

Vital and RiO Restaurant POS Terms & Conditions

ACH AUTHORIZATION:

The service charges as specified in this Addendum shall be debited from Merchant's account as designed on the Merchant Agreement upon the execution of this Service Addendum and then monthly with the processing fees from the Merchant Agreement. All other charges payable hereunder shall be debited during the month in which they have been incurred.

THIS SERVICE ADDENDUM is made on the date as set forth above, by and between Central Payment Co., LLC dba TSYS Independent Partner Sales (TSYS) with its principal place of business at 2350 Kerner Boulevard, Suite 300, San Rafael, Ca 94901 and MERCHANT with its principal place of business located at the address as set forth in MERCHANT AGREEMENT; WHEREAS, TSYS has placed certain Equipment at the Merchant Location for the exclusive use by the MERCHANT;

1. Service of Equipment: So long as Merchant is not in default of this Agreement, TSYS shall, for the monthly service charges set forth in Exhibit A here to, provide service to the Merchant Location as set forth in this Section. Technical Support: Merchant shall be entitled to 24 hours a day, seven days a week remote technical support for the Equipment and Software. TSYS will use commercially reasonable efforts to answer questions and resolve any problems related to the Equipment and/or Software, but does not guarantee resolution of the problems reported. Merchant authorizes TSYS to lay additional cables and cable lines that do not fit within the definition of a basic installation at its reasonable discretion at the time of installation. Merchant shall be billed \$200 for each cable drop or system installation that does not fit within the definition of the basic installation as set forth above and for each additional installation thereafter. Repair/Replacement: Upon notification either verbal or written, of malfunction of any Equipment covered under this Agreement, TSYS shall provide remote support to determine if the part is defective and, if so, at TSYS's sole discretion, repair Equipment or supply replacement Equipment. All inoperative, repaired, or replaced parts are the property of and shall be returned to TSYS. Failure to return replaced or repaired parts will result in charges to Merchant as referenced in Section 4. Merchant shall be responsible for the costs of shipping to and from TSYS.

2. Non-standard Services: TSYS shall, at its sole discretion, for the additional charges, provide services and make required repair, redesign, reinstall, reconfigure or replace the Equipment when either its required due to causes not attributable to normal wear and tear, including, but not limited to: (a) the failure of Merchant to continually maintain the Merchant Location in conformance with commercially reasonable standards; (b) impairments in the performance of the Equipment resulting from changes in the design of the Equipment made by Merchant or mechanical, electrical, or electronic interconnections made by Merchant; (c) damage caused by accidents, natural disasters or the negligence of, or improper use of misuse of, the Equipment by Merchant; (d) damage or necessity of repair resulting from unauthorized maintenance by Merchant or any third party other than TSYS or its authorized representatives; (e) damage or repair necessitated as a result of relocation of Equipment; (f) change in laws or Association rules that require service, repair, or replacement above normal day to day maintenance; (g) any third party hardware or software in conjunction with the use of the Equipment without TSYS's express written consent; or (h) theft of the Equipment.

3. Merchant Obligations.

3.1 Notice of Equipment failure: Merchant shall notify TSYS immediately upon Equipment failure or malfunction and shall allow TSYS full and free access to the Equipment and the use of necessary data communication facilities and equipment at no charge to TSYS, subject to Merchant's security rules.

3.2 Receipt of Equipment: Merchant warrants that it has completed the verification acknowledging the proper customization of the Equipment prior to shipping and has completed an installation sign-off form or process electronic transactions on said Equipment acknowledging receipt of the Equipment. Upon acknowledgement, Merchant accepts the Equipment, Software and customization as set forth herein. Any additional customization of equipment after completion of the verification shall be at additional cost to merchant.

3.3 Merchant's Maintenance Efforts: Merchant shall maintain the Equipment in good operating condition, repair, and appearance, and protect the same from deterioration other than normal wear and tear; shall use the Equipment in the regular course of its business, within its normal operating capacity, without abuse, and shall comply with all laws, regulations, directives, requirements and rules with respect to the use, maintenance and operation of the Equipment and Software; shall not make any modifications, alteration, or addition to the Equipment or Software, without the written consent of TSYS; shall not at any time affix, and shall not remove Equipment from the Merchant Location without the written consent of TSYS. Which shall not be unreasonably withheld.

3.4 Merchant Security: Merchant shall be responsible for (a) maintaining virus protection and security for all its systems, data, and overall network access, and (b) all risk of loss, theft, damage or destruction of the Equipment from any causes whatsoever after taking possession of the Equipment. Merchant acknowledges that security and access to any Equipment located on its premises is solely Merchant's responsibility and agrees to notify TSYS immediately if Equipment is lost, destroyed, stolen or taken by another person.

4. Equipment Return: Merchant agrees that: (a) upon termination of the Agreement, that it shall return all Equipment to TSYS within ten business days; (b) upon receiving replacement equipment that it shall return any Equipment which it has requested being replaced to TSYS within ten business days of receipt of the substitute Equipment; and (c) to the extent permitted by law, without demand or legal process, TSYS, and its representatives, affiliates, may enter into the premises where the Equipment may be found and take possession of and remove the Equipment, without liability of such retaking. Any Equipment that is; in TSYS's sole discretion damaged above ordinary wear and tear, or is not returned within the timeframe specified in this section will result in a charge to Merchant of the full retail value of the Equipment.

5. Early Termination Fee: If this Agreement is terminated either during the Initial Term or any renewal term for any reason set for in this Section, Merchant agrees to pay an early terminal fee equal to fifty percent of the total monthly fee as set forth in Exhibit A multiplied by the number of months remaining on the then-current term, in addition to all other amounts that the Merchant owes.

6. Ownership: During the 4-year term for Vital Select and RiO Restaurant, and the 2-year term for Vital Plus, the Equipment is, and will remain at all times, the exclusive property of TSYS, its affiliates, successors, or assigns. Merchant's use of the Equipment and Software is expressly conditioned on the

terms of this Agreement and does not confer any ownership rights of any kind in the Merchant. After the applicable term, the Equipment in use will transfer ownership to MERCHANT from TSYS. MERCHANT may continue utilizing the TSYS RIO software with the existing hardware at a cost of \$30 per month per device for RiO Restaurant, \$29 per device per month for Vital Select, and \$15 per device per month for Vital Plus..

7. Governing Law: This Agreement shall be governed under the laws of the State of California, irrespective of that state's choice-of law principles. All actions or proceedings arising in connection with this Agreement will be tried and litigated exclusively in the State and Federal courts for the County of Marin, State of California.

8. Vital and RiO Restaurant Terms and Conditions: Merchant understands and agrees that the software license hereunder for the RiO Restaurant products and services is offered by Dinerware, Inc. ("Dinerware"), and not by TSYS. TSYS and its affiliates are in no way responsible for the actions, inactions, performance or nonperformance of Dinerware, or for disputes or resolving disputes of any kind arising from the software license provided by Dinerware. Merchant agrees that it shall have no right to license any source code relating to the Vital or RiO Restaurant products or any right to make any modifications to the Vital or RiO Restaurant products. Merchant shall not modify, decompile, or reverse engineer the Vital or RiO Restaurant products. By signing the Merchant Application, Merchant agrees to the terms and conditions of Dinerware's End User Software License Agreement ("EULA"), as well as the EULA for the Vital products. Merchant understands and agrees that the DinerWare EULA is strictly between Merchant and Dinerware, and that TSYS is not a party to the Dinerware EULA. The full Dinerware EULA is available at www.TSYS.com/poseula; the full Vital EULA is available at www.iMobile3.com/terms.

9. Taxes: It is understood and agreed to by the parties hereto that the Fees set forth in the Agreement are exclusive of any and all applicable taxes or assessments, whether designated as sales taxes, use taxes, ad valorem taxes, GST/HST taxes, VAT taxes or by some other name or designation, and including any interest or penalties thereon, which may be levied or assessed by any governmental or taxing jurisdiction in connection with the performance of services to Subscriber or provision of materials to Subscriber by TSYS. In the event of the payment of or for any such tax, assessment or expense by TSYS, Subscriber shall in turn pay TSYS for such items.

10. Entire Agreement: TSYS representatives may have made oral statements regarding the Equipment, Software or Service set forth herein. None of the oral statements constitute warranties, merchant shall not rely on any of them and they are not part of the Agreement. This Agreement, including the exhibits attached hereto and incorporated as an integral part of this Agreement, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous proposals, oral or written, and all negotiations, conversations, or discussions heretofore, had between the parties related to this agreement.