionality or features, including any comments made by us regarding future functionality or features.

8. LIMITED WARRANTY AND DISCLAIMER

8.1. Limited Warranty and Disclaimer. We warrant that the Hardware (excluding any parts or components (e.g., digital menu board displays) not manufactured or branded by us) and Installed Software will perform in all material respects in substantial accordance with our applicable specifications and documentation for the warranty period specified in the Sales Agreement (or, in the absence of such period in the Sales Agreement, a period of twelve (12) months) in each case beginning upon our shipment of the Hardware or, if earlier, Installed Software (as applicable, the "**Warranty Period**"). We warrant that the Services will be performed in a professional and competent manner by appropriately qualified personnel in substantial accordance with our applicable specifications and documentation. To the fullest extent permitted under applicable law, any warranty under this Agreement shall be void, and we shall have no responsibility or liability under this Agreement, in the event that performance of the Hardware or Services has been affected by (i) accident, spill, abuse, misuse or neglect; (ii) a delay of more than sixty (60) days in properly reporting to us, in writing, any relevant non-conformance; (iii) operation in or connection to any unsuitable, unauthorized, unsupported, incompatible or third party software, hardware, network, configuration, system or physical, electrical, or operating environment (including Third Party Materials); (iv) the performance or failure to perform of any kitchen or other non-Xenial equipment monitored by or otherwise interfaced with the System; (v) any compliance or failure to comply with standards or practices for food production or storage; (vi) installation, implementation, repair, or modification of the Hardware or Software by any Person other than us or our authorized subcontractors; (vii) your network or connectivity problems, including failure to maintain sufficient broadband capacity and supported browsers; or (viii) the performance of (or failure to perform by) the Brand or other third parties, and is expressly conditioned on your compliance with any applicable specifications, as made available to you, as they may be updated by us from time to time, including any hardware, operating system, network, configuration, security, installation or other requirements. If a System defect results from an embedded part or component that was manufactured by a third party,

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we will reasonably facilitate any communications between you and such third party during the applicable Warranty Period. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8.1, XENIAL EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW REGARDING THE SYSTEM, THE XENIAL MATERIALS, OR THE SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE ARISING IN LAW FROM A COURSE OF DEALING OR USAGE OR TRADE, AND INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE SYSTEM, THE XENIAL MATERIALS, THE SERVICES AND ANY RELATED DOCUMENTATION ARE PROVIDED ON AN "AS IS" "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS, AND YOUR USE OF THE SYSTEM, THE XENIAL MATERIALS, THE SERVICES THEREBY IS AT YOUR SOLE RISK AND DISCRETION. FURTHER, XENIAL MAKES NO WARRANTY THAT (I) THE SYSTEM, THE XENIAL MATERIALS, OR THE SERVICES WILL MEET YOUR REQUIREMENTS; (II) THE SYSTEM, THE XENIAL MATERIALS, OR THE SERVICES WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, TIMELY, SECURE, OR ERROR-FREE THAT DEFECTS WILL BE CORRECTED OR THE SYSTEM, THE XENIAL MATERIALS, OR THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (III) THE QUALITY OF THE SYSTEM, THE XENIAL MATERIALS, OR THE SERVICES, INFORMATION, OR OTHER MATERIAL ACCESSED OR OBTAINED BY YOU THROUGH THE SYSTEM WILL MEET YOUR EXPECTATIONS; OR (IV) THE SYSTEM, THE XENIAL MATERIALS, OR THE SERVICES DO NOT VIOLATE ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON OR ENTITY. XENIAL DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SYSTEM, THE XENIAL MATERIALS, OR THE SERVICES, IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO YOU. ALL THIRD PARTY MATERIALS (INCLUDING ANY BRAND CONTENT (*SEE SCHEDULE A*) AND DIGITAL MENU BOARD DISPLAYS, IF APPLICABLE) MADE ACCESSIBLE THROUGH THE SYSTEM ARE PROVIDED "AS IS" AND ANY REPRESENTATION, CONDITION, GUARANTEE OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD PARTY OWNER OR DISTRIBUTOR OF THE THIRD PARTY MATERIALS.

8.2. Remedies. You assume sole responsibility for any Use of the System that is inconsistent with the terms and conditions of this Agreement. Our entire liability and your exclusive remedy with respect to any breach of the above warranty shall be, at our option in our sole discretion, either (i) substantial correction of nonconformities in or replacement of materially nonconforming Hardware, which is under valid warranty during the applicable Warranty Period, at no charge to you (except that we may charge shipping and handling charges after the first ninety (90) days of the Warranty Period); or (ii) re-performance, substantial correction of nonconformities in, or replacement of, materially nonconforming Services, which are under valid warranty during the applicable Warranty Period, at no charge to you. Any replacement Hardware or Installed Software will be warranted for the remainder of the original Warranty Period or thirty (30) days, whichever is longer.

8.3. Non-Warranted Services. We will be entitled to reimbursement at our then-current standard rates and prices for any services performed or products or parts provided in connection with Hardware or Services not under warranty, including circumstances where a warranty is void for any of the reasons set forth in this Section 8.

9. LIMITATION OF LIABILITY

9.1. NO CONSEQUENTIAL DAMAGES. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NONE OF US NOR ANY OTHER PERSON WHO HAS CONTRIBUTED TO THE DESIGN, DEVELOPMENT, PRODUCTION, DISTRIBUTION, INSTALLATION, IMPLEMENTATION, SUPPORT OR MAINTENANCE OF THE HARDWARE OR SERVICES SHALL BE LIABLE FOR ANY (I) INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES; (II) LOST BUSINESS OR ANTICIPATED SAVINGS, LOST PROFITS, LOST GOODWILL OR DIMINUTION IN VALUE; OR (III) LOST, DAMAGED, CORRUPTED OR INACCURATE DATA, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR IN CONNECTION WITH THE HARDWARE, SERVICES OR THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, EXTRA-CONTRACTUAL OR IN TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY.

9.2. LIABILITY LIMITATION. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, EXTRA-CONTRACTUAL OR IN TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE NUMBER OF OCCURRENCES OR CLAIMS, SHALL BE LIMITED TO THE FEES YOU HAVE PAID TO US DURING THE PRECEDING TWELVE (12) MONTHS IN CONNECTION WITH THE AUTHORIZED RESTAURANT LOCATION(S) FOR THE SPECIFIC HARDWARE OR SERVICES OUT OF WHICH THE CLAIM ARISES.

10. INFRINGEMENT INDEMNIFICATION

10.1. Indemnification by Us. We shall defend and indemnify you from liability to third parties to the extent resulting from infringement by the Hardware (if manufactured or branded by us), the Software, or their combination in the System, of any patent registered in the country of the applicable Authorized Restaurant Location(s) or any copyright issued as of the commencement date of the Subscription Term or misappropriation of any trade secret; *provided* that (i) we are promptly notified of (in no event more than five (5) business days after) any and all threats, claims and proceedings related thereto; (ii) we are given reasonable assistance and the opportunity to assume sole control over defense and settlement; and (iii) you are not in material breach under this Agreement (including with respect to payment of Fees). We will not be responsible for any settlement that we do not approve in writing. The foregoing obligations do not apply (a) with respect to portions or components of the System (1) not supplied by us or our authorized subcontractors, (2) made in whole or in part in accordance with specifications provided by you, (3) that are modified without our approval after the Hardware and Software are delivered or made available by us, or (4) combined with other hardware, software, products, systems, environments, services, processes or other materials not specifically approved by us where the alleged infringement relates to such combination; (b) where you continue the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (c) where the liability arises or results from your business methods or your use of the Hardware or Software is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Hardware (if manufactured or branded by us), the Software, or their combination in the System, are held by a court of competent jurisdiction to be or are believed by us to be infringing, we may, at our option and expense, (x) replace or modify the Hardware (if manufactured or branded by us), the Software, or their combination in the System, to be non-infringing; *provided* that such modification or replacement contains substantially similar features and functionality; (y) obtain for you the right to continue using the Software; or (z) if neither of the foregoing is commercially practicable in our reasonable discretion, terminate in whole or in part this Agreement or the

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applicable Sales Agreement and provide you a refund of any prepaid, unused Fees for the affected Hardware or Software, as applicable.

10.2. Exclusive Remedy. This Section 10 states our entire liability and your exclusive remedy with respect to any infringement or misappropriation related to the Hardware (if manufactured or branded by us), the Software, their combination in the System or the Services (or any use of the foregoing) of any intellectual property rights.

10.3. Indemnification by Customer. You agree to indemnify, hold harmless and defend Xenial and its licensors, parent, subsidiaries and affiliates, and all officers, directors, and employees thereof, and anyone acting on Xenial's behalf (collectively, the "**Indemnified Parties**") from and against any and all claims, alleged claims, demands, causes of action, judgments, damages, losses, liabilities, and all costs and expenses of any kind arising from or connected with (i) your use of the System, the Xenial Materials, or the Services; (ii) any breach or alleged breach of your representations, warranties, obligations or agreements hereunder; (iii) your gross negligence or willful misconduct; and/or (iv) any violation of any laws or regulations or the rights of any third party by you or by any person or entity that you allow to use the System, the Xenial Materials, or the Services, including Taxes arising from any incorrect data or insufficient data entered into the System by you, any other third-party marketplace facilitator or marketplace provider. For the avoidance of doubt, the indemnification under this Section 10.3 shall also cover liability under Section 3.5 and your failure to comply with Section 5.3 and Section 7.2(v) of these System Terms; and any failures committed by any third-party marketplace facilitator or marketplace provider described in Section 7.2 of Schedule A to the Xenial System Terms and Conditions. This Section 10.3 shall survive the termination of this Agreement.

11. FORCE MAJEURE

You acknowledge that we may be interrupted, delayed, or prevented from completing performance of any or all of our obligations under this Agreement due to an occurrence outside of our reasonable control, including fire, flood, explosion, natural disaster or act of God, war, riot, pandemic, terrorist act, action or inaction of government, strike, labor dispute, materials shortage, shortage of adequate power, internet or telecommunications or conduct of third parties ("**Force Majeure Event**"). We will use reasonable efforts to mitigate the effects of a Force Majeure Event, but shall not be liable or responsible to you, or be deemed to have defaulted under or breached this Agreement, as a result of a Force Majeure Event.

12. ASSIGNMENT AND TRANSFER

12.1. Assignment or Transfer by You. You may assign or transfer your rights and interests in this Agreement or the System only in connection with the sale or other transfer of the restaurant at the Authorized Restaurant Location(s) (including as a result of a change in control by operation of law, merger or the sale of assets or equity) and only with our prior written consent. Our consent shall not be unreasonably withheld; *provided* that such assignment or transfer: (i) is in writing; (ii) is not to a Person that is in default under any agreement with us or affiliated with such a Person; (iii) is accompanied by the physical transfer of the Hardware and any Installed Software to the assignee; (iv) states that the assignee is assuming all of your rights and obligations under this Agreement; and (v) is accompanied by the payment of a transfer fee at our then-current rates. In addition, the assignee shall agree to a one-year Support Term with us (or our designee), and pay the associated then-current Fees, as a condition to such assignment or transfer.

12.2. Assignment by Us. We may assign or transfer our rights, interests and obligations in this Agreement or the System, in whole or in part, in our sole discretion.

13. MISCELLANEOUS

13.1. Relationship. Each of Customer and Xenial agrees that our legal relationship under this Agreement is as independent contractors. Nothing in this Agreement shall be deemed to create a joint venture, agency, partnership, or other relationship between

Customer and Xenial, and neither party shall have any power by virtue of this Agreement to enter into any contract or commitment on behalf of the other or to bind the other in any respect whatsoever.

13.2. Export Controls. The System and/or the Xenial Materials may be subject to US export control laws, including but not limited to the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export or release the System or the Xenial Materials to, or make the System or the Xenial Materials accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the System or the Xenial Materials available outside the US.

13.3. Entire Agreement. This Agreement, including these System Terms and the applicable Sales Agreement, is the complete and exclusive agreement between Customer and Xenial concerning the subject matter of this Agreement and supersedes any and all prior or contemporaneous proposals, agreements, verbal or written. This Agreement shall take precedence over any additional or different terms and conditions you may provide, including any general terms of purchase or lease, to which notice of objection is hereby given. In the event of any conflicts or inconsistencies, the following order of precedence shall apply, but only with respect to the specific subject matter of each: (i) the Sales Agreement then (ii) the System Terms (for the avoidance of doubt, where a Sales Agreement includes additional and more specific terms and conditions with respect to a concept addressed generally in these System Terms or does not address a concept addressed herein, no conflict shall be deemed to exist), and in each case in the event such conflict or inconsistency relates to the translation from English into a local language, the English version shall control. Xenial may modify these System Terms, in whole or in part, at any time, and such modified System Terms will supersede and replace any prior versions of these System Terms. In the event such changes are considered material by Xenial, Xenial will post such changes on its website and may make the revised System Terms available to you via download through the applicable app store. You agree to check Xenial's web site periodically to review any changes to these System Terms. By continuing to use the System and the Services and/or clicking your assent to the modified System Terms, you will be deemed to have read, understood, and unconditionally agreed to comply with the terms and conditions of the System Terms, as modified.

13.4. Authority. Each of Customer and Xenial acknowledges that (i) it has read and understands, and has had an opportunity to provide its comments to, the terms and conditions set forth in this Agreement and intends to be legally bound hereby; (ii) the representatives accepting or executing the Sales Agreement incorporating these System Terms are authorized representatives; and (iii) the execution, delivery and performance of this Agreement will not result in any breach of or default under any provision of any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation to which it is a party or by which it is bound or which applies to its obligations hereunder.

13.5. Compliance with Applicable Laws. Each of Customer and Xenial shall comply with any law or regulation applicable, in the case of us, to the delivery or provision of the Hardware and Services and, in the case of you, to the receipt and Use of the Hardware and Services (including with respect to applicable taxation, privacy and importation/exportation laws). Any legal or regulatory compliance obligations shall remain your sole responsibility, and nothing herein is intended to shift such burden from you to us. For the avoidance of doubt, the System is not intended to serve as a substitute for, or method of, compliance with any legal or compliance obligations to which you may be subject (including with respect to employee recordkeeping), and under no circumstances shall we have any liability to you arising from your non-compliance with such obligations.

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13.6. Audit. We may audit and monitor your Use of the System and compliance with these Systems Terms or an applicable Sales Agreement at our expense. You agree (i) to cooperate with our audit and to provide reasonable assistance and access to relevant information, which audit shall not unreasonably interfere with your normal business operations and (ii) that we shall not be responsible for any of your costs incurred in cooperating with the audit. You agree to pay within thirty (30) days of written notification any Fees applicable to your Use of the System in excess of your rights. If you fail to remit payment, we may terminate the Services.

13.7. Waiver; Severability. The failure to enforce at any time the provisions of this Agreement or to require at any time performance by the other party of any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement, or a party's right thereafter to enforce provisions in accordance with the terms of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable by a judicial or regulatory authority, the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable. If no feasible interpretation would save the provision, it shall be severed and the remainder shall not be affected and shall be enforced as nearly as possible according to its original terms and intent.

13.8. Governing Law; Arbitration. Except as set forth in [Schedule B](#) to this Agreement, (i) this Agreement shall be construed and governed in accordance with the laws of the United States and the State of Georgia U.S.A., without giving effect to: (y) the principles of conflicts of law and that body of law applicable to the choice of law; and/or (z) the United Nations Convention on Contracts for the International Sale of Goods, and/or its implementing and/or successor legislation and/or its regulations; (ii) any dispute arising under these System Terms or this Agreement shall be submitted exclusively to binding arbitration in Atlanta, Georgia U.S.A. in accordance with the rules of the American Arbitration Association, and each party consents to such exclusive forum; *provided* that nothing herein shall prevent either party from seeking a preliminary injunction or other equitable relief in a judicial proceeding to prevent irreparable harm pending arbitration; and (iii) EACH PARTY HEREBY IRREVOCABLY (y) CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE SPECIFIED FORUMS, AND VENUE THEREIN AND (z) VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BETWEEN THEM BASED DIRECTLY OR INDIRECTLY ON THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY RELATED TO THIS AGREEMENT. To the extent that other terms and conditions than those set forth in this Agreement are necessitated by a governing law other than the State of Georgia, such terms and conditions are set forth in [Schedule B](#), and in the event of any conflict with the terms and conditions of this Agreement, such the terms and conditions set forth in [Schedule B](#) shall control.

13.9. Notice. All notices required under this Agreement shall be given and made in writing and shall be delivered to the respective addresses identified in the Sales Agreement and deemed received (i) when received, if hand delivered or (ii) the day after it is sent, if delivered by an internationally-recognized common carrier's overnight delivery service providing proof of delivery. Any notices sent to us shall be sent to VP of Sales, Xenial, Inc., 3420 Toringdon Way, Suite 400, Charlotte, NC 28227, with a required copy to Global Payments Inc., 3550 Lenox Road, Suite 3000, Atlanta, Georgia 30326, ATTN: Corporate Secretary.

13.10. Construction. For purposes of this Agreement: (i) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; (iii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; and (iv) words denoting the singular have a comparable meaning when used in the plural, and vice-versa. Unless the context otherwise requires, references in this Agreement:

(a) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (b) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (c) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Sales Agreement and the schedules and exhibits attached hereto are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The Sales Agreement may be executed in any number of counterparts, each of which is deemed to be an original and all of which taken together constitutes one agreement.

13.11. Equitable Relief. You acknowledge that any breach of Section 2 (*Access and Use*), Section 3 (*Proprietary Rights; Licenses; Confidentiality*) or Section 7.1 (*Restrictions*) may irreparably harm us, that the damages suffered by us as a result of such breach will be difficult to ascertain, and that we may not have an adequate remedy at law for such breach. You agree and consent that in the event of such breach, we shall be entitled, without posting bond, in addition to all other rights and remedies to which we may be entitled, to have a decree of specific performance or an injunction issued requiring any such violation to be cured and enjoining all Persons involved from continuing the violation. You acknowledge and agree that the restrictions in this Section 13.11 are reasonable and necessary to protect our legitimate business interests.

14. Lease Terms.

14.1. Applicability. If a Sales Agreement indicates that Customer has leased the System, then the terms in this Section 14 apply. If Customer does not lease the System from Xenial, then the terms in this Section 14 are to be disregarded. In the event of a conflict between the terms in this Section 14 and the remainder of the Agreement, the terms in this Section 14 will control.

14.2. Definitions. "**Agreement Term**" has the meaning set forth in Section 4.1.1 (Agreement Term); "**Lease Fee**" means the lease fee which includes any applicable Support Services indicated on an applicable Sales Agreement for such Xenial Product; "**Lease Term**" has the meaning set forth in Section 14.7 (Lease Term and Order Pricing); "**Transferee**" has the meaning set forth in Section 14.9 (Assignment).

14.3. Lease of Xenial System. Xenial agrees to lease to Customer, and Customer agrees to lease from Xenial, the System, as listed on an applicable Sales Agreement. Customer acknowledges that the System may contain either new or refurbished components. Customer is responsible for obtaining any hardware, other than Hardware that is listed on the Sales Agreement to operate the Software. In the event Customer elects to purchase Hardware from a source other than Xenial or not otherwise approved by Xenial in writing ("**Non-Approved Hardware**"), Xenial shall not be responsible for any errors or defects resulting from the use of such Non-Approved Hardware. In addition, if Xenial is requested to perform Support Services on the System as a result of Customer's purchase of Non-Approved Hardware, Customer agrees to pay Xenial at its then current time and materials rates for such Services. The System will at all times be and remain the personal property of Xenial and Customer will have no right, title or interest in the System except as expressly set forth in the Agreement. Customer will keep the System free and clear of all liens, security interests, adverse claims and encumbrances. Customer agrees that Xenial or any

System Terms and Conditions

Transferee may prepare and file or record with any appropriate filing office, at Xenial's cost, appropriate UCC financing statements, including amendments or continuations to such statements, as determined by Xenial or a Transferee.

- 14.4. Use of Hardware.** Customer shall use the Hardware solely in the conduct of its business under the terms of this Agreement, in a manner and for the use contemplated by the manufacturer thereof. Customer shall use all Hardware with reasonable care to prevent excessive wear and tear and/or damage to any Hardware. Without the prior written consent of Xenial, in no event shall Customer permit any Hardware (i) to be used or possessed by any persons other than the named Customer, (ii) to be subject to any liens or security interests of any third party, (iii) to be moved to a location other than as set forth on a Sales Agreement. Furthermore, Customer will not make or allow to be made any alterations or additions, whether temporary or permanent in nature, to the Hardware. Xenial will not be responsible for loss or damage due to alterations or additions to, misuse or improper use of, negligent handling of, or improper maintenance of the Hardware. In the event of any failure or defect in any manner whatsoever of the Hardware leased from Xenial during the initial twelve (12) months of the Lease Term, Customer shall, at Xenial's expense, return such Hardware to Xenial's premises. Xenial shall be responsible, at Xenial's expense, for the initial delivery to Customer of any leased Hardware as well as the delivery back to Customer of any repaired or replaced Hardware leased from Xenial. For any Hardware for which return to Xenial is necessary after the initial twelve (12) months of the Lease Term, (whether due to inoperability or termination or expiration of the Agreement or any Sales Agreement or otherwise), Customer shall be responsible at its own expense, for the packing and delivery of the Hardware to Xenial's premises during Xenial's regular business hours. Customer must return (i) any defective leased Hardware that is replaced by Xenial within forty-five (45) days after shipment of the replacement items to you; and (ii) any Hardware leased from Xenial within thirty (30) days of expiration or termination of this Agreement or any Lease Term or Sales Agreement, unless Customer exercises its rights under Section 14.8 to buyout the Hardware at the end of a Lease Term. For any Hardware returned to Xenial which has more than ordinary wear and tear, or if Hardware is not returned within the aforementioned 30 or 45 days, as applicable, then Customer shall be obligated to pay Xenial for the expenses which Xenial incurs in repairing or replacing the Hardware (the "**Repair/Replace Fee**") (which shall not relieve Customer of its obligation to return the Hardware to Xenial if Hardware is not returned).
- 14.5. Security Interest.** Customer hereby grants to Xenial a security interest in the Hardware and Software to secure full and timely performance of all obligations owing by Customer to Xenial under this Agreement or any other agreement between Customer and Xenial, including, without limitation, full and timely payment of all amounts from time to time owing by Customer to Xenial hereunder or thereunder. Customer agrees that, upon Xenial's request, Customer will execute and deliver to Xenial any and all documents that Xenial may from time to time request to more fully evidence or perfect the security interest granted hereby. The parties further agree that this Agreement constitutes a security agreement.
- 14.6. Invoicing and Payment.** Customer agrees to execute one of the two attached Direct Debit Authorizations (Schedule C (US) and/or Schedule C-1 (Canada)), to allow Xenial to debit Customer's account via Automated Clearing House

("ACH") transfer on a monthly basis for all amounts due under this Agreement. Customer agrees to promptly notify Xenial of any changes in its bank account information that would affect credit and/or debit entries by bank wire or ACH transfer to and from its deposit account. In the event of an ACH reject, Customer will pay Xenial an ACH reject reimbursement fee of \$25.00 per reject. Unless otherwise stated, all costs, fees, and charges in this Agreement (including shipping costs and other payments) are stated in U.S. dollars, and any taxes, duties, fees, and other governmental charges of any kind (including sales, service, and use taxes) that are imposed by or under the authority of any government or any political subdivision thereof on the fees for the System, the Hardware, and the Software shall be borne by Customer and shall not be considered a part of, a deduction from, or an offset against such fees. Unless otherwise stated in a Sales Agreement, fees are due net thirty (30) days from the invoice date. For each Sales Agreement, Customer will provide complete and accurate billing and contact information to Xenial and will promptly notify Xenial of any changes to such information. Any terms and conditions that are included in a Xenial invoice shall be deemed to be solely for the convenience of the parties, and no such term or condition shall be binding upon Customer.

- 14.7. Lease Term and Order Pricing.** The term of each Subscription Term to the System in a Sales Agreement shall be called a "**Lease Term**". Unless otherwise specified in a Sales Agreement, each Lease Term for a Sales Agreement shall be sixty (60) months, unless earlier terminated as permitted under this Agreement. Except as otherwise specified in a Sales Agreement, following the conclusion of the Lease Term, subscriptions to the System will automatically terminate. The per-unit pricing shall be fixed during the Lease Term of any Sales Agreement. **Should either Customer or Xenial terminate these System Terms, all Sales Agreements then in effect shall automatically terminate.**

- 14.8. End of Lease Term Buyout.** Provided Customer provides Xenial at least sixty (60) days' notice prior to the end of a Lease Term, at the end of a Lease Term Customer shall have the right to purchase that Hardware listed in an applicable Sales Agreement for One (\$1) Dollar. If Customer does not purchase the Hardware at the conclusion of a Lease Term, then Customer's right to use the System on the applicable Sales Agreement shall immediately cease. If Customer purchases the Hardware at the conclusion of a Lease Term, and if, subsequent to such purchase, Customer does not purchase Support Services from Xenial utilizing such Hardware, then Customer must allow Xenial the right to access such Hardware to remove any software, firmware, or other Xenial proprietary data or information from the relevant Hardware.

- 14.9. Assignment.** Neither this Agreement, an applicable Sales Agreement, nor any lease or license hereunder may be assigned by Customer (whether by operation of law or otherwise) without Xenial's prior written consent. Xenial and any Xenial transferee may without notice to or consent of Customer transfer, assign, grant a security interest in, or sell to any person (e.g. a financial institution) ("**Transferee**") all or any portion of Xenial's (or such Transferee's) right, title and interest in and to any System and the Agreement, including the right to receive payments thereunder. Customer acknowledges and agrees that: (a) no such Transferee will be required to assume, or be deemed to have assumed, any of the obligations of Xenial hereunder; (b) any such assignment or transfer will not be deemed to materially change Customer's duties or obligations hereunder; and (c) Customer's obligation to Transferee under the Agreement will be unconditional and

System Terms and Conditions

not subject to any abatement, reduction, defense, offset or counterclaim for any reason whatsoever. Xenial may subcontract any of its obligations under the Agreement and may perform those obligations through personnel employed by, or under contract with, Xenial, without notice to Customer.

14.10. Changes to Sections 1 - 13. Sections 4.1.2, 4.1.3, 4.3.2, 5.2, 12.1, and 12.2 of these Systems Terms are deleted in their entirety. References to “Support Term” and “Subscription Term” in the remaining sections of these Systems Terms (including Schedules) shall be deemed references to “Lease Term”.

Schedules/Exhibits

Schedule A (Additional Terms–Services)	Attached
Schedule B (Additional Terms–Geographies)	Attached
Schedule C (ACH – US)	Attached
Schedule C-1 (ACH - Canada)	Attached
<i>Support Services Price List</i>	Provided Separately
<i>Site Readiness Specifications</i>	Provided Separately

Additional Terms and Conditions for
Certain Systems and Services

The Xenial Systems and Services set forth below are provided to Customer by Xenial subject to the additional terms and conditions herein, which are incorporated in the System Terms and Conditions to the extent applicable. The additional terms and conditions applicable to the Systems and Services set forth below only apply to Customer to the extent such Systems or Services are included in a Sales Agreement. **Unless the below Systems or Services are being purchased/leased/licensed/subscribed for by Customer, the below Additional Terms and Conditions shall not apply.**

System/Service	System Terms §	Additional Terms and Conditions
All (to the extent of any rights granted to the Brand)	3	Brand Rights/Content. Customer acknowledges, consents and agrees that, subject to Customer having separately granted such rights to the Brand in its franchise/license agreement or otherwise, (i) the System may be designed or configured to transmit or facilitate the transmission of Customer data through Xenial to the Brand (including daily menu sales, ticket count and menu item product mix and other data identifiable by Authorized Restaurant Location) and (ii) such disclosures through Xenial to the Brand shall not constitute a breach of any confidentiality obligations of Xenial or the Brand under this Agreement or any other agreement between Xenial or the Brand and Customer, whether entered into before or after the date of this Agreement. Any images and other content (including pricing) directly or indirectly supplied to Customer by the Brand, through or for use in connection with the System (collectively, the “ Brand Content ”), are owned by the Brand, or its licensors, and may be removed, blocked or modified at any time by the Brand or Xenial. Customer shall not access, use, copy, display, distribute or otherwise exploit any Brand Content, except to the extent Customer is expressly granted rights under, and solely in accordance with, any applicable terms and conditions established or made available by the Brand or Xenial.
Point of Sale System	2.2	Use of the Software Service is limited to a maximum of five (5) Xenial point-of-sale terminals.
Menu Maintenance Services	0	Menu Maintenance Services are only applicable to menu data managed using Systems, and not to menu data stored or managed through other POS systems, or other restaurant data.
	6	Subject to Customer’s payment of all applicable Fees, Customer’s compliance with its restrictions and responsibilities under Section 7 (<i>Your Restrictions and Responsibilities</i>), and the other terms of this Agreement, Xenial is responsible for and agrees to (during the Support Term unless a different time period is specified): (i) remotely update, align, and configure Customer’s Systems at the Authorized Restaurant Location(s) to reflect menu changes, including the addition of new products, deletion of discontinued products, and changes in options and pricing; and (ii) make available a Menu Maintenance portal to enable Customer to update its pricing for individual menu items and to make selections from offered options, subject to any applicable requirements, conditions, and limitations established by Xenial. To the extent that Customer’s utilization of Menu Maintenance Services is in connection with a Brand-mandated program, and only to the extent of any obligations of Customer to the Brand, Menu Maintenance Services will include the consideration of Brand Content, if applicable, in the provision of the above-referenced Services.
	7.2	Provision of the Menu Maintenance Services are further conditioned on Customer’s performance of certain obligations and responsibilities. Customer must (i) designate no more than two Customer contact personnel (per Customer, not per Authorized Restaurant Location) who: (a) are authorized to request menu changes and provide related information to Xenial data maintenance personnel; (b) are authorized to review and approve changes made by Xenial; and (c) have sufficient familiarity with the System to coordinate with Xenial data maintenance personnel in connection with the changes. Xenial shall maintain a list of Customer’s designated contact personnel, which may be updated from time to time; (ii) where Customer is given the ability to select options or to enter data (e.g., pricing) through the Menu Maintenance portal, provide timely and accurate selections and data entries (Customer understands that, if applicable, the Brand may require Customer to provide specified information through the portal in a timely manner in order to be approved to sell specific menu items); (iii) review all menu changes, and correct errors resulting from erroneous selections and data entry by Customer personnel (Customer assumes all risk and responsibility as to menu changes made directly by Customer personnel, including as to any resulting conflicts with changes made by Xenial); (iv) prevent Customer personnel from making additional menu changes directly, except as expressly permitted (e.g., options provided on the Menu Maintenance portal); and (v) protect its own data and programs, including performing nightly and weekly backups. Customer is responsible for all data provided by Customer’s designated personnel, or any third-party marketplace facilitator or marketplace provider, to Xenial, and for regular and ongoing monitoring and verification of the accuracy of data reported by the System following changes made by Xenial; in particular, Customer is responsible for the accuracy of tax tables and sales data entered into the System, and for monitoring and verifying that the System is accurately calculating and reporting tax information; Xenial assumes no responsibility or liability for any errors in tax calculations or payments, or for the consequences of any other data input or output errors. Customer shall indemnify, defend and hold the Indemnified Parties harmless from and against, any liability, obligation, cost or expense relating to Customer’s failure to comply with this paragraph or for any failures committed by any third-party marketplace facilitator or marketplace provider that are described in this paragraph and are the sole responsibility of Customer, and such indemnity shall be covered under Section 10.3 of this Agreement.

System/Service	System Terms §	Additional Terms and Conditions
Content Management Services	6	<p>Subject to Customer's payment of all applicable Fees, Customer's compliance with its restrictions and responsibilities under Section 7 (<i>Your Restrictions and Responsibilities</i>), and the other terms of this Agreement, including the last sentence of this Section, Xenial is responsible for and agrees (during the Support Term unless a different time period is specified) to (i) reasonably facilitate Customer's development of Customer Content, as requested by Customer; (ii) format Customer Content to be compatible with the digital menu board and (iii) transmit Customer Content to the digital menu board via the required broadband connection for display. Customer Content availability is subject to the applicable written business rules provided by Customer to Xenial, and any changes requested after deployment are subject to the applicable change control procedures and count as additional submissions. Xenial reserves the right to suspend or decline deployment of any content if (a) Xenial and Customer have not mutually approved and fully configured such content or (b) Xenial reasonably suspects that any Systems or Services might be negatively impacted. You represent, warrant and covenant, and shall defend, indemnify, and hold harmless Xenial and its employees, directors, shareholders and agents against any claims, liabilities, losses, costs or expenses arising from any breach of, the following: (a) that you have and shall at all times continue to have all rights and consents necessary to provide to Xenial, and grant Xenial the rights granted under this Agreement related to, the Customer Content (and Brand Content, if applicable); (b) that the Customer Content (and Brand Content, if applicable) shall not infringe or violate any third party intellectual property or other rights in any jurisdiction; and (c) that the Customer Content (and Brand Content, if applicable) shall comply with all applicable laws and regulations. For purposes of this Agreement, "Customer Content" means any images and other content (including pricing) supplied by Customer to Xenial through or for use in connection with the System. To the extent that Customer's utilization of Content Management Services is in connection with a Brand-mandated program, and only to the extent of any obligations of Customer to the Brand, the Content Management Services described above may be governed by additional or different terms and conditions between the Brand, Xenial and Customer and will include the consideration of Brand direction and Brand Content in the provision such Content Management Services.</p>
	7.2	<p>Provision of the Content Maintenance Services are further conditioned on Customer's performance of certain obligations and responsibilities. Customer must protect its own data and programs, including performing nightly and weekly backups. Customer is responsible for all of its data (including product, tax, recipe, inventory, labor-guideline, and nutritional data), and for regular and ongoing monitoring and verification of the accuracy of such data. In particular, Customer is responsible for the accuracy of tax tables and sales data entered into its POS System, and for monitoring and verifying that the POS System is accurately calculating and reporting tax information. Xenial assumes no responsibility or liability for any errors in tax calculations or payments, or for the consequences of any other data input or output errors. Customer shall further comply with and ensure the satisfaction of the following requirements: (i) all Customer Content must be provided to Xenial in final design form (any design or color changes requested by Customer and provided, in Xenial's sole discretion, by Xenial will be separately billable); (ii) the business rule version, exact PLU verbiage and exact PLU content price mapping must be provided to Xenial concurrently with each content delivery; and (iii) all associated Customer Content must be provided to Xenial prior to deployment. To the extent that Customer's utilization of Content Management Services is in connection with a Brand-mandated program, and only to the extent of any obligations of Customer to the Brand, Customer's Content Management Services-related obligations may be governed by additional or different terms and conditions among Xenial, Customer and the Brand and will include the consideration of Brand direction and Brand Content, if applicable, in the provision such Content Management Services.</p>
Loyalty Module	2	<p>General. Xenial has developed an additional loyalty module (the "Loyalty Module") for our POS System, which Loyalty Module constitutes Software. For each Loyalty Module licensed by Customer, Xenial shall update and configure Customer's System(s) at the Authorized Restaurant Location(s) to add the functionality of the Loyalty Module.</p> <p>Functionality. The Loyalty Module facilitates loyalty transactions by serving as a gateway between the POS System and a compatible third party application services provider (the "App Provider"). When a customer places an order through a compatible smartphone loyalty application (the "Loyalty App"), the Loyalty Module processes the authenticating data received from the Loyalty App, transmits an acknowledgment to the App Provider, receives a validation code or other authenticating response from the App Provider, and enables the POS System at the Authorized Restaurant Location(s) to process the order transaction in accordance with the business rules established by Xenial, Customer and/or the Brand. After processing the order, the Loyalty Module communicates the transaction results to the App Provider, which may in turn communicate transaction results to Customer through the Loyalty App. See "Xenial Support" below.</p>
	6	<p>Xenial Support. Subject to Customer's payment of all applicable Fees, Customer's compliance with its restrictions and responsibilities under Section 7 (<i>Your Restrictions and Responsibilities</i>), and the other terms of this Agreement, Xenial is responsible for and agrees (during the Support Term unless a different time period is specified) to provide a gateway for the exchange of data between Customer's System and the App Provider, which represents the sole functionality of the Loyalty Module. Xenial hereby disclaims any responsibility for (i) designing, marketing, or managing the relevant loyalty program; (ii) selecting or managing App Providers; (iii) designing, creating, or distributing Loyalty Apps; (iv) selling, facilitating or supporting the purchase, lease, sale or license of Loyalty Apps; (v) establishing business rules for the loyalty program; or (vi) validating Loyalty Apps or Loyalty App transactions (the Loyalty Module may display validation codes and other validation responses transmitted by the App Provider, but does not perform any independent validation and Xenial is not responsible for validation errors or failures to validate).</p>
Mobile Ordering Module	2	<p>General. Xenial has developed an additional mobile ordering module (the "Mobile Ordering Module") for our POS System, which Mobile Ordering Module constitutes Software. For each Mobile Ordering Module licensed by Customer, Xenial shall update and configure Customer's System(s) at the Authorized Restaurant Location(s) to add the functionality of the Mobile Ordering Module.</p>

System/Service	System Terms §	Additional Terms and Conditions
		<p>Functionality. The Mobile Ordering Module facilitates mobile ordering transactions by serving as a gateway between the POS System and a compatible third party application services provider (the “App Provider”). When a customer places an order through a compatible smartphone mobile ordering application (the “Mobile Ordering App”), the Mobile Ordering Module processes the authenticating data received from the Mobile Ordering App, transmits an acknowledgment to the App Provider, receives a validation code or other authenticating response from the App Provider, and enables the POS System at the Authorized Restaurant Location(s) to process the order transaction in accordance with the business rules established by Xenial, Customer and/or the Brand. After processing the order, the Mobile Ordering Module communicates the order status to the App Provider, which may in turn communicate order status to Customer through the Mobile Ordering App. Mobile ordering payments are processed by the App Provider and not by Xenial through the Mobile Ordering Module. See “Xenial Support” below.</p>
	6	<p>Xenial Support. Subject to Customer’s payment of all applicable Fees, Customer’s compliance with its restrictions and responsibilities under Section 7 (<i>Your Restrictions and Responsibilities</i>), and the other terms of this Agreement, Xenial is responsible for and agrees (during the Support Term unless a different time period is specified) to provide a gateway for the exchange of data between Customer’s System and the App Provider, which represents the sole functionality of the Mobile Ordering Module. Xenial hereby disclaims any responsibility for (i) designing, marketing, or managing the relevant mobile ordering program; (ii) selecting or managing App Providers; (iii) designing, creating, or distributing Mobile Ordering Apps; (iv) selling, facilitating or supporting the purchase, lease, sale or license of Mobile Ordering Apps; (v) establishing business rules for the mobile ordering program; (vi) validating Mobile Ordering Apps or Mobile Ordering App transactions (the Mobile Ordering Module may display validation codes and other validation responses transmitted by the App Provider, but does not perform any independent validation and Xenial is not responsible for validation errors or failures to validate); or (vii) processing payments for orders placed through Mobile Ordering Apps (all payment processing is the responsibility of the App Provider and its payment processors).</p>
Software Service for Subscription Software (SaaS)	2	<p>Authorized Users. Xenial will issue administrative login and password information to an administrator designated by Customer and set forth in the Sales Agreement. Through its administrator, Customer will be responsible for providing additional logins to its Authorized Users within the Authorized Restaurant Location(s) and for assigning access levels through the administrative modules of the Subscription Software. After the initial login, the administrator will be able to revise Authorized User access levels, logins, and passwords, and Authorized Users will be able to revise their own logins and passwords. Customer may change administrators by providing written notice in accordance with Section 13.99 (<i>Notice</i>). Notwithstanding acceptance in accordance with Section 1.1 (<i>Terms</i>), Xenial may additionally require that Authorized Users (through a click-through agreement or otherwise) acknowledge and accept the terms of this Agreement and Xenial’s relevant policies (e.g., privacy policy) as a precondition of Use. Customer will be responsible for maintaining the security of logins and passwords in its and its Authorized Users’ possession in accordance with industry standards and applicable law. Any breach of the terms and conditions of this Agreement by any Authorized User (including any Authorized User that gains unauthorized access) shall constitute Customer’s breach. Customer shall notify Xenial immediately if it learns of any unauthorized disclosure, access or use of any login or password assigned to Customer or its Authorized Users.</p>
	2	<p>Beta Services. During the Subscription Term, Xenial may elect to make additional features or products (“Beta Services”) available to Customer at no charge, to which the following special terms and conditions apply: (i) Customer may use or decline to use any Beta Services; (ii) Beta Services may not be supported and may be changed or terminated at any time without notice; (iii) Beta Services may not be as reliable or available as the Services; (iv) Beta Services are not considered Services under this Agreement; however, all Customer restrictions, obligations and limitations that apply to Services shall also apply to Beta Services; (v) any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation; and (vi) notwithstanding anything to the contrary in this Agreement, Beta Services are provided “as-is” and no warranty or obligations will apply, nor will Xenial have any liability for any harm or damage arising out of or in connection with a Beta Service.</p>
	2	<p>Trial Period. If specified in the Sales Agreement, Customer may subscribe for the Subscription Software for nonproduction, trial and evaluation purposes for a limited period (“Trial Period”), to which the following special terms and conditions apply: (i) the Trial Period shall be as set forth in the Sales Agreement, but may be terminated by Xenial at any time in its sole discretion; (ii) no fees will apply, except for any Trial Period Fee specified in the Sales Agreement (which shall be applied against Fees in connection with Implementation Services to the extent applicable in Xenial’s reasonable discretion); (iii) the Subscription Software and related Services are provided “as-is” and no warranty or obligations will apply, nor will Xenial have any liability for any harm or damage arising out of or in connection with the use of the Services during the Trial Period; (iv) Customer may terminate this Agreement and all of its rights hereunder by providing written notice thereof in accordance with Section 13.99 (<i>Notice</i>) no less than ten (10) business days prior to the end of the Trial Period and, absent such notice, Customer’s subscription for the Subscription Software, and related Services, and this Agreement shall continue in effect for the Service Term set forth in the Sales Agreement (subject to earlier termination as provided in this Agreement).</p>
	4.3.1	<p>Upon Customer’s written request made within thirty (30) days after the effective date of termination or expiration of the Agreement, Xenial will make Customer’s data available for export or download; however, after such thirty (30)-day period, Xenial will have no obligation to maintain or provide any of Customer’s data, and it will thereafter, except as otherwise expressly set forth in the applicable Sales Agreement, delete or destroy all copies of Customer’s data in its systems or otherwise in its possession or control, except for data (i) contained in an archived computer system back-up in accordance with security and/or disaster recovery procedures and applicable law; (ii) to the fullest extent permitted under applicable law, contained in latent data, including deleted files and other non-logical data types such as memory dumps, swap files, temporary files, printer spool files and metadata that are not generally retrievable or accessible without the use of specialized tools and techniques; (iii) to the fullest extent</p>

System/Service	System Terms §	Additional Terms and Conditions
		permitted under applicable law, included in materials prepared for regulatory compliance, archival or record retention purposes; or (iv) for which destruction is legally prohibited. For the avoidance of doubt, nothing in this Section 4.3.1 shall be read to imply any obligation of Xenial to maintain data in compliance with Customer's record-keeping obligations under applicable law. Any services provided by Xenial in connection with the export or download of Customer's data or Xenial's continued retention of Customer data beyond the thirty (30) day period referenced above shall be pursuant to a Sales Agreement at then-current rates for such Services.

Additional Terms and Conditions for
Authorized Restaurant Locations outside of the United States

With respect to Authorized Restaurant Locations located in the geographies outside of the United States, the following terms and conditions shall govern with respect to such geographies. For geographies outside of the United States and not listed below, the terms and conditions of the System Terms (unaffected by this Schedule B) shall govern. Except as otherwise expressly set forth in this Schedule B, the terms of this Schedule B shall be in addition to and without limitation of the related provisions of the System Terms. The terms of this Schedule B shall only apply with respect to the specific corresponding geographies and shall not affect the System Terms with respect to other geographies.

Authorized Restaurant Location	System Terms §	Additional Terms and Conditions																																	
ALL (NON-U.S.)																																			
All (Non-U.S.)	13.8	<p>With respect to Authorized Restaurant Locations located in the geographies outside of the United States set forth in the table below, the following terms and conditions shall govern. For geographies outside of the United States and not listed below, the terms and conditions of Section 13.8 of the System Terms (unaffected by this Schedule B) shall govern.</p> <p>13.8 Governing Law; Arbitration. This Agreement shall be construed and governed in accordance with the applicable laws set forth in the table below (the “Governing Law”), without giving effect to: (a) the principles of conflicts of law and that body of law applicable to the choice of law; and/or (b) the United Nations Convention on Contracts for the International Sale of Goods, and/or its implementing and/or successor legislation and/or its regulations. Any dispute arising under these System Terms or this Agreement shall be submitted exclusively to binding arbitration in a jurisdiction within the Governing Law in accordance with the International Chamber of Commerce (“ICC”) acting according to the rules adopted by the ICC for this purpose (and, if/where the ICC is unavailable, in accordance with the rules of the system of arbitration corresponding with such Governing Law set forth below), and each party consents to such exclusive forum; <i>provided</i> that nothing herein shall prevent either party from seeking a preliminary injunction or other equitable relief in a judicial proceeding to prevent irreparable harm pending arbitration. EACH PARTY HEREBY IRREVOCABLY (i) CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE SPECIFIED FORUMS, AND VENUE THEREIN AND (ii) VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BETWEEN THEM BASED DIRECTLY OR INDIRECTLY ON THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY RELATED TO THIS AGREEMENT.</p> <table border="1" data-bbox="500 1283 1430 1785"> <thead> <tr> <th>Geography of Authorized Restaurant Location</th> <th>Governing Law</th> <th>Arbitration Rules (if not ICC)</th> </tr> </thead> <tbody> <tr> <td>Canada</td> <td>Ontario</td> <td>International Center for Dispute Resolution</td> </tr> <tr> <td>Mexico</td> <td>Mexico</td> <td>--</td> </tr> <tr> <td>Central America</td> <td>New York</td> <td>--</td> </tr> <tr> <td>South America and its dependent territories</td> <td>New York</td> <td>--</td> </tr> <tr> <td>Europe (<i>including</i> Azerbaijan, Georgia, Kazakhstan, Russia and Turkey)</td> <td>England</td> <td>--</td> </tr> <tr> <td>Asia (<i>excluding</i> Azerbaijan, China, Georgia, Kazakhstan, Philippines, Russia and Turkey)</td> <td>Singapore</td> <td>Singapore International Arbitration Centre</td> </tr> <tr> <td>China</td> <td>China</td> <td>China International Economic and Trade Arbitration Commission</td> </tr> <tr> <td>Philippines</td> <td>Philippines</td> <td></td> </tr> <tr> <td>Africa</td> <td>England</td> <td>--</td> </tr> <tr> <td>Australia and its dependent territories</td> <td>Australia</td> <td>--</td> </tr> </tbody> </table>	Geography of Authorized Restaurant Location	Governing Law	Arbitration Rules (if not ICC)	Canada	Ontario	International Center for Dispute Resolution	Mexico	Mexico	--	Central America	New York	--	South America and its dependent territories	New York	--	Europe (<i>including</i> Azerbaijan, Georgia, Kazakhstan, Russia and Turkey)	England	--	Asia (<i>excluding</i> Azerbaijan, China, Georgia, Kazakhstan, Philippines, Russia and Turkey)	Singapore	Singapore International Arbitration Centre	China	China	China International Economic and Trade Arbitration Commission	Philippines	Philippines		Africa	England	--	Australia and its dependent territories	Australia	--
Geography of Authorized Restaurant Location	Governing Law	Arbitration Rules (if not ICC)																																	
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Africa	England	--																																	
Australia and its dependent territories	Australia	--																																	

Authorized Restaurant Location	System Terms §	Additional Terms and Conditions
CANADA		
Canada	3.10.1	<p>Data Processing. With respect to Authorized Restaurant Locations located in Canada, Section 3.10.1 of the System Terms is hereby replaced in its entirety by the following: “3.10.1. Data Processing. Each of Customer and Xenial acknowledges and understands that “personal information” (“Personal Data”) as defined in the Personal Information Protection and Electronic Documents Act (“PIPEDA”) and any other applicable data protection, data privacy and data security laws (collectively, the “Data Protection Laws”) shall be collected, used and/or disclosed pursuant to this Agreement as set out in the Data Protection Laws (including PIPEDA). In providing the System and Services, Xenial agrees to abide by the privacy and security obligations set out in Xenial’s Privacy Policy located at http://www.Xenial.com/privacy-policy/.</p>
Canada	13.12	<p>Language. The parties hereby agree that this Agreement and related documents be drawn up in the English language only. Les parties aux présentes ont convenu que cette entente et les documents s’y rattachant soient rédigés en langue anglaise seulement.</p>
EU		
EU, Iceland, Liechtenstein, Norway, UK and Switzerland	3.10.1	<p>Data Processing. With respect to Authorized Restaurant Locations located in the EU, Iceland, Liechtenstein, Norway, UK and Switzerland, Section 3.10.1 of the System Terms is hereby replaced in its entirety by the following: “3.10.1. Data Processing. Xenial will act as a data processor with respect to any “Personal Data” (as defined under European Union General Data Protection Regulation 2016/679, the EU-U.S. and Swiss-U.S. Privacy Shield Framework and Privacy Shield Framework Principles (“the “Privacy Shield”), and any other applicable data protection, data privacy and data security laws (collectively, the “Data Protection Laws”)) provided to Xenial or made accessible by Customer under this Agreement. Xenial shall not engage any sub-processors to process any Personal Data without the prior specific or general written authorization of Customer and without ensuring that the sub-processors are subject in all material respects to the same data protection obligations as Xenial as set out in this Section 3.10.1. As between Xenial and Customer, Xenial shall at all times remain liable for the acts and omissions of any sub-processors Xenial engages with respect to the processing of the Personal Data. Xenial shall (and shall procure that its sub-processors shall) comply with the Data Protection Laws, as applicable to data processors, and shall also: (i) process the Personal Data for the limited and specific purposes set forth in this Agreement or pursuant to Customer’s written instructions; (ii) keep the Personal Data confidential in accordance with Sections 3.56-3.88 of this Agreement; (iii) take all appropriate technical and organisational measures necessary to ensure that Personal Data are protected against loss, destruction and damage, unauthorised access, use, modification, disclosure or other misuse; (iv) use the Personal Data obtained pursuant to this Agreement only for the purposes of providing the System or Services contemplated under this Agreement and for no other purposes; (v) ensure (a) that only persons authorised by Xenial have access to Personal Data, and (b) the reliability of the persons who will be approved by Xenial to have access to Personal Data and who otherwise process the Personal Data; (vi) notify Customer as soon as practicable on becoming aware of any breach of its obligations as a data processor or any breach of its sub-processors’ obligations as a data processor, including under this Section 3.10.1, and/or any data security incident involving the unlawful access, loss, destruction, restriction, anonymization and/or deletion of Personal Data; (vii) provide reasonable assistance, upon the reasonable request of Customer and subject to all applicable charges or fees at our then-current rates, in the management and remediation of any actual, threatened, alleged or suspected data security incident where the assistance of Xenial (and/or its sub-processors, as applicable) is reasonably required; (viii) provide reasonable assistance, upon the reasonable request of Customer and subject to all applicable charges or fees at our then-current rates, to enable Customer to comply with its obligations of providing access to Personal Data, and the restriction, anonymization, deletion and/or rectification of Personal Data under the Data Protection Laws and, if required by Customer, to return or delete all copies of the Personal Data; and (ix) allow Customer the right to audit Xenial’s processing operations, systems and/or facilities solely for the purpose and to the extent necessary for Customer to assess Xenial’s compliance with this Section 3.10.1 or, at Customer’s option, co-operate with all reasonable requests of Customer for information to demonstrate Xenial’s compliance with this Section 3.10.1. Upon any termination of this Agreement, Xenial shall return all copies of the Personal Data to Customer or, at Customer’s written request, delete all copies of the Personal Data, in each case subject to applicable legal obligations of Xenial to retain any such documents containing Personal Data (in which event Xenial shall restrict the access to and processing of such Personal Data to the extent necessary to meet the requirements of such legally required obligations). Xenial shall not transfer Personal Data outside of the European Economic Area, UK or Switzerland, as applicable, without the prior written consent of Customer (where “written consent” may be satisfied through commercially reasonable electronic means) unless another derogation in the Data Protection</p>

Authorized Restaurant Location	System Terms §	Additional Terms and Conditions
		Laws is applicable and, where such consent is provided by Customer, only in conformity with the Privacy Shield (or other mechanism such as binding corporate rules or upon execution of standard contractual clauses) in compliance with the applicable provisions of the Data Protection Laws.”
ITALY		
Italy	3.23	Licenses. With respect to Authorized Restaurant Locations located in Italy, Section 3.23 of the System Terms is hereby replaced in its entirety by the following: “ 3.3. Licenses. You grant us and our authorized subcontractors (i) a worldwide, open-ended, royalty-free license to host, copy, transmit and display your data, and any Third Party Materials (as defined in Section 3.9) created by or for you using the System or for use by you with the System, each as is reasonably necessary for your Use as contemplated by this Agreement; and (ii) a worldwide, open-ended, transferable, sublicensable, royalty-free license to use, copy, modify, prepare derivative works of and incorporate into the System and Services (and any modifications or derivatives thereof, any of our other products and services and any documentation or other materials related to the foregoing) any suggestion, enhancement request, recommendation, correction or other feedback provided by you relating to the operation, functionality or performance of the System or Services. Subject to the limited licenses granted herein, neither us nor our authorized subcontractors acquire any right, title or interest from you or your licensors under this Agreement in or to any of your data or Third Party Materials.”
Italy	13.12	Maximum Customer Indemnification. With respect to Authorized Restaurant Locations located in Italy, your aggregate liability under your indemnification obligations set forth in this Agreement shall not exceed the greater of \$5 million or three (3) times the total amounts paid (plus payable) by Customer to Xenial under this Agreement.
MEXICO		
Mexico	3.1	Ownership. You acknowledge and agree that any unauthorized use or misappropriation of Xenial Materials may constitute an illicit action expressly prohibited under Articles 84 and 85 of the Mexican Industrial Property Law (<i>Ley de la Propiedad Industrial</i> , the “ Industrial Property Law ”), that will entitle Xenial to seek any remedies available under applicable law and, therefore, any such unauthorized use or misappropriation may result in criminal liability under Article 223 of the Industrial Property Law.
Mexico	3.77	Non-Disclosure of Confidential Information. You acknowledge and agree that non-compliance with the terms set forth in Section 3.7 of the System Terms may constitute an illicit action expressly prohibited under Articles 84 and 85 of the Industrial Property Law, that will entitle Xenial to seek any remedies available under applicable law and, therefore, any such breach of your obligations under Section 3.77 of the System Terms may result in criminal liability under Article 223 of the Industrial Property Law.
Mexico	3.10.1	Data Processing. With respect to Authorized Restaurant Locations located in Mexico, Section 3.10.1 of the System Terms is hereby replaced in its entirety by the following: “ 3.10.1. Data Processing. Each of Customer and Xenial acknowledges and understands that “personal data” (“ Personal Data ”) as defined in the Federal Law for the Protection of Personal Data in Possession of Private Entities (<i>Ley Federal de Protección de Datos Personales en Posesión de los Particulares</i>) and its relevant Regulation (<i>Reglamento de la Ley Federal de Protección de Datos Personales en Posesión de los Particulares</i>) (the “ Mexican Data Protection Law and Regulations ”) and any other applicable data protection, data privacy and data security laws (collectively, the “ Data Protection Laws ”) shall be collected, used and/or disclosed pursuant to this Agreement as set out in the Data Protection Laws (including the Mexican Data Protection Law and Regulations).”
PHILIPPINES		
Philippines	3.1	Ownership. With respect to Authorized Restaurant Locations located in the Philippines, Section 3.1 of the System Terms is hereby replaced in its entirety by the following: “ 3.1. Ownership. You acknowledge that the Software and all specifications, documentation, systems, information, data, documents, materials, designs, plans, works, content, devices, methods, processes, hardware, software (including application program interfaces (“ APIs ”)) and other technologies that are provided or made available in connection with, or that otherwise comprise or relate to, the Software or Services, and all improvements, enhancements or modifications thereto or

Authorized Restaurant Location	System Terms §	Additional Terms and Conditions
		<p>derivative works thereof made by or on behalf of Xenial or its licensors (collectively, the “Xenial Materials”), are the sole property of Xenial or our licensors. As between us and you, ownership and title to (i) the Xenial Materials; (ii) any software, applications, inventions or other technology or materials developed or delivered by or on behalf of Xenial or its licensors in connection with the Services; and (iii) all intellectual property rights related to any of the foregoing (as well as all intellectual property rights in the System) shall remain with us. The Software is made available for authorized Use, not sold, to you, and you have no intellectual property rights therein, other than the limited rights expressly granted hereunder. Ownership and title to your data shall remain with you. You acknowledge and agree that the Xenial Materials contain valuable proprietary information and trade secrets of Xenial, and are protected intellectual property rights of Xenial.”</p>
Philippines	3.10.1	<p>Data Processing. With respect to Authorized Restaurant Locations located in the Philippines, Section 3.10.1 of the System Terms is hereby replaced in its entirety by the following: “3.10.1. Data Processing. Each of Customer and Xenial acknowledges and understands that “personal data” (“Personal Data”) as defined in the Philippines Data Privacy Act of 2012 (“DPA”) and any other applicable data protection, data privacy and data security laws (collectively, the “Data Protection Laws”) shall be collected, used and/or disclosed pursuant to this Agreement as set out in the Data Protection Laws (including DPA, its implementing rules and regulations and other issuances of the National Privacy Commission). In providing the System and Services, Xenial agrees to abide by the privacy and security obligations set out in Xenial’s Privacy Policy located at http://www.Xenial.com/privacy-policy/.”</p>
Philippines	5.3	<p>Taxes. With respect to Authorized Restaurant Locations located in the Philippines, Section 5.3 of the System Terms is hereby replaced in its entirety by the following: “5.3. Taxes. All Philippine taxes imposed on payments made under this Agreement shall be borne by Xenial. In the event that you are required to withhold such taxes from your payments to us, you shall (i) withhold from any payment payable to us under this Agreement the appropriate amount of withholding taxes, (ii) pay such taxes on behalf of Xenial, and (iii) provide Xenial with all official receipts or other documentary evidence of such withholding and payment of such taxes to the satisfaction of Xenial to enable Xenial to claim necessary tax credit under the applicable tax treaty.”</p>
Philippines	7.1	<p>Restrictions. With respect to Authorized Restaurant Locations located in the Philippines, the phrase “except to the extent specifically mandated by applicable law” in Section 7.1(i) of the System Terms means, in light of Section 87.13 of the Intellectual Property Code of the Philippines: “except to the extent that the said modifications, derivative works, or improvements are necessary to adapt the Services or Xenial Materials to local conditions, and for as long as they do not impair the quality standards prescribed by Xenial or involve any access to, or use or modification of, any of Xenial’s source code by Customer”.</p> <p>With respect to Authorized Restaurant Locations located in the Philippines, Section 7.1(xi) of the System Terms is hereby replaced in its entirety by the following: “(xi) Use the Xenial Materials or the System (or any Related Applications) for any purpose or in any manner that is to our detriment or commercial disadvantage or that is not expressly authorized under this Agreement”.</p>
<p>RUSSIA</p>		
Russia	3.10.1	<p>Data Processing. With respect to Authorized Restaurant Locations located in Russia, Section 3.10.1 of the System Terms is hereby replaced in its entirety by the following: “3.10.1. Data Processing. Each of Customer and Xenial acknowledges and understands that “personal data” (“Personal Data”) as defined in Federal Law No. 152-FZ of 27 July 2006 “On Personal Data” and any other applicable data protection, data privacy and data security laws (collectively, the “Data Protection Laws”) shall be collected, used and/or disclosed pursuant to this Agreement as set out in the Data Protection Laws.”</p>
Russia	3.10.2	<p>Customer Acknowledgements and Responsibilities. With respect to Authorized Restaurant Locations located in Russia, Section 3.10.2 of the System Terms is hereby replaced in its entirety by the following: “3.10.2. Customer Acknowledgements and Responsibilities. Customer (i) acknowledges that Xenial is headquartered in the United States and that data collected by Xenial from Customer’s Systems may, subject to the terms of this Agreement, be transferred into and processed in the United States or other locations; (ii) expressly consents to such transfer and processing; and (iii) agrees that Xenial may provide a summary or copy of this Agreement, along with information regarding the processing of Personal Data by Xenial and/or its sub-processors, to relevant governmental authorities (including the U.S. Department of Commerce and the U.S. Federal Trade Commission). If Customer uses Software to process, transmit, or store any Personal Data, Customer shall (a) limit the sharing of such Personal Data to the minimum extent necessary for management of its operations; and (b) comply with the Data Protection Laws, including ensuring valid grounds for transfer and further processing of the Personal Data by Xenial hereunder (if relevant, upon receipt of the express consent from data subjects) and compliance with the data localization requirement (to the extent applicable). Customer shall defend, indemnify, and hold harmless Xenial and its employees, directors, shareholders and agents from and against any claims, liabilities, losses, costs or expenses arising out of Customer’s failure to comply with the foregoing obligations or the Data Protection Laws.”</p>

Authorized Restaurant Location	System Terms §	Additional Terms and Conditions
Russia	12.1	<p>Assignment or Transfer by You. With respect to Authorized Restaurant Locations located in Russia, Section 12.1 of the System Terms is hereby replaced in its entirety by the following: “12.1. Assignment or Transfer by You. You may assign or transfer your rights and interests in this Agreement or the System only in connection with the sale or other transfer of the restaurant at the Authorized Restaurant Location(s) (including as a result of a change in control by operation of law, merger or the sale of assets or equity) and only with our prior written consent. Our consent shall not be unreasonably withheld; <i>provided</i> that such assignment or transfer: (i) is in writing; (ii) is not to a Person that is in default under any agreement with us or affiliated with such a Person; (iii) is not to a Person on the Specially Designated Nationals and Blocked Persons List (the “SDN List”) issued by the U.S. Office of Foreign Assets Control, or any Person owned 50% or more directly or indirectly by a Person on the SDN List or owned 50% or more in the aggregate directly or indirectly by one or more Persons on the SDN List, and is not to a Person with whom any dealings are prohibited under any other applicable laws or regulations; (iv) is accompanied by the physical transfer of the Hardware and any Installed Software to the assignee; (v) states that the assignee is assuming all of your rights and obligations under this Agreement; and (vi) is accompanied by the payment of a transfer fee at our then-current rates. In addition, the assignee shall agree to a one-year Support Term with us (or our designee), and pay the associated then-current Fees, as a condition to such assignment or transfer.”</p>
Russia	13.3	<p>Adhesion. The parties hereby acknowledge and agree that this Agreement is not an adherence agreement within the meaning of Article 428 of the Russian Civil Code.</p>

Authorization for Direct Payment via ACH (ACH Debit)

CONSUMER AUTHORIZATION FOR DIRECT PAYMENT VIA ACH (ACH DEBITS) FOR US-BASED CUSTOMERS

Direct Payment via ACH is the transfer of funds from a consumer account for the purpose of making a payment.

I (we) authorize Xenial, Inc. (collectively known as “Xenial”) to electronically debit my (our) account (and, if necessary, electronically credit my (our) account to correct erroneous debits) as follows:

Select One:

Checking Account

Savings Account

at the depository financial institution named below (“DEPOSITORY”). I (we) agree that ACH transactions I (we) authorize comply with all applicable laws.

Depository Name _____

Routing Number _____

Account Number _____

Please confirm if your financial institution requires an ACH ID number from us to allow for the execution of this transaction. If they do, you can provide the following respective ACH ID number:

2232480489 Xenial, Inc.

Amount of debit(s), method of determining amount of debit(s) and range of acceptable dollar amounts authorized: as determined by signed sales agreement.

Date(s) and/or frequency of debit(s): as determined by signed sales agreement.

I (we) understand that this authorization will remain in full force and effect until I (we) notify Xenial in writing that I (we) wish to revoke this authorization. I (we) understand that Xenial requires at least 30 days prior notice in order to cancel this authorization.

Name(s) _____ (Please Print)

Title _____ (Please Print)

Date _____ Signature(s) _____

Authorization for Direct Payment via ACH (ACH Debit)

CONSUMER AUTHORIZATION FOR DIRECT PAYMENT VIA ACH (ACH DEBITS) FOR CANADA-BASED CUSTOMERS

Direct Payment via ACH is the transfer of funds from a consumer account for the purpose of making a payment.

I (we) authorize Xenial, Inc. (collectively known as “Xenial”) to electronically debit my (our) account (and, if necessary, electronically credit my (our) account to correct erroneous debits) as follows:

Select One:

Checking Account

Savings Account

at the depository financial institution named below (“DEPOSITORY”). I (we) agree that ACH transactions I (we) authorize comply with all applicable laws.

Depository Name _____

Account Number _____

Institution ID _____

Transit ID _____

Please confirm if your financial institution requires an ACH ID number from us to allow for the execution of this transaction. If they do, you can provide the following respective ACH ID number: A000353041.

Amount of debit(s), method of determining amount of debit(s) and range of acceptable dollar amounts authorized: as determined by signed sales agreement.

Date(s) and/or frequency of debit(s): as determined by signed sales agreement.

I (we) understand that this authorization will remain in full force and effect until I (we) notify Xenial in writing that I (we) wish to revoke this authorization. I (we) understand that Xenial requires at least 30 days prior notice in order to cancel this authorization.

Name(s) _____ (Please Print)

Title _____ (Please Print)

Date _____ Signature(s) _____