

**ARMY AND AIR FORCE EXCHANGE SERVICE  
NEGOTIATED CONTRACT**

<b>ISSUED BY</b> Army & Air Force Exchange Service Attn: SD-F/C (Vernita Van Slyke) 3911 S. Walton Walker Blvd., Dallas, TX 75236-1509  <b>TELEPHONE NO.</b> 214-312-3358	<b>CONTRACT NO.</b> SD-F 09-076	<b>CONTRACT CONTROL NO.</b> (if applicable)
	<b>AMOUNT</b> <input type="checkbox"/> Actual \$ <input type="checkbox"/> Estimated	<b>TYPE OF ITEM/SERVICE</b> Burger King Franchise Agreement

1. Contractor agrees to provide the items/services at the prices set out and in accordance with the terms of this contract.

2. A copy of this contract, consisting of the provisions identified in the Contents paragraph of the attached Schedule, signed by the contracting officer and approved when required in accordance with applicable AAFES regulations, mailed or otherwise furnished to the contractor will constitute award of the binding contract.

3. In the event of an inconsistency between the provisions of this contract, as identified in the Contents paragraph of the attached Schedule, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule; (b) General Provisions; (c) other provisions of the contract, whether incorporated by reference or otherwise; (d) the Specifications; and (e) the Drawings.

**CONTRACTOR**

**CONTRACTOR REPRESENTS:** (Check appropriate boxes)


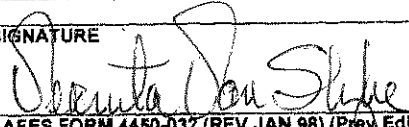
1. a. That it  is  is not a manufacturer or producer of, is is not a regular dealer in; the items provided (Commodity contracts only).
- OR
- b. That it  is  is not principally engaged in furnishing of services of the type called for herein (Service contracts only).
2. That it operates as an  Individual  Partnership  Corporation, incorporated in the State (Country if outside US) of Florida.
3. That it  is  is not a small business.
4. That it  is  is not a minority business enterprise (see definition below).\*
5. That it  is  is not a women-owned business (see definition below).

\*Check a block for all contracts to be performed in the United States, its possessions and Puerto Rico.

The term "minority business" means a business concern (1) which is at least 51 per cent owned by minority group members; or in the case of any publicly owned business, at least 51 per cent of the stock of which is owned by one or more minority group members, and (2) whose management and daily business operations are controlled by one or more such minority group members. For purpose of this definition, minority group members include Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, and Native Americans (such as American Indians, Eskimos, Aleuts and native Hawaiians).

The term "women-owned business" means a business that is at least 51 per cent owned by a woman or women who also control and operate it. ("Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

6. That an owner or officer of the firm or the firm or a related firm  has  has not been convicted of a felony related to a business transaction.
7. That an owner or officer of the firm or the firm or a related firm  has  has not been suspended or debarred.
8. That the person signing this contract is an individual having the authority to obligate the firm contractually.
9. That the information provided is full, accurate and complete. For breach of this warranty, AAFES may terminate this contract and all other AAFES contracts for default.

<b>FULL NAME AND BUSINESS ADDRESS OF CONTRACTOR</b> (Street, City & Zip Code or Country)  Burger King Corporation 5505 Blue Lagoon Drive Miami, Florida 33126 USA	<b>TELEPHONE NUMBER:</b> 305-378-3200	<b>FAX NUMBER:</b>
	<b>E-MAIL:</b> jfitzpatrick@whopper.com	
	<b>SIGNATURE OF PERSON AUTHORIZED TO SIGN CONTRACT</b> 	<b>DATE</b> 5/13/09
<b>TIN NO.</b>	<b>DUNS NO.</b>	<b>TYPED OR PRINTED NAME AND TITLE</b> Jonathan Fitzpatrick, Senior Vice President
<b>CONTRACTING OFFICER</b>		
<b>SIGNATURE</b> 	<b>TYPED NAME</b> VERNITA VAN SLYKE Contracting Officer, Army & Air Force Exchange Service	<b>DATE OF AWARD</b> 14 May 2009

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### Franchise Agreement and Development Agreement

#### Article I General Terms

1. **Grant:** This is a Franchise Agreement and Development Agreement ("Agreement") in which Burger King Corporation ("Franchisor") grants the Army and Air Force Exchange Service (AAFES) a license to use the Burger King Marks and Burger King System solely in connection with the development and operation of Burger King Restaurants, specializing in hamburgers and other menu items, at selected Army and Air Force Military Installations worldwide. Restaurants will be opened depending upon need and available resources and on other Military Installations subject to the prior written approval of Franchisor where AAFES has the responsibility to provide exchange service.

2. **Term:**

A. **Effective Date:** The effective date of this Agreement is May 15, 2009.

B. **Term:** The term for this Agreement will continue in effect for a period of five years. The term for each Supplemental Agreement for each Restaurant will continue in effect for a period of five years commencing upon the actual date of opening.

C. **Extension of Agreement Term:** So long as AAFES is in material compliance with this Agreement, the term of this Agreement may be extended in writing at AAFES' option for three additional five year periods.

D. **Extension of Restaurant Term:** So long as AAFES is in material compliance with this Agreement each Supplemental Agreement may be extended in writing at AAFES' option for three additional five year periods for each Restaurant. AAFES shall use reasonable efforts to give Franchisor twelve months advance written notice of any extension. In addition and so long as AAFES is in material compliance with this Agreement, each Supplemental Agreement for any Existing Restaurant may be extended in writing at AAFES' option for four additional five year periods for each Existing Restaurant.

3. **Exclusivity:** Franchisor hereby grants to AAFES an exclusive license to develop and operate Burger King brand franchises to be located on Army and Air Force Military Installations worldwide.

4. **Sales Data:** AAFES makes no warranty, express or implied, of the gross sales or fees to be realized from operations established as a result of this Agreement. Franchisor makes no warranty, express or implied, of the gross sales or fees to be realized from the Restaurants established as a result of this Agreement.

5. **Fee:** The fee and charges paid by AAFES to Franchisor for granting a Supplemental Agreement and other requirements listed herein are listed in **Exhibit E**.

6. **AAFES Restructuring:** Franchisor recognizes and accepts any AAFES' successor non-private organization as a result of the restructuring of the military exchange systems. Such restructuring

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will have no impact on this Agreement, all rights, obligations and responsibilities, etc. shall remain unchanged.

7. **Green Clause:** AAFES encourages contractors/vendors to embrace, establish and promote environmentally "Green Initiatives". We look to the Franchisor to accomplish this by:

(a) where possible utilize environmentally friendly products.

(b) where possible promote energy-efficiency and water conservation.

(c) where possible eliminate/reduce the production or generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

8. **Personal Identity Verification of Contractor Personnel:** After award and prior to performance on any Military Installation, the Franchisor shall comply with the local Military Installation's personal identity verification procedures identified by that Military Installation which implements HSPD-12 policy for a Common Identification Standard for Federal Employees and Contractors.

(a) AAFES contractors, which includes Franchisor, must follow local installation guidelines and directives concerning identification, access, and security requirements. These guidelines may vary from one installation to another and it is the contractor's responsibility to seek guidance concerning these issues.

(b) Franchisor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(c) Franchisor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

9. **Management and Crew Member Incentive Awards.** AAFES may adopt and participate in the Franchisor's incentive programs that may be promulgated in specified geographic areas from time to time by the franchisor at its discretion. AAFES employees of franchises may participate in the same manner under the same conditions and standards as other employees of the other franchisees within the specified geographic areas. As permitted by the Department of Defense Joint Ethics Regulation and AAFES personnel directives, AAFES employees may earn incentive awards for achieving certain service, sales and/or sanitation standards. For AAFES employees to be eligible for awards under the franchisor incentive programs, the program must: (1) make awards on a regular basis or be funded wholly or in part, to ensure their continuation on a regular basis, and (2) be administered pursuant to written standards.

10. **Combating Trafficking in Persons.**

(a) *Definitions.* As used in this clause—

"Coercion" means—

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- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.
- (4) Withholding any documents (e.g. passports, visas, IDs, etc.) that prevents or restricts the person to move freely.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced labor" means knowingly providing or obtaining the labor or services of a person—

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

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"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government and the Army Air Force Exchange Service has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—

(i) The United States Government's and the Army Air Force Exchange Services' zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Army Air Force Exchange Service, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract or fee payments;

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(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Army Air Force Exchange Service determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) *Mitigating Factor*. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

11. **Additional General Provisions:** Additional general provisions are set forth in the attached **Exhibit A and Exhibit B**.

12. **Definitions:** Attached as **Exhibit D** are definitions of terms used in this Agreement.

## Article II Restaurant Development Procedures

1. **Direct Operation or Concession Operation Decision:** AAFES will determine the best method of operation (Direct Operation or Concession Operation) for any Fast Food Hamburger Activity, whether such activity is new or existing (upon expiration of the applicable Supplemental Agreement). Franchisor will have the first right of refusal for any Direct Operation Fast Food Hamburger Activity on any Military Installation. AAFES may solicit for and award any Fast Food Hamburger Activity for Concession Operations. Franchisor and its franchisees shall have the right to participate in any solicitation for a Fast Food Hamburger Activity on a Concession Operation basis.

2. **Direct Operations – Letter Of Intent.** Specific Location and type of Restaurant will be determined by AAFES in conjunction with military command and AAFES mission, and will be identified to Franchisor through a Letter of Intent attached as **Exhibit K**, issued by the AAFES Contracting Officer. In the Letter of Intent, the Contracting Officer will provide pertinent demographics and other available information. The Franchisor may request a waiver to not authorize AAFES to proceed with development of a Restaurant for any Location, subject to mutual agreement of AAFES and Franchisor. Exercise of any such agreement is done with the understanding that subsequent to such agreement, AAFES, at its option, may solicit for and award Fast Food Hamburger Activity as a Concession Operation for such Location. Exceptions granted by the Franchisor are listed in **Exhibit I**.

3. **Location Approval.** As part of Franchisor's Location approval process and for each proposed Location, AAFES must submit a "Institutional Site Application Package" in the form specified by Franchisor with a request for written Franchisor Location approval ("Site Approval") as indicated by Franchisor's issuance of an "A number" designation for the Location.

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4. **Location Survey**: When practical, the Contracting Officer or his/her representative, Franchisor representative(s) and Military Installation representative(s) will conduct a joint survey of the Military Installation and agree to a specific Location to establish a Burger King® Restaurant if one was not identified in the Letter of Intent. Alternatively, the parties shall use commercially available mapping programs or other information to agree the specific Location.

5. **Restaurant Construction**. All Restaurants must be constructed, equipped and furnished in accordance with Franchisor approved plans and specifications. Prior to construction, AAFES must obtain from written architectural and design approval of AAFES' plans as indicated by issuance of a restaurant number ("BK #"). AAFES must obtain Franchisor's approval of the type of facility, site layout, and equipment configuration for each Restaurant, including the building design, style, size, interior decor, type of equipment, service format and equipment arrangement ("Construction Approval").

6. **Supplemental Agreement**. No more than 15 days after the opening of a Restaurant the Contracting Officer will send Franchisor a fully executed Supplemental Agreement in the form attached as **Exhibit H** and the Initial Franchise Fee.

7. **Co-Branding**. If mutually agreed upon, Franchisor will allow for the co-locating of both name brand and AAFES signature brand food concepts within the same Location. In some Locations, AAFES will share or have adjoining dining area with other AAFES operations (e.g. chicken, pizza, Mexican, etc.).

## ARTICLE III Franchise Agreement Terms Applicable to each Restaurant

1. **Special Terms- Applicable to each Restaurant**. Exhibit C sets forth the special terms applicable to each Restaurant.

## Article IV. Additional Terms

1. **Indemnity**: AAFES shall indemnify and hold Franchisor harmless from court judgments claims and suits arising out of loss, damage, or injury caused by or resulting from acts or omissions of AAFES or its employees, including Dram Shop Act liabilities.

2. **Default**: If AAFES or Franchisor breaches any material provision of this Agreement and fails to cure the breach after written notice and within thirty (30) days from receipt of such notice, then, without prejudice to any other rights and remedies either party may have under this Agreement, any other agreement, at law or in equity, either party may terminate this Agreement by giving written notice to the other party of such termination. If any applicable law or rule requires a longer cure period than that provided herein, then the period required under the law or rule shall be substituted for the requirements herein.

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### 3. Action on Termination.

Upon expiration or termination of this Agreement for any reason, all monies owed by AAFES to Franchisor and any Franchisor Affiliate relating to this Agreement shall be immediately due and payable. AAFES shall not be entitled to any goodwill or other compensation or refund of fees for any reason. In addition, AAFES must:

- A immediately cease using the Burger King System including the Burger King Marks or any mark confusingly similar to the Burger King marks and the Confidential Information,
- B not thereafter identify itself as or hold itself out as a Burger King franchisee or former Burger King franchisee or as having any connection or relationship with Franchisor or the Burger King System;
- C immediately return to Franchisor all Confidential Information including the MOD Manual and all other materials in its possession or control relating to the Burger King System;
- D immediately destroy or deliver to Franchisor, at Franchisor's option, all materials bearing the Burger King Marks or in which Franchisor owns copyright or any other intellectual property rights that are otherwise identifiable with the Burger King System, and all proprietary supplies, including all branded goods and such goods made to Franchisor's formulations as Franchisor determines;
- E de-identify the Restaurant in accordance with Franchisor's instructions;
- F pay all trade creditors relating to the Restaurant, including approved suppliers; and
- G permit Franchisor to enter the Restaurant at any time to verify that AAFES has done all things required of it by Section.

The foregoing shall be in addition to any other rights or remedies of Franchisor that exist under statute, regulation or common law.

### 4. Agency

Franchisor may subcontract or delegate to an Affiliate or any other entity the performance of any obligation or the right to exercise any right, power, authority or discretion under this Agreement, such that anything that may or must be done by Franchisor under this Agreement may be done instead by or in conjunction with such subcontractor or delegate. If directed by Franchisor, and to the extent directed by Franchisor, AAFES must deal with any such subcontractor or delegate as if they were Franchisor. Franchisor shall remain responsible for the performance of the obligation.

### 5. Non-Waiver.

The failure or delay on the part of Franchisor to exercise any right or option given to it under this Agreement, or to insist on strict compliance by AAFES with the terms of this Agreement, shall not constitute a waiver of any terms or conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by Franchisor of its right at any time thereafter to require exact and strict compliance with all the terms of this Agreement. The rights or remedies set out in this Agreement are in addition to any other rights or remedies which may be granted by law.

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### 6. Notices.

Any notice, demand, request, consent, approval, authorization, designation, specification or other communication given or made to or by a party to this Agreement must be in writing, addressed:

(i) if to Franchisor:                   Burger King Corporation  
5505 Blue Lagoon Drive  
Miami, Fl. USA 33126  
Attention: General Counsel  
  
Facsimile: 305- 378-3191

(ii) if to AAFES:                       Army & Air Force Exchange Service  
Attn: Burger King Contracting Officer  
3911 S. Walton Walker Blvd. (SD-F)  
Dallas, TX 75236-1509  
Facsimile: 214-312-6161

or as specified to the sender by any party by notice. Notice is regarded as being given by the sender and received by the addressee if by delivery in person (including by courier or overnight mail service), when delivered to the addressee.

7. Insurance. **Exhibit G** sets forth the Insurance provisions of this Agreement.

**EXHIBIT A**  
**GENERAL PROVISIONS**  
**(AUG 08)**

1. AUTHORITY TO BIND (NOV 95).
2. LEGAL STATUS (AUG 08).
3. PROCUREMENT INTEGRITY (NOV 95).
4. ORAL REPRESENTATIONS (JAN 94).
5. MODIFICATIONS AND ADDITIONS (MAY 04).
6. SUBCONTRACTING (JUN 94).
7. ASSIGNMENT - SERVICES (DEC 97).
8. TERMINATION (JUN 94).
9. PERMITS, LICENSES AND APPLICABLE LAWS (JAN 94).
10. INDEMNIFY AND HOLD HARMLESS (MAY 89).
11. DISPUTES (FEB 95).
12. NON-WAIVER OF DEFAULTS (MAY 89).
13. ADVERTISEMENTS (AUG 08).
14. EXAMINATION OF RECORDS (AUG 08).
15. CONTRACTOR PERSONNEL AND REPRESENTATIVES (AUG 08).
16. ENVIRONMENTAL PROTECTION (MAR 94).
17. CONTRACTOR LIABILITY - SERVICES (MAY 04).
18. DRUG-FREE WORKPLACE (AUG 92).
19. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (MAY 04).
20. DATE COMPLIANT (DEC 04)
21. PAYMENT BY ELECTRONIC FUNDS TRANSFER (OCT 98).
22. CHOICE OF LAW AND FORUM (MAR 2006)
23. PRIVACY ACT (APR 84)
24. PAYMENT CARD INDUSTRY (PCI) COMPLIANCE (DEC 04)

## GENERAL PROVISIONS

### 1. AUTHORITY TO BIND (NOV 95).

a. "Contracting Officer" means a person authorized by the Commander, AAFES to execute and administer contracts, purchase orders, or other agreements on behalf of AAFES. Only contracting officers may waive or change contract terms; impose additional contract requirements; issue cure, show-cause and termination notices; issue claims against contractors, and issue final decisions on contractor claims.

b. The contracting officer may authorize other AAFES and government officials to perform actions of an administrative nature, such as conducting inspections and audits; placing orders against existing contracts; forwarding requests for contract changes to the contracting officer; collecting contract payments, and processing routine documents. These officials are not contracting officers, as defined in a. above.

c. AAFES has no obligation to recognize or accept waivers or changes to this contract that result from the actions of officials other than the contracting officer. Claims based on such actions may be denied. Questions concerning the authority of other AAFES or government officials should be referred to the contracting officer.

### 2. LEGAL STATUS (AUG 08).

The Army and Air Force Exchange Service (AAFES), including its activities, offices, and individual exchanges, is an integral part of the Departments of the Army and Air Force and an instrumentality of the United States Government. AAFES contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under the provisions of the Contract Disputes Act of 1978, as amended, in which event AAFES will reimburse the U.S. Government. AAFES procurement policy is established by applicable directives and instructions promulgated by the Department of Defense. The Federal Acquisition Regulation (FAR) does not apply to AAFES.

### 3. PROCUREMENT INTEGRITY (NOV 95).

a. By submission of an offer or performance of this contract, the offeror or contractor certifies with respect to this AAFES purchase action:

(1) that no discussion, offer or promise of future employment or business opportunity has been or will be made to AAFES civilian or military personnel who participated personally and substantially in the purchase action;

(2) that no offer, promise or gift of any gratuity, entertainment, money, or other thing of value has been or will be made to any AAFES civilian or military personnel or any other employee of the United States Government or member of their family or household;

(3) that no information proprietary to other offerors or other purchasing information (offeror list, prices offered, technical evaluations or rankings, etc.) is sought or obtained until it is available to the public under AAFES procedures.

(4) that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except bona fide employees or bona fide established commercial selling agencies retained by the contractor for the purpose of securing business.

b. Contractor certifies that no gratuities (entertainment, gifts, money, kickbacks or other things of value) were or will be solicited or accepted by the contractor, or any person representing the contractor, from any subcontractor or person representing the subcontractor, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.

c. Contractor will report in writing to the Director, Loss Prevention Division, any possible violation of this clause when the contractor has reasonable grounds to believe a violation may have occurred. The contractor shall cooperate fully with any federal agency investigation of a possible violation of this clause.

d. For breach of any of these certifications, AAFES may terminate this contract for default and/or deduct from amounts due under this or other contracts, or charge contractor for, the total value of any contingent fee, gratuity or kickback or other loss to AAFES arising out of the breach.

4. **ORAL REPRESENTATIONS (JAN 94).** This contract represents the entire agreement of the parties. Any changes or amendments thereto may not be recognized by AAFES unless committed to writing and incorporated by reference into the contract by the contracting officer.

**5. MODIFICATIONS AND ADDITIONS (MAY 04).**

a. Except as otherwise specifically provided in this contract, all changes, modifications, additions or deletions to this contract must be prepared in writing as formal amendments signed by both parties and approved in accordance with provisions of applicable regulations.

b. Unilateral Amendments: The contracting officer may make unilateral amendments to the contract to incorporate administrative changes, provided such changes are within the general scope of the contract.

**6. SUBCONTRACTING (JUN 94).** Contractor shall not subcontract any part of the work to be performed without the prior written consent of the contracting officer. Any subcontractor used in connection with this contract is the agent of the contractor and not the agent of AAFES.

**7. ASSIGNMENT - SERVICES (DEC 97).** The Assignment of Claims Acts, 31 U.S.C. 3727 and 41 U.S.C. 15, are not applicable to amounts due under AAFES contracts. Contractor may not assign its rights or delegate its obligations under this contract, and AAFES will neither consent to, nor recognize, any purported assignment. Contractor may request permission from the contracting officer to have contract payments forwarded to a third party.

**8. TERMINATION (JUN 94).** Relative to termination of this contract, it is mutually agreed:

a. This contract may be terminated in whole or in part by either party immediately upon written notice to the other party in the event of breach of this contract by the other party.

b. This contract may be terminated in whole or in part by either party upon thirty (30) days notice (ninety (90) days for vending contracts) in writing to the other party.

c. This contract is automatically terminated upon the dispatch of written notice to contractor in the event the exchange is inactivated or the installation at which the exchange is located is inactivated. If this contract covers services to be performed at various exchanges or installations and only one or more of the exchanges or installations is inactivated, then only that portion of the contract being performed at the inactivated exchange or installation is terminated.

**9. PERMITS, LICENSES AND APPLICABLE LAWS (JAN 94).** Contractor warrants that all necessary permits and licenses have been obtained and that the merchandise, services, supplies, and/or equipment provided under this contract are in compliance with applicable laws.

**10. INDEMNIFY AND HOLD HARMLESS (MAY 89).**

a. Contractor will indemnify, hold harmless and defend AAFES and all other agencies and Instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of any of the following:

(1) The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by contractor;

(2) Loss, damage, or injury alleged or established to have arisen out of or in connection with items or services provided by contractor, unless such loss, damage, or injury was caused by or resulted solely from the acts or omissions of AAFES, its agents, representatives, or employees;

(3) Any loss, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the contractor.

b. AAFES will give contractor notice and an opportunity to defend.

**11. DISPUTES (FEB 95).**

a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Contract Disputes Act.

c. A claim by the contractor shall be made in writing and submitted to the contracting officer for a written decision. A claim by AAFES against the contractor shall be made by a written decision by the contracting officer.

d. For contractor claims exceeding \$100,000, the contractor shall submit with the claim a signed certification that:

- (1) The claim is made in good faith;
- (2) Supporting data are accurate and complete to the best of the contractor's knowledge and belief, and
- (3) The amount requested accurately reflects the contract adjustment for which the contractor believes AAFES is liable.

e. The claim must be executed by an individual with authority to bind the contractor.

f. The contracting officer will mail or otherwise furnish a written decision in response to a contractor claim, within the time periods specified by law. Such decision will be final and conclusive unless:

(1) Within 90 calendar days from the date of contractor's receipt of the final decision the contractor appeals the decision to the Armed Services Board of Contract appeals (ASBCA), or

(2) Within 12 months from the date of contractor's receipt of the final decision the contractor brings an action in the United States Court of Federal Claims.

g. Pending final resolution on any request for relief, claim, appeal, or action arising under or relating to this contract, contractor will proceed diligently with the performance of this contract and will comply with the contracting officer's decisions.

h. Submission of false claims to AAFES is a violation of federal law and may result in civil and/or criminal penalties. If contractor cannot support all or part of its claim as a result of fraud or misrepresentation of fact, then in addition to other remedies or penalties provided for by law, contractor will pay AAFES an amount equal to the unsupported part of the claim and all AAFES' costs attributable to reviewing that part of the claim.

**12. NON-WAIVER OF DEFAULTS (MAY 89).** Any failure by AAFES at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms and conditions in any way or AAFES' right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

**13. Advertisements (AUG 08).**

Contractor will not represent in any manner, expressly or by implication, that products purchased under this contract are approved or endorsed by any element of the United States, including AAFES. All contractor advertisements that refer to AAFES or military exchanges will contain a statement that the advertisement was neither paid for nor sponsored, in whole, or in part, by AAFES, the military exchange system, or the United States Government.

**14. Examination of Records (AUG 08).**

a. This clause applies if the amount of the contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or his duly authorized representative will have the right to examine and audit the books and records of the contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract. The contractor agrees to include this clause in all subcontracts that exceed \$10,000.

b. "General Accountability Office" may be substituted for "contracting officer or his duly authorized representative" when the prospective contractor does not accept the standard wording of the examination clause.

c. Contracts awarded to foreign contractors may exclude the examination clause when its use is precluded by the laws of the country involved, subject to the approval of the servicing AAFES General Counsel (AAFES HQ and AAFES Europe). Contract files will be in such circumstances be documented to show the basis for exclusion of the clause.

**15. CONTRACTOR PERSONNEL AND REPRESENTATIVES (AUG 08).**

a. The contractor will discontinue using any individual in exchange facilities upon contracting officer's written notice that the individual is not acceptable for performance under this contract. Contractor will not use any such person to perform other AAFES contracts without the prior written consent of the contracting officer.

b. The contractor will not employ any individual to work in exchange facilities whom an AAFES contracting officer has determined unacceptable under any other AAFES contract without the prior written consent of the contracting officer.

c. Contractor personnel will abide by applicable regulations and directives and conduct themselves so as not to reflect discredit on AAFES.

d. Contractor will not represent himself/herself to be an agent or representative of AAFES, another instrumentality, or an agency of the United States.

**16. ENVIRONMENTAL PROTECTION (MAR 94).**

a. This clause shall apply to any contract in excess of \$100,000, and indefinite quantity contracts estimated to exceed \$100,000 in one year; however, it shall not apply to use of facilities located outside the United States or to contracts otherwise exempt in accordance with 40 CFR Part 15.

b. Unless this contract is exempt, by acceptance of this contract, contractor (and, where appropriate, subcontractor) stipulates:

(1) that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the EPA List of Violating Facilities as of the date of contract award;

(2) its agreement to comply with all requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in sections 114 and 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder;

(3) that as a condition of award of contract, contractor shall promptly notify the contracting officer of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, or delegatee, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities;

(4) its agreement to include the criteria and requirements in subparagraphs (1) through (4) in every nonexempt subcontract, and to take such actions the Government may direct as a means of enforcing such provisions.

**17. CONTRACTOR LIABILITY - SERVICES (MAY 04).**

a. Except as set out specifically elsewhere in the contract, contractor will be liable for costs to AAFES and/or other agencies of the United States associated with termination for default as follows:

(1) Incidental damages, including expenses reasonably incurred in connection with repurchase of the service and any other reasonable expense incident to the breach.

(2) Consequential damages including, but not limited to, lost fees resulting from lapses in service, unscheduled facility closures, sales declines, lower fees received on repurchase, and injury to person or property proximately resulting from any breach of warranty.

b. Contractor will not be liable for incidental or consequential damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. In such case contractor must provide prompt written notice to the contracting officer; the contracting officer, at his option may accept late, partial or substituted performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by contractor.

**18. DRUG-FREE WORKPLACE (AUG 92).** Contractor agrees to make a good faith effort to establish and maintain a drug-free workplace in connection with the performance of this contract. Consistent with the size and organization of its work force, contractor may wish to consider taking the following or other appropriate actions in establishing a drug-free workplace: publicizing a drug-free workplace policy, initiating an employee drug awareness program or encouraging participation in existing community/installation programs and informing employees of the general availability of drug counseling programs.

**19. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (MAY 04).**

a. Contractor will not acquire for use in the performance of this contract any merchandise, equipment, supplies or services originating from, processed in, or transported from or through, the countries prohibited from commerce by the United States Government. This restriction includes merchandise, equipment, supplies or services from any other country that is restricted by law, regulation or executive order at any time during performance of the contract. A current list of prohibited countries is available at <http://www.ustreas.gov/offices/enforcement/ofac/>.

b. Contractor agrees to insert the provisions of this clause, including this paragraph, in its subcontracts.

**20. DATE COMPLIANT (DEC 04).**

a. Contractor warrants that all information technology (software, hardware, micro-code, firmware, etc.) supplied under the contract are able to accurately and efficiently process date and time data including, but not limited to, calculating, comparing, and sequencing date and time data from, into, and between the twentieth and twenty-first centuries, and leap year calculations through at least 31 December 2101. The supplied information technology when used in combination with other information technology will accurately and efficiently process date and time data if the

other information technology properly exchanges date and time data. No human intervention is needed to invoke the date compliance (i.e. rebooting the hardware or restarting the software). The information technology methods to be date compliant must run fault free (no abnormal exiting applications and error free results) and be transparent to the user.

b. If the Information Technology supplied under this contract relies on other Information Technology to accurately and efficiently process date and time data then the contractor must disclose this reliance before entering into any agreement or allowing any contract addition or substitution (as may be authorized by the contracting officer).

**21. PAYMENT BY ELECTRONIC FUNDS TRANSFER (OCT 98).** The following will apply for all payments made by AAFES to the contractor under the terms of this contract.

a. Method of payment.

(1) All payments by AAFES under this contract shall be made by electronic funds transfer (EFT). The term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) If AAFES is unable to release payment by EFT, the Contractor agrees to either (i) accept payment by check or some other mutually agreeable method of payment, or (ii) request AAFES to extend the payment due date until such time as AAFES can make payment by EFT.

b. AAFES shall make payment to the Contractor using the EFT information provided by the contractor. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to AAFES, not less than thirty days prior to the effective date.

c. If the Contractor's EFT information in the AAFES database is incorrect AAFES need not make payment to the Contractor under this contract until correct EFT information is entered into the AAFES database; and any invoice shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

d. If the Contractor has identified multiple payment receiving points in the AAFES database, and the Contractor has not notified AAFES of the payment receiving point applicable to this contract, AAFES shall make payment to the first payment receiving point listed in the AAFES database.

e. The payment or disbursing office shall forward to the Contractor available payment information. AAFES shall send the payment information to the remittance address contained in the AAFES database.

**22. CHOICE OF LAW AND FORUM (MAR 06)** This contract shall be construed and interpreted in accordance with the laws of the United States of America as applied by, among others, the Armed Services Board of Contract Appeals and the United States Court of Federal Claims. By execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of the national or state courts where this contract is performed and agrees to accept the exclusive jurisdiction of an appropriate US Federal administrative body or court.

**23. PRIVACY ACT (APR 84).**

a. The Contractor agrees to –

(1) Comply with the Privacy Act of 1974 (the Act) and Department of Defense rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies –

(a) The systems of records; and

(b) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

b. In the event of violations of the Act, a civil action may be brought against AAFES when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an AAFES function, and criminal penalties may be imposed upon the officers or employees of AAFES when the violation concerns the operation of a system of records on individuals to accomplish an AAFES function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an AAFES function, the Contractor is considered to be an employee of AAFES.

c. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

d. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

e. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

f. The system or systems of records identified for this contract is/are: The system of records refers to information collected, compiled, and/or utilized to build a customer database for potential and/or current /follow-on services. Instruments used to collect information in written or electronic format includes, but are not limited to, application for services, verification of credit rating, customer inquiries/comments, data for invoicing current customers, change of address notifications, information used for marketing purposes, etc.

g. Subcontracting/outsourcing customer data outside CONUS is not acceptable for DoD Operational Security (OPSEC) purposes.

#### **24. PAYMENT CARD INDUSTRY (PCI) COMPLIANCE (DEC 04)**

a. If payment cardholder data is shared with contractors, subcontractors, merchants or service providers under the terms and conditions of this contract, the contractors, subcontractors, merchants and service providers must adhere to the most current version of the PCI DSS (Data Security Standard) requirements. These requirements are available at <https://www.pcisecuritystandards.org>.

b. The contractor acknowledges that each contractor, subcontractor, merchant and service provider with access to payment cardholder data is responsible for the security of the cardholder data the provider possesses. The contractor will also include this clause in any subcontract that provides access to cardholder data.

## EXHIBIT B

### LABOR PROVISIONS Contract for Services (without SCA) - April 98

#### 1. EQUAL EMPLOYMENT OPPORTUNITY.

a. The contractor agrees to comply with regulations of the Department of Labor contained in 41, Code of Federal Regulations, 60, which are incorporated herein by reference.

b. A contract award in the amount of \$10,000,000 or more will not be made unless the contractor, and each first-tier subcontractor which will receive a subcontract of \$10,000,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

2. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** (Applicable to contracts for services performed in the United States, any U.S. territory, or the District of Columbia.) The following clause is applicable to concession, agency, and vending machine contracts where the total gross receipts from sales or services under the contract will exceed \$2,500 and to management and direct service contracts where total payments to the contractor will exceed \$2,500. This contract to the extent that it is of the character to which the Contract Work Hours and Safety Standards Act, 40 USC 327, applies, is subject to all applicable provisions of the Act and the regulations of the Secretary of Labor thereunder (29 CFR 5).

a. Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek to work in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives such compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages: In the event of any violations of provisions of paragraph a., the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be completed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph a. in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his standard workweek of 40 hours without payment of the overtime wages required by paragraph a.

c. Withholding for unpaid wages and liquidated damages: The contracting officer may withhold from the contractor from any monies payable on account of work performed by the contractor or subcontractor such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph b.

d. Subcontracts: The contractor shall insert paragraphs a. through d. of this clause in all subcontracts and shall require their inclusion in all subcontracts of any tier.

e. Records: The contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

3. **AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA.** If this contract equals or exceeds \$10,000, and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in 41 CFR Part 60-250, which are incorporated herein by reference.

4. **AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS.** If the contract amounts equals or exceeds \$2,500 and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in 41 CFR Part 60-741, which are incorporated herein by reference.

5. **CONVICT LABOR (MAY 1989).** In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 USC 4082(c)(2)) and Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987.

## EXHIBIT C

### SPECIAL PROVISIONS

#### Franchise Agreement Terms Applicable to each Restaurant

1. **Restaurants.** The following terms shall apply to each Restaurant operated by AAFES pursuant to this Agreement and each Supplemental Agreement.

2. **Standards and Uniformity.** AAFES agrees to comply strictly at all times with all elements of the Burger King System, which it acknowledges is a fundamental term of this Agreement and a necessary and reasonable requirement in the interests of AAFES and others operating under the Burger King System. Without limitation, AAFES must at all times comply with the following covenants:

A. Operations Standards.

AAFES must fully comply with the MOD Manual. A copy of the MOD Manual must be kept at the Restaurant at all times and all changes or additions to it must be inserted upon receipt. In the event of any conflict between the MOD Manual kept at the Restaurant and the master copy maintained by Franchisor or its Affiliates in Miami, Florida (or such other place as may be designated by Franchisor's Affiliate), the master copy shall govern.

AAFES agrees that changes in standards, specifications and procedures in the MOD Manual may become necessary or desirable from time to time and AAFES must accept and comply with such modifications, revisions and additions to the MOD Manual as Franchisor in its sole discretion believes to be desirable.

The MOD Manual and any changes to it made from time to time and such other policies, standards, specifications and procedures communicated to AAFES shall be deemed to be part of this Agreement.

These manuals will be in English only except that if AAFES and Franchisor jointly determine that translations to local languages are needed, all translations will be done at Franchisor's expense.

B. Building and Premises.

i. Construction. The Restaurant must be constructed and improved in the manner authorized and approved by Franchisor, and must not thereafter be altered unless approved in advance by Franchisor. The Restaurant must be decorated, furnished, and equipped with equipment, signage, furnishings, and fixtures which meet Franchisor's specifications and the Current Image applicable at the time the Restaurant is constructed or improved.

ii. Maintenance and Repairs. AAFES must, at its own expense, continuously throughout the Term, maintain (whether by repairs or replacement) the Location and the Restaurant in good condition and repair in accordance with Franchisor's then current standards relating to the repair, maintenance, condition and appearance of Burger King Restaurants. Without limiting the foregoing, AAFES must make all repairs, improvements and alterations as may be reasonably determined by

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Franchisor to be necessary to maintain the Current Image which AAFES was last required to meet. AAFES must comply with Franchisor's requirements in this regard within such time as Franchisor reasonably requires. AAFES and/or installation will keep the premises clean, orderly, secure, and sanitary. AAFES will comply with the installation/exchange fire, health, sanitation and safety regulations, and the provisions of Exchange Service Manual 17-1, entitled "Occupational Safety and Health Program" and the Franchisor's standards.

- iii. Current Image. In addition to and without limiting any other obligations specified in this Agreement, every tenth year of each Restaurant's term from its original opening date, AAFES shall remodel, renovate, replace, upgrade, improve and modernize the Restaurant including, without limitation, all improvements at the Location, and all furnishings, fixtures, equipment, signage and décor, to conform with the Current Image in effect as of the beginning of such year, including any necessary structural work, in accordance with Franchisor's requirements, and pursuant to plans and specifications approved in advance by Franchisor.

### C. Signage.

AAFES must: (a) display the Burger King Marks only in the form, manner, locations and positions authorized by Franchisor; (b) maintain and display at the Location signage conforming to the Current Image and current specifications that are manufactured from sources approved by Franchisor; (c) not place additional signage or posters anywhere at the Location without the prior consent of Franchisor; and (d) immediately discontinue the use of and destroy unapproved, obsolete or unsuitable signage. Such signs are fundamental to the Burger King System. AAFES will, after the written request of Franchisor, within a reasonable time (30 days), discontinue the use of and destroy (or return at Franchisor's expense) such Franchisor signs as are declared obsolete by Franchisor. AAFES agrees to maintain and display signs reflecting the current image of Franchisor and will not place additional signs or posters on the premises without the prior written consent of Franchisor. Franchisor agrees to abide by the various installation commander's and host country signing requirements / limitations which may differ from Franchisor's current image. Franchisor agrees that AAFES may keep posted the following AAFES signs:

- (1) Hours of Operation.
- (2) Emergency Contact Sign/Decal.
- (3) Cash Register Discrepancy Sign.
- (4) Specialized AAFES Policy Signs.
- (5) Fraud, Waste and Abuse Sticker.

### D. Equipment.

AAFES must: (a) purchase, install and use only equipment and equipment layouts that have been approved by Franchisor; (b) maintain all equipment in a condition that meets operational standards specified in the MOD Manual or as otherwise prescribed by Franchisor; (c) remove and replace equipment which becomes obsolete or inoperable with equipment approved for installation in new Burger King Restaurants at the time of the replacement; and (d) install within

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such time as Franchisor may reasonably specify, such additional, new or substitute equipment as Franchisor determines is needed in any part of the Location due to a change in menu or method of preparation and service, because of health, safety or regulatory considerations, or other business reasons. Franchisor has the right, but not the obligation, to establish requirements and criteria for POS Systems and communications equipment and systems to be used by AAFES. Prior to mandating the use of a new piece of equipment, Franchisor or its Affiliate will use reasonable efforts to field test the proposed new equipment.

### E. Vending Machines, ATMs, etc.

AAFES must not install public telephones, newspaper racks, juke boxes, automatic teller machines, lottery ticket terminals, cigarette, gum, candy or any other type of vending machines, video games, rides or any other type of machines normally found in amusement arcades, televisions, consumer computers or internet appliances, fireplaces or any other types of machines or equipment in the Restaurant without the prior approval of Franchisor, but must install such machines or equipment in the Restaurant promptly upon request from Franchisor. In the event any such items are installed at the Restaurant, then all sums received by AAFES in connection with these items shall be included within Gross Sales and AAFES shall comply with any conditions and mandatory standards, specification and provisions as to the use of such items.

### F. Conduct of Business.

AAFES must: (a) use its best efforts to effectively promote and maximize the sale of Approved Products at the Restaurant and to this end shall employ adequate personnel and maintain sufficient supplies of Approved Products, including food and packaging products and merchandise and promotional products; (b) conduct its business at the Restaurant in a manner which protects and enhances the reputation and goodwill of the Burger King System; and (c) adhere to high standards of integrity and ethical conduct in dealings with customers, suppliers, distributors, public officials, all other persons who conduct business with AAFES, and Franchisor and its Affiliates.

### G. Menu, Service and Hygiene.

AAFES must sell all menu items, merchandise and promotional products, and other products or materials or services specified in the MOD Manual or as otherwise specified by Franchisor in accordance with the standards, specifications and other requirements of the Burger King System. AAFES must not serve, sell or offer for sale any items which are not Approved Products.

AAFES must adhere to all specifications contained in the MOD Manual or as otherwise prescribed by Franchisor from time to time as to ingredients, pricing, product groupings, storage, and handling, method of preparation and service, weight and dimensions of products served, and standards of cleanliness, health, and sanitation in accordance with the standards, specifications and other requirements of the Burger King System.

AAFES must only sell and serve food, beverages, and other items in packaging and other paper products that meet Franchisor's specifications in accordance with the standards, specifications and other requirements of the Burger King System.

Franchisor may at any time, by written notice to AAFES, add a product or ingredient to, or remove any product or ingredient from, menu items or other Approved Products. If Franchisor makes any such changes, AAFES must change the menu within the period specified by

## EXHIBIT C

Franchisor in writing.

Franchisor may at any time, by written notice to AAFES, change the menu by introducing new menu items or new Approved Products or changing the recipes for, or removing existing menu items or other Approved Products that AAFES must prepare at the Restaurant; or change the types, brands or mix of pre-manufactured products that may be utilized with menu items or other Approved Products. If Franchisor makes any such changes, AAFES must change the menu within the period specified by Franchisor in writing.

Franchisor may at any time require AAFES to cease using any ingredients or withdraw from supply in the Restaurant, any Approved Product or any other food, beverage, product or service, which in Franchisor's sole discretion: (a) does not conform or no longer conforms with the standards, quality controls or specifications for food, beverages, products or services to be supplied in accordance with the Burger King system; (b) does not conform or no longer conforms with the range or type of food, beverages, products or services to be supplied in accordance with the Burger King system; or (c) is, or may be, a health or safety risk or may adversely impact the Burger King System. AAFES must immediately cease using any ingredients or withdraw any food, beverages or products from sale or supply when required to do so by Franchisor.

AAFES shall sell the Approved Products only at retail to consumers at the Restaurant and shall not sell such items for redistribution or resale.

AAFES must, upon request of Franchisor, provide Franchisor with copies of all health inspection reports or violations issued by local authorities.

### H. Sources of Supply.

Only goods and services that meet Franchisor's then current standards and specifications and are purchased from Approved Suppliers shall be used in the development, improvement or operation of the Restaurant. Such goods include the Approved Products, including, without limitation, food and supplies, packaging and paper products, furnishings, fixtures, signage, equipment, uniforms and premiums. The decision to approve or disapprove proposed suppliers or distributors shall be made by Franchisor in its sole discretion. Franchisor may consider any factors it deems relevant in establishing specifications and standards and in approving suppliers and/or distributors, and is not obligated to approve multiple suppliers and/or distributors of any good or service.

All food items, equipment and supplies for performing this agreement will be furnished by AAFES in accordance with Franchisor's specifications from sources approved by both Franchisor and AAFES. Franchisor recognizes AAFES requirement to competitively procure food, supplies and equipment obtained from commercial sources

### I. Hours of Operation.

The operating hours will be determined at each Military Installation by exchange management and approved by Franchisor.

### J. Uniforms.

All employees in the Restaurant must wear uniforms approved by Franchisor as meeting the design, color and specification from time to time prescribed by Franchisor.

### K. Advertising and Promotional Materials.

AAFES must not use, publish, display, sell or distribute any advertising or promotional material or slogans, or material on which any Burger King Marks appear, without the prior approval of

## EXHIBIT C

Franchisor. All material on which Burger King Marks are used must bear such notice of registration or license legend as Franchisor may specify. AAFES must adhere to all applicable laws and regulations relating to advertising, and must comply with all advertising, promotional and public relations standards, guidelines and policies established by Franchisor from time to time. AAFES must, immediately upon receipt of notice from Franchisor, remove or discontinue the use, publication, display, sale and distribution of any advertising or promotional material, slogans, and any material on which the Burger King Marks appear, which Franchisor has not approved.

L. Compliance with Laws.

AAFES must comply with and at all times conduct its business strictly in accordance with all requirements of the law, any competent authority, the MOD Manual and otherwise as prescribed by Franchisor. In the event of conflicting standards, AAFES must comply with the strictest standard. AAFES must immediately notify Franchisor, and provide any details reasonably requested by Franchisor, of any legal action taken, or circumstances which could reasonably lead to legal action being taken against AAFES, Franchisor or its Affiliates, including by a customer or any regulatory authority, and of any likely adverse publicity in relation to AAFES or the Restaurant. AAFES must obtain and maintain all licenses and other permits required by the law of the governing bodies where the Restaurant is located in all matters, including without limitation those relating to health, safety, hygiene, employment, the Americans with Disabilities Act, and charitable solicitation laws.

M. Participation in Inspection/Evaluation/Rating Programs.

AAFES must participate, at its cost, in all inspection, evaluation and rating programs, including self-audits, product, equipment, facility, crew or service evaluation programs and customer satisfaction programs as required by Franchisor from time to time and any other similar or replacement programs as may be implemented by Franchisor during the Term. AAFES understands and agrees that Franchisor may receive a copy of a report or summary showing the findings of the inspection, evaluation or rating program. Franchisor may charge AAFES or require AAFES to pay a third party vendor for costs related to inspections, evaluations or ratings of optional equipment installed at the Restaurant.

N. Right of Entry; Inspection.

Franchisor or any employee, agent or designee of Franchisor shall have the unrestricted right to enter the Restaurant to conduct such reasonable inspections and other activities as it deems necessary to ascertain or ensure compliance with this Agreement and in accordance with the Schedule. The inspections and other activities may be conducted without prior notice at any time reasonably determined by Franchisor when at least one of AAFES' employees is present at the Restaurant. Franchisor or any employee, agent or designee of Franchisor shall use reasonable efforts to ensure that the inspections and other activities are performed in a manner which minimizes interference with the operation of the Restaurant.

O. Interference with Employment Relations of Others.

Franchisor and AAFES must not employ or seek to employ any person who at the time is employed by the other or any of its Affiliates or of another AAFES of Franchisor or its Affiliates or otherwise directly or indirectly, entice or induce such person to leave such employment. This obligation shall not be breached if the person that AAFES or Franchisor employs or seeks to employ has not been employed by the other or its Affiliate or by another

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AAFES for a period of more than 6 months or if the other party has obtained the prior written consent of such person's employer.

3. **Prices, Menu and Food Specifications:** The prices to be charged, menu items, and food specifications are set out in **Exhibit F**, Prices, Menu, and Specifications.

4. **Field Assistance:** Franchisor will provide the complete details of any field assistance programs to include frequency of visits, inspection criteria, on-call consultations, etc. The Franchisor shall provide field assistance at any Restaurant worldwide in accordance with Franchisor's then current visitation process. Attached as **Exhibit J**, entitled Field Assistance, represents Franchisor's current field assistant visitation process. AAFES recognizes that remote Restaurants and Deployed Locations may not receive the same level of field visitation support due to their unique characteristics. Franchisor is continually reviewing and modifying these programs for the Burger System based on competitive and industry needs worldwide. Franchisor may enter the Restaurant to conduct such field assistance as it deems necessary to ascertain compliance with its standards and this Agreement. The visits may be conducted during Restaurant operating hours. The field assistance will be performed in a manner which minimizes interference with the Restaurant operations. A copy of all field assistance reports will be immediately provided to the Restaurant Manager and to the Contracting Officer or his representative.

### 5. **Services Available to AAFES**

Franchisor agrees to provide the following services to AAFES and to use reasonable efforts to provide them in a manner reasonably designed for the BURGER KING system, including the use of technology deemed by Franchisor to be competitive in the quick service restaurant industry. The content of and manner by which the following services are to be delivered by Franchisor shall be within Franchisor's sole reasonable discretion. Franchisor will consult with AAFES from time to time in connection with the operation of the Restaurant and shall provide to AAFES:

- A. A pre-opening training program conducted at training facilities and/or Burger King Restaurants at such location(s) as determined by Franchisor.
- B. Pre-opening and opening assistance at the Restaurant for such period of time as Franchisor, in its discretion, deems appropriate under the circumstances. Franchisor may, in its reasonable discretion, consider the following factors: the experience of the operator, the type of facility being operated, whether the assistance is for a new opening or the reopening after a transfer of ownership of an already operating Burger King Restaurant, the prior Burger King System experience of AAFES' management, the projected volume of the Burger King Restaurant as estimated by AAFES, and any other factors that Franchisor deems appropriate for consideration.
- C. The MOD Manual, on loan to AAFES, for the Term. The loaned copy of the MOD Manual and other specifications, standards and operating procedures furnished by Franchisor will be written in English.
- D. Such marketing and advertising research data and advice as may be developed from time to time by Franchisor and deemed by it to be helpful in the operation of a Burger King Restaurant.
- E. Communication of new developments, techniques and improvements in food preparation, equipment, food products, packaging, service and restaurant management which are relevant to the operation of a Burger King Restaurant.

## EXHIBIT C

- F. Such other ongoing information as Franchisor considers reasonably necessary to continue to communicate and advise AAFES as to the Burger King System, including the operation of the Restaurant.

### 6. Training:

- A. The Restaurant must not open unless the Restaurant Manager and such other members of AAFES' staff charged with the responsibility for the day-to-day operation of the Restaurant as Franchisor may determine, have successfully completed Franchisor's pre-opening training program at such location(s) as determined by Franchisor.
- B. Any new Restaurant Manager and any other new member of AAFES' staff as Franchisor may determine must successfully complete the training program referred to in Subsection A before assuming their position.
- C. The Restaurant Manager and such other members of AAFES' staff as Franchisor may determine shall undertake and complete continuing training programs from time to time as directed by Franchisor in order to implement Franchisor's current operational standards. Such training programs shall be at locations specified by Franchisor.
- D. AAFES shall be responsible for the cost of Franchisor providing any ongoing training programs requested by AAFES or required by Franchisor to be undertaken by AAFES, the Restaurant Manager or any of AAFES' employees (including the cost of training any new or replacement Restaurant Manager or any new employees of AAFES). AAFES shall also be responsible for the cost of all Franchisor's training materials such as workbooks, all travel and living expenses, all compensation of and workers compensation insurance for AAFES' employees while enrolled in the training program, any other personal expenses incurred and materials provided to such employee, and training facility charges and training staff charges, if any.
- E. AAFES must, at its cost, implement a training program for Restaurant employees in accordance with training standards and procedures prescribed by Franchisor.
- F. AAFES must staff the Restaurant at all times during the term with a sufficient number of trained employees including the minimum number of managers required by Franchisor who have completed Franchisor's training program at an accredited location to ensure that Franchisor's operational standards are met.
- G. Franchisor must provide a detailed training plan for AAFES supervisory and non-supervisory personnel involved in the operation of the Restaurant. The plan should cover both formal and on-the-job training during the start up and first year of operation of a Restaurant and annually thereafter.

### 7. Accounting Procedures/Right of Audit:

- A. Accounting. AAFES agrees to keep complete records of this business and furnish Franchisor with a monthly and fiscal year to date operating statement, in the format agreed to by both parties.
- B. Audits. AAFES agrees that Franchisor or its representatives, at franchisor's expense, shall, at all reasonable times, have the right to examine or audit the books or accounts of franchised operation.

## EXHIBIT C

### 8. POS System and Product Mix Reporting.

As of January 1, 2006, Franchisor announced global POS System standards for the entire Burger King System. Franchisor recognizes AAFES' unique business needs and agrees that AAFES is granted an exception based on the following criteria:

- A. AAFES expects to or has designated Micros, a Franchisor approved POS System vendor, as its supplier of POS System equipment used at its Restaurants.
- B. Any POS System selected by AAFES for use at its Restaurants will operate all Franchisor required and future required platforms such as BK Crown Cards, PLS, LSS, Electronic Payments and Kitchen Minder. At least 6 months prior to AAFES deployment of any new platform that is dependent on POS System integration ("POS Platform"), Franchisor will forward to AAFES detailed operational and technical specifications setting forth the requirements for the new POS Platform. AAFES will then work with Micros or the incumbent POS System provider using commercially reasonable efforts to implement the new POS Platform functionality. In addition, the POS System must have the same operational capabilities of the POS System currently approved for the Burger King System.
- C. AAFES shall provide Franchisor with gross sales, ticket count, comparative sales, product mix data and other information that Franchisor may require from time to time. AAFES shall provide data in an electronic format and methods reasonably required by Franchisor and mutually agreed to by Franchisor and AAFES.

### 9. Protection of the Burger King System

#### A. Ownership.

AAFES acknowledges that ownership of all right, title and interest in and to all elements of the Burger King System, including the Burger King Marks, and the design, décor and image of Burger King Restaurants is and shall remain vested solely in Franchisor or an Affiliate of Franchisor and that AAFES has and will acquire no proprietary or other rights or claims in or to any element of the Burger King System or the Burger King Marks other than the license granted by this Agreement. AAFES disclaims any other right or interest in and to the Burger King System and the Burger King Marks and in the goodwill derived therefrom and will promptly if requested by Franchisor assign free of any charge to Franchisor any right or interest AAFES may acquire or be deemed to acquire therein. AAFES acknowledges and agrees that all uses of the Burger King Marks and any element of the Burger King System shall inure to the benefit of Franchisor.

#### B. Improvements.

AAFES must notify Franchisor of any potential improvements or new features which it identifies as capable of benefiting the Burger King System. AAFES agrees that all right, title and interest in and to such potential improvements or new features are hereby transferred to, vest in and remain the exclusive property of Franchisor on and from their creation, without payment by Franchisor, and Franchisor and/or its Affiliates may evaluate, modify and introduce any such potential improvements or new features into the Burger King System for the benefit of Franchisor and other AAFES'. AAFES shall do all things and sign all

## EXHIBIT C

documents necessary to give effect Section. Franchisor shall have no obligation to use the improvements or new features. AAFES shall not use potential improvements or new features at the Restaurant unless and until first approved by Franchisor.

### C. Confidential Information.

The term "Confidential Information" as used in this Agreement means all confidential and proprietary information of Franchisor or any of its Affiliates, including without limitation, Franchisor's operations manuals, including the MOD Manual, and other standards, specifications and operating procedures, training material, marketing and business information, marketing strategy and marketing programs, plans and methods, food specifications, details of suppliers and distributors, and sources of supply and distribution, sales, contractual and financial arrangements of Franchisor and its Affiliates and service providers, and all other information and knowledge relating to the methods of operating and the functional know-how applicable to Burger King Restaurants and the Burger King System revealed by or at the direction of Franchisor or any of its Affiliates to AAFES.

AAFES acknowledges the uniqueness of the Burger King System and that Franchisor is making the Confidential Information available to AAFES for the purpose of operating the Restaurant. AAFES agrees that it would be an unfair method of competition for AAFES to use or duplicate or to allow others to use or duplicate any of the Confidential Information. AAFES, therefore, must:

- i. at all times, both during the Term and following its termination or expiration, maintain the Confidential Information in strict confidence;
- ii. use the Confidential Information only in the operation of the Restaurant and other licensed Burger King Restaurants;
- iii. not disclose the Confidential Information to any person except those officers, employees and professional advisers of AAFES or any Principal who have a specific need to have access to it for the operation of the Restaurant, who have been made aware of the terms on which it has been disclosed to AAFES, and who agree to maintain its confidentiality. AAFES is responsible for any unauthorized disclosure of the Confidential Information by persons to whom AAFES has disclosed it;
- iv. not permit anyone to reproduce, copy or exhibit any portion of the MOD Manual or any other Confidential Information received from Franchisor; and,
- v. return, delete or destroy the Confidential Information received from Franchisor immediately upon receipt of a request from Franchisor to do so.

### D. No Dilution.

AAFES must not directly or indirectly, at any time during the Term or after the expiration of the Term, do or cause to be done any act or thing disputing, attacking or in any way diluting or tending to dilute the validity of and Franchisor's right, title or interest in and to the Burger King System, including the Burger King Marks, and the goodwill associated therewith.

### E. Infringement.

AAFES must immediately notify Franchisor of all infringements or imitations of the Burger King System, including the Burger King Marks, which come to AAFES' attention, or challenges to AAFES' use of any of the Burger King Marks, and Franchisor may exercise absolute discretion in deciding what action, if any, should be taken. AAFES must co-operate in the prosecution of any action to prevent the infringement, imitation, illegal use or misuse of the Burger King Marks

## EXHIBIT C

or the Burger King System and agrees to be named as a party in any such action if so requested by Franchisor. Franchisor will bear the reasonable legal expenses and costs incidental to AAFES' participation in such action except for the cost and expenses of AAFES' personal legal counsel if AAFES elects to be represented by counsel of AAFES' own choosing. AAFES must not institute any legal action or other kind of proceeding based on the Burger King Marks or the Burger King System without the prior approval of Franchisor.

F. Burger King Marks, Registered Users.

Franchisor represents that the marks specified in **Exhibit L** are registered or applied for as stated in **Exhibit L** for use in the US but makes no expressed or implied warranty with respect to the validity of any of the Burger King Marks. AAFES accepts that AAFES may conduct business utilizing some Burger King Marks which have not been registered, that registration may not be granted for the unregistered marks and that some of the Burger King Marks may be subject to use by third parties unauthorized by Franchisor. AAFES shall, upon request and at no expense to AAFES, assist Franchisor in perfecting and obtaining registration of any unregistered Burger King Marks.

Whenever requested by Franchisor, AAFES must enter into one or more Registered User Agreements authorizing and permitting the use of the Burger King Marks or any of them, and AAFES agrees to comply with all the terms and conditions contained in such Registered User Agreements and to sign and execute any documents and/or do such things to assist Franchisor in making application on AAFES' behalf for registration of all necessary Registered User Agreements. The provisions of any Registered User Agreements shall be consistent with the provisions of this Agreement. AAFES shall not attempt to register itself as a user of any of the Burger King Marks except in connection with an application filed by Franchisor. Nothing in any Registered User Agreement shall be construed as giving AAFES the right to transfer, sublicense or otherwise dispose of AAFES' right to use the Burger King Marks without Franchisor's prior written consent.

G. Conduct of Business on the Internet.

Without the prior consent of Franchisor, AAFES must not conduct business or advertise for business on the Internet. Franchisor may conduct business and advertise for business on the Internet. Franchisor may offer for sale products and services via the Internet and Franchisor is not liable to AAFES for any money or benefits received by Franchisor or any of its Affiliates in connection with the sales. AAFES must co-operate with Franchisor in its conduct of business on the Internet including by advertising the domain name specified by Franchisor at the Location.

H. Use of the Internet.

AAFES must: (a) obtain Franchisor's prior approval to any email address it uses in connection with the Restaurant and, if necessary, change the email address; (b) acknowledge at all times that ownership and control of Franchisor's websites and domain names remain with Franchisor or an Affiliate of Franchisor; (c) not alter or allow to be altered the structure or layout of any of the websites used by Franchisor or any Affiliate of Franchisor under license from Franchisor; (d) not publish the Burger King Marks or any information or material on the Internet or World Wide Web concerning the Restaurant, the Location, the MOD Manual, Current Image or any other Confidential Information of Franchisor or its Affiliates without the prior consent of Franchisor; and (e) not interfere in the use of any of the websites used by Franchisor or any Affiliate under

## EXHIBIT C

license from Franchisor and comply with all policies and procedures regarding website and use of the Internet that Franchisor publishes from time to time.

I. Independent Contractor.

AAFES is an independent contractor and is not an agent, partner, joint venturer or employee of Franchisor, and no express or implied fiduciary relationship exists between the parties. AAFES must not, nor attempt to, bind or obligate Franchisor in any way nor represent that AAFES has any right to do so. Franchisor has and will have no control over the terms and conditions of employment of AAFES' employees.

J. Public Notice of Independence.

In all public records and in AAFES' relationship with other persons, on stationery, business forms and checks, AAFES must indicate the independent ownership of the Restaurant and that AAFES is a AAFES of Franchisor. AAFES must exhibit at the Restaurant in such places as may be designated by Franchisor, a notification that the Restaurant is operated by an independent operator under license from Franchisor. Franchisor may prescribe the form of the indication and notification required by this clause..

K. Registration of Agreement.

If local law requires the registration or recordation of this Agreement with any local government agency, administrative board or banking agency, AAFES must request Franchisor's consent to do so. If Franchisor grants its consent, AAFES shall effectuate such registration(s) or recordation(s) at its sole cost and expense in strict compliance with local laws as soon as possible.

10. Special Sales Coupons:

Periodically, AAFES or Franchisor may provide special sales coupons for customer use in purchasing merchandise provided under this agreement at reduced prices. The coupons will show the specific amount of discount or free items customers will be entitled to receive.

The coupons are redeemable at face value towards purchase of specific items indicated, subject to compliance with any time limit and other restrictions that may be specified. Coupons will not be redeemed for cash.

The regular sell price will be rung on the cash register. The amount of monies collected from the customer will equal the regular sell price discounted by the coupon's face value. Fees payable to Franchiser (gross sales) will be based on regular sell price, less any discount or free item customers are entitled to from redeeming the coupons.

## EXHIBIT D

### Definitions

**Burger King Restaurant or Restaurant:** shall mean building and improvements at the Location used or associated with the use of the premises as a Burger King brand restaurant, and the Burger King restaurant business carried on by Franchisee at the Location and is defined as meaning one the following types:

1) **Fixed Facility Restaurant** (i.e., newly constructed or renovated building) is a traditional stand alone Burger King Restaurant with drive through and dining room.

2) **Mobile Restaurant** (i.e., fully contained motor vehicle or trailer). Each Mobile Restaurant will be assigned a separate Restaurant number by Franchisor for purposes of identification.

Mobile Restaurants, while assigned to a specific Military Installation, will be free to temporarily move to other Military Installations (e.g., for summer encampments, during renovations, as a result of troop movements, etc.), upon (60) days prior written notice to Franchisor, if and when AAFES receives advance notice of the requirement.

Mobile Restaurants may be reassigned to another installation with no additional fees incurred by AAFES, upon (60) days prior written notice to and approval from Franchisor.

The Mobile Restaurants menu will be limited to the Global Core menu as defined in the MOD Manual. Any additions proposed by AAFES will be reviewed by Franchisor for final approval

The cash register system used in the Mobile Restaurants will be a restricted version of the current POS system, the system may not telecommunicate data as fixed facilities do.

3) **Burger King Food Court/Retail Add-on Restaurant** (i.e., may share common dining areas with other restaurants, not including, however, another burger restaurant). Each Burger King® Food Court/Retail Add-on Restaurant will be assigned a separate Restaurant number by the Franchisor for purposes of identification and to report gross sales and account for the payment of advertising and royalty fees required by Exhibit E, Fee Schedule.

Each Burger King® Food Court/Retail Add-on Restaurant will be identified by Burger King® standard signs or logos which bear registered trademarks or trade names of Burger King® and which are approved for use by Burger King®.

## EXHIBIT D

The Burger King® Food Court/Retail Add-on Restaurant menu will be in accordance with Exhibit C, Special Provisions, Section 2.G., Menu, Service and Hygiene.

Each Burger King® Food Court/Retail Add-on Location unit will be under the supervision of a AAFES Burger King® trained Restaurant manager, assistant manager or shift coordinator consistent with the management of current AAFES Restaurants.

The hours of operation of any Burger King® FoodCourt/ Retail Add-on Restaurant within a mall will be guided by the operating hours of the mall or shopping center within which the Restaurant is located.

Burger King® Food Court/Retail Add-on Location units are subject to the following design guidelines:

Will have common seating if located in the food court. May have a limited amount of seating if it is the only Restaurant on the Military Installation.

Must not be a free standing unit unless approved by Franchisor.

For purposes of this Agreement a Burger King Restaurant or Restaurant shall include all Existing Restaurants currently operated by AAFES as of the date of this Agreement as a well as any new Restaurants opened pursuant to this Agreement.

**AAFES Certified Classroom Trainers:** AAFES employees who have been certified by Franchisor to teach Burger King training programs

**AAFES Certified Training Restaurants:** Restaurants which have been certified by Franchisor for teaching certain Burger King training programs

**AAFES Investment Spending Account- ("ISA")** - An account managed by Franchisor for the purposes listed on **Exhibit E** Section 2.

**Approved Products** means the food and beverage items and any merchandise or promotional products, and the types, brands and ranges of ingredients, packaging, merchandise or materials of menu items and products and any other products, materials or services specified and as approved in the MOD Manual or otherwise approved by Franchisor from time to time.

**Approved Supplier** means a supplier or distributor who has been approved by Franchisor or any of its Affiliates to supply the Approved Products and any other goods, or services for Burger King Restaurants in the country in which the Franchised Restaurant is located.

**Agreement** means the Schedule and Exhibits A through L, including any issued Letters of Intent and Supplemental Agreements.

## EXHIBIT D

**Army and Air Force Military Installations** - shall mean any Military Installation operated by the Army and Air Force branches of the US Military.

**Burger King Marks** means such trademarks, service marks and such other marks (registered and unregistered) as Franchisor may authorize from time to time for use in connection with the Burger King Restaurants in the country in which the Franchised Restaurant is located.

**Burger King System** means the unique restaurant format and operating system developed by Franchisor or its Affiliates for the development and operation of quick service or fast food restaurants, including proprietary designs and color schemes for restaurant buildings, equipment, layout and décor, proprietary menu and food preparation and service formats, uniform product and quality specifications, training programs, restaurant operations manuals, bookkeeping and report formats, marketing and advertising formats, promotional marketing items and procedures for inventory and management control, and also includes the Current Image and the Burger King Marks and all Confidential Information, other proprietary information, copyrights and other intellectual property rights relating to the system, and modifications Franchisor or any of its Affiliates may make to the system from time to time.

**Concession Operations** - shall mean any location at which AFFES plans to solicit bids for the operation of a Fast Food Hamburger Restaurant by third parties on a Military Installations.

**Contracting Officer**- The AAFES designated employee responsible for handling all contract matters with Franchisors defined in Section 1 of **Exhibit A**.

**CONUS** – shall mean any Military Installation located within the continental United States including Hawaii and Alaska

**Current Image** means the internal and external physical appearance of new or remodeled Burger King Restaurants including without limitation as it relates to signage, fascia, color schemes, menu boards, lighting, furniture, finishes, décor, materials, equipment and other matters generally applicable to Franchisor's operations in United States as may reasonably be changed from time to time by Franchisor.

**Deployed Locations:** Are locations in which AAFES is operating a Restaurant as a an event which requires or has required the deployment of US military forces in response to such things as natural disasters, terrorist or subversive activities, collapse of law and order, political instability, humanitarian assistance, military operations or hostile conditions.

**Effective Date** shall have the meaning as set forth Schedule, Article I, Section 2.

## EXHIBIT D

**Equipment** shall mean or include includes equipment, furniture, moveable trade fixtures, signs and décor items).

**Existing Restaurant-** any Restaurant in existence as of the Effective Date may also be referred an Existing Restaurant.

**Fast Food Hamburger Restaurant or Fast Food Hamburger Restaurant Activity -** means any branded restaurant concept which (a) has hamburgers or hamburger-based products which account for 10% or more of total menu items or total gross sales, and (b) does not offer table service as the principal method of ordering or food delivery.

**Franchisor's Affiliate-** A direct or in direct subsidiary of Franchisor.

**Gross Sales:** Means or includes all sums charged for goods or merchandise sold at or from the franchised operations but excluding coupons or promotions and any federal, state, county or city sales or excise tax, or other similar tax if required to be collected by AAFES from customers based upon sales.

**Letter of Intent-** shall mean the form attached as **Exhibit K** which AAFES will use to notify Franchisor if its intent to build a new Burger King Restaurant.

**Location --** means all of the land and any buildings and other improvements located from time to time at the address specified in Supplemental Agreement where the Restaurant is situated.

**Military Installation -** shall mean any US military installation worldwide where AAFES operates or will operate.

**MOD Manual--** means the manual of operating data (whether in one or more volumes, in electronic or hard copy format, and as updated by Franchisor from time to time), including all translations and copies, setting out Franchisor's mandatory restaurant operating, equipment and product standards, specifications and procedures as issued and amended from time to time by Franchisor or any of its Affiliates and includes any requirements of Franchisor relating to such matters, whether or not physically incorporated into the manual. The MOD Manual currently includes the Burger King Operations Manual, the Restaurant Equipment Manual, the Approved Brands and Distributors List, the Brand Standards Guide, the Ops Emphasis Guide, \*[RSI Equipment and Facilities E-Red Book] alerts and amendments thereto, and applicable policies established by Franchisor or its Affiliates from time to time.

**OCONUS-** Shall mean any Military Installation outside the Continental United States and excludes Hawaii.

**POS System -** means a point of sale computerized system consisting of electronic hardware and software technology, which captures, records and transmits sales, taxes on sales, number, date and time of transactions, products and combinations of products sold

## EXHIBIT D

and employees using the system and such other related information as may be required by Franchisor from time to time.

**Supplemental Agreement--** shall mean the form attached as **Exhibit H**.

## EXHIBIT E

### FEE SCHEDULE

#### 1. **Franchise Initiation Fee:**

a. Prior to the opening of a newly identified site, the following one-time franchise initiation fee will be due:

- (1) \$15,000.00 per Fixed Stand-Alone Facility Location
- (2) \$7,500.00 per Mobile Facility
- (3) \$7,500.00 per Burger King Food Court/Retail Add-on Location

b. Should an existing Burger King activity be closed and replaced with another Burger King activity on the same installation (offset), this fee will transfer to the new (offset) location (no franchise initiation fee will be due on the offset location).

c. Franchise Initiation Fees are waived for any locations considered as deployed (an event which requires or has required the deployment of US military forces in response to such things as natural disasters, terrorist or subversive activities, collapse of law and order, political instability, humanitarian assistance, or military operations) or hostile.

#### 2. **Advertising Fee:**

a. The Advertising Fee shall be 2% of Gross Sales generated at each Restaurant. Advertising Fees will be paid on all Gross Sales. 100% of the advertising fees from OCONUS Restaurants and 25% of the advertising fees from the CONUS Restaurant will be allocated to an ISA. The ISA will be managed by Franchisor and will be made available to AAFES for Local Store Marketing (LSM) and/or other types of promotional events on a local, regional or worldwide basis, to be used exclusively within the military community. (For example, if total gross sales for OCONUS are \$100,000 and CONUS are \$200,000, \$3,000 (OCONUS = \$2,000 + CONUS = \$1,000) will be allocated to the ISA).

b. Marketing and promotional programs, including grand opening contributions made available by Franchisor nationwide to Burger King franchisees in the United States will be made available to AAFES worldwide; except (i) national television advertising marketing as used in the U.S.; (ii) advertising and/or promotions which are either legally or logistically impossible or impractical for Franchisor to provide to AAFES; and, (iii) Grand opening contributions will be available only for those Restaurants in CONUS.

3. **Royalty Fee:** The Royalty Fee paid by AAFES to Franchisor will be 4% of Gross Sales, generated from the Restaurants.

4. **Payment of Fees:** AAFES shall pay all Advertising Fees and Royalty Fees on gross sales sold at or from the franchised operation to the franchisor within 30 days after the close of each AAFES fiscal month. Fees due for January will be processed within 60 days to allow for year end closeout. On or before the 10<sup>th</sup> day of February of each AAFES fiscal year during the term of this agreement AAFES shall provide franchisor with a list of the next twelve ensuing fiscal monthly cutoff dates. Franchise initiation fee for each Burger King

EXHIBIT E

activity opened under this contract shall be paid at least seven days before the start of operations.

## EXHIBIT F

### PRICES, MENU, AND SPECIFICATIONS

1. The products to be sold will be the standard menu items and portions required in Franchisor's nationally recognized United States commercial facilities. AAFES will adhere to all specifications prescribed by Franchisor as to ingredients, methods of preparation and service, weight or portions of products served. All food, drink and other items will be served in packaging that meets Franchisor's specifications.
2. Sell prices will be established by AAFES.
3. Franchisor agrees that AAFES may sell beer at mutually agreeable franchise locations.

#### 4. Food Processing and Sanitation:

a. Food Source: All foods (including ice) sold under this contract must be processed/packaged in production plants or facilities that meet the sanitary standards prescribed in the current version of MIL-STD-3006, DEPARTMENT OF DEFENSE STANDARD PRACTICE, SANITATION REQUIREMENTS FOR FOOD ESTABLISHMENTS.

**Note:** Food source changes or additions during the Agreement period must be approved by the contracting officer prior to accepting deliveries or offering the items for sale.

b. All deliveries of food items of animal origin and/or classed as perishable (not shelf stable at ambient temperatures) will be inspected for compliance with Agreement requirements. Inspections will be performed by AAFES Receiving Agent or the Military Installation health authorities. Military Installation medical representatives may draw random samples of manufactured items for the purpose of determining wholesomeness and quality. If delivery container is inspected at a location other than at the Exchange or Military Installation then the delivery invoice will be stamped or marked by food inspection personnel (and Security Forces if opened due to force protection inspections) as evidence that an authorized inspection was accomplished and products meet contract requirements. Foods determined to be unwholesome, of poor quality, from non-approved food sources, and/or delivered in unsanitary vehicles will not be permitted to be sold under this Agreement.

c. Food sales areas must comply with current Federal, FDA, DOD, local, state food safety and Force Protection requirements. These include but are not limited to the FDA Food Code, Air Force Instruction 48-116, Food Safety Program, and TB Med 530, Occupational and Environmental Health Food Sanitation. Concessionaires will conduct appropriate background checks and training for drivers delivering to Military Installation and ensure every effort is made to protect food from intentional or accidental contamination during transportation and sale. Sales areas are subject to routine and special medical inspections without notice.

## EXHIBIT F

d. All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of items under this contract and all items delivered under this Agreement will meet the sanitary standards prescribed in the current edition of MIL-STD-1105C, Military Standard Sanitary Standards for Bakeries.

5. **Bioterrorism**: Franchisor will ensure that both it and its food supply sources are compliant with current Federal, FDA, DOD, local, state and Military Force Protection requirements. These include but are not limited to Facility Registration IAW FDA Bioterrorism Act, 2002, conducting appropriate background checks on drivers delivering to military installation and ensuring every effort is made to protect food from intentional or accidental contamination during storage or shipment.

## EXHIBIT G

### INSURANCE REQUIREMENTS

1. AAFES is self-insured for liability covered by the Federal Tort Claims Act, and other federal laws prescribing similar liability in OCONUS locations. Tort or tort-type claims against AAFES will be filed and processed in accordance with applicable federal law and Army or Air Force Regulations.
2. AAFES agrees to self-insure for Worker's Compensation risks for its employees, as required by federal or host country law.
3. Franchisor agrees to provide Worker's Compensation and employer's Liability Insurance for Franchisor employees coming on to the Location with coverage limits complying with laws of such employee's country or state of residence.

EXHIBIT H

SUPPLEMENTAL AGREEMENT

1. **GENERAL:** This is a supplemental agreement negotiated pursuant to Franchise Agreement Number SD-F 09-076, dated 15 May 2009, between the Army & Air Force Exchange Service and Burger King Corporation.

2. **LOCATION:** The Burger King Restaurant is located at:

a. Name and Location of Military Installation and Burger King Restaurant Number:

b. Building Number:

Consisting of: \_\_\_\_\_ sq. ft. under roof

Patron Seating: \_\_\_\_\_

Drive Thru Service: \_\_\_\_\_

3. **PERIOD OF AGREEMENT:** The initial term of this Supplemental Agreement will be for a period of five (5) years, starting on \_\_\_\_\_ and ending on \_\_\_\_\_, unless terminated or extended in accordance with the basic contract.

4. This addendum is effective \_\_\_\_\_.

For Burger King Corporation:

For Army & Air Force  
Exchange Service:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Typed Name  
Title

\_\_\_\_\_  
Contracting Officer

## EXHIBIT I

### MILITARY INSTALLATION EXCEPTIONS

1. Notwithstanding Schedule, Article 1 Paragraph 1. General, and in accordance with Schedule, Article I, Franchisor agrees to allow AAFES a one- time exception to operate another direct hamburger chain restaurant, or chain featuring hamburgers at the locations listed below:

Kessler AFB, Mississippi  
4<sup>th</sup> ID Food Court, Ft. Hood, Texas  
Camp Foster, Okinawa  
Columbus AFB, Mississippi  
K-16, Korea  
Futenma, Okinawa  
Al Udied, Qatar (Orange Julius/Dairy Queen dual concept)

AAFES agrees that it will not use any proprietary material it has obtained from Burger King Corporation in their operations. Additional locations may be added by contract amendment signed by both parties.

2. Notwithstanding Schedule, Article 1, Paragraph 1. General, AAFES agrees to an exception for Franchisor to authorize operation of Burger King Facilities within Saudi Arabia and Kuwait by approved Burger King Franchisees in return for AAFES contracting with said Franchisees to operate the Restaurant(s) for AAFES.

3. Notwithstanding Schedule, Article 1 Paragraph 1. General, and in accordance with Schedule, Article I, Franchisor agrees to allow a one-time exception for the Marine Corps Air Station at Iwakuni, Japan to operate a Burger King restaurant under this Agreement. AAFES shall be solely responsible to Franchisor as Franchisee for the Restaurant including but not limited to franchise fee, royalty and advertising payments, training, maintenance and repairs of the restaurant, and image, all in accordance with the terms of this Agreement.

## EXHIBIT J

### FIELD ASSISTANCE

#### FREQUENCY OF VISITS AND INSPECTION CRITERIA

A Franchise **Business Leader** ("FBL") will be assigned to each Restaurant to assist, aid and make visits to the Restaurant on a periodic basis. The frequency of visits is scheduled according to need.

On most of these visits, a site visitation form will be completed covering such items as quality, service, cleanliness, etc.

Generally, **twice** a year, a **Operation Excellence Specialist (OES)** will complete a **Operations Excellence Review (OER)**. The **OER** is a **one** day comprehensive review of the Restaurant that is conducted by the **OES** with the restaurant's management team. The purpose of the review is two-fold:

1. It is a training (**coaching**) experience designed to improve Restaurant operations.
2. It is a method of reviewing operational platforms in the areas of Cleanliness, Safety, Hot & Fresh, Friendly & Fast Service that customers expect in Burger King® Restaurants.

#### ON-CALL CONSULTATIONS

In most cases, the FBL will live in the general area of the Restaurant in his district, and can come to the Restaurant when a problem arises that cannot be resolved over the phone.

#### ANNUAL FRANCHISE REVIEW

Franchise reviews will be conducted at least semi annually or quarterly if needed. This meeting will take place either at HQ AAFES or at Franchisor headquarters. Franchisor will at that time review the AAFES program and discuss it's progress.

**The operation support and Restaurant inspection procedures are constantly being evaluated by Franchisor and will be revised as deemed necessary Franchisor.**

EXHIBIT K  
Letter of Intent



HQ Army and Air Force Exchange Service, Dallas, TX

SD-F

dd month 2009

SUBJECT: Letter of Intent to Establish a Burger King  
Restaurant, {LOCATION}

Burger King Corporation  
ATTN: Mr. Jim Schwandt  
35492 Cherokee Trail  
Elizabeth, CO 80107

Dear Mr. Schwandt:

This is our Letter of Intent to establish a Burger King {TYPE OF ACTIVITY} at {LOCATION} and all rights and obligations under our franchise agreement number HQ 84-PRS-039 related to opening a location are now enforceable.

A site map of the new facility will be provided to you separately. The correct cross streets are \_\_\_\_\_.

The physical address of the BK {TYPE OF ACTIVITY} is as follows:

{COMPLETE ADDRESS}

\_\_\_\_\_ General Manager of the {EXCHANGE NAME} is your point of contact. You can reach {GM's NAME} at (\_\_\_\_) - \_\_\_\_ - \_\_\_\_.

We'll issue the supplemental agreement and pay the franchise fee about seven days before completion of construction.

Please contact me at (214) 312-3358 if you have any questions.

Sincerely,

CONTRACTING OFFICER  
(Name and Signature)

cf: Ms. Ericson  
Mr. Archer  
SD-F/B  
Exchange

EXHIBIT L

Burger King Marks

Home of the Whopper  
Burger King  
Whopper  
Have It Your Way  
BK



## SECTION I

Instructions to Offerors -- Amendment of Solicitation. The following instructions apply unless specified otherwise in an Exchange letter accompanying this amendment.

a. Offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of proposals in the original solicitation, or the hour and date specified in this amendment if such has been amended. Offeror must acknowledge by one of the following means:

- (1) By signing and returning all except one copy of this amendment.
- (2) By acknowledging receipt of this amendment on each copy of the proposal submitted;
- (3) By separate letter or telegram which includes a reference to the solicitation and amendment number.

b. Proposals must be based upon and refer to the solicitation as amended. Unless an acknowledgment of this amendment is received by the contracting officer before the hour and date specified for receipt of proposals, offeror's proposal may be considered nonresponsive.

c. If you desire to revise a proposal previously submitted, such revision must be received prior to the hour and date specified for receipt of proposals enclosed in a sealed envelope addressed to the issuing office, with the name and address of the offeror and the solicitation number on the face of the envelope. Telegraphic proposals will not be considered unless authorized by the solicitation; however, proposals may be modified by telegraphic notice provided such notice is received prior to the time set for receipt of proposals. Telegraphic modifications should not reveal the amount of the original or of the revised proposal.

## SECTION II

Instructions to Contractor -- Amendment of Contract.

Unless otherwise instructed, all except one copy of this amendment are to be executed by the person authorized to bind the firm contractually and returned to the contracting officer. The effective date will be the date the amendment is signed in block 6 by the contracting officer or the date(s) indicated in block 4, whichever is later.

## EXHIBIT E

### FEE SCHEDULE

#### 1. Franchise Initiation Fee:

a. Prior to the opening of a newly identified site, the following one-time franchise initiation fee will be due:

- (1) \$15,000.00 per Fixed Stand-Alone Facility Location
- (2) \$7,500.00 per Mobile Facility
- (3) \$7,500.00 per Burger King Food Court/Retail Add-on Location

b. Should an existing Burger King activity be closed and replaced with another Burger King activity on the same installation (offset), this fee will transfer to the new (offset) location (no franchise initiation fee will be due on the offset location).

c. Franchise Initiation Fees are waived for any locations considered as deployed (an event which requires or has required the deployment of US military forces in response to such things as natural disasters, terrorist or subversive activities, collapse of law and order, political instability, humanitarian assistance, or military operations) or hostile.

#### 2. Advertising Fee:

a. The Advertising Fee shall be 2% of Gross Sales generated at each Restaurant. Advertising Fees will be paid on Gross Sales. 100% of the advertising fees from ONCONUS Restaurants and 25% of the advertising fees from the CONUS Restaurant will be allocated to an ISA. The ISA will be managed by the Franchisor and will be made available to AAFES for Local Store Marketing (LSM) and/or other types of promotional events on a local, regional or worldwide basis, to be used exclusively within the military community. (For example, if total gross sales for OCONUS are \$100,000 and CONUS are \$200,000, \$3,000 (OCONUS + CONUS = \$1,000) will be allocated to the ISA).

(1) Effective 1 June 2012 through 1 June 2016, the Advertising Fee will be adjusted as follows for the Game Changer Platform. The Advertising Fee will be reduced from 2% of Gross Sales generated at each Restaurant to 1.5% of Gross Sales generated at each Restaurant to offset the cost of implementing the Game Changer (equipment, surveys and labor) in CONUS Restaurants. The Game Changer will be implemented at CONUS locations (includes Hawaii and Alaska). The parties will negotiate a final agreed upon cost after which the franchise agreement will be amended to incorporate the true and accurate cost.

b. Marketing and promotional programs, including grand opening contributions made available by Franchisor nationwide to Burger King franchisees in the United States will be made available to the Exchange worldwide; except (i) national television advertising marketing as used in the U.S.; (ii) advertising and/or promotions which are either legally or logistically impossible or impractical for Franchisor to provide to the Exchange; and (iii) grand opening contributions will be available only for those Restaurants in CONUS.

## EXHIBIT E

3. **Royalty Fee:** The Royalty Fee paid by the Exchange to Franchisor will be 4% of Gross Sales, generated from the Restaurants.
  
4. **Payment of Fees:** The Exchange shall pay all Advertising Fees and Royalty Fees on gross sales sold at or from the franchised operation to the franchisor within 30 days after the close of each Exchange fiscal month. Fees due for January will be processed within 60 days to allow for yearend closeout. On or before the 10<sup>th</sup> day of February of each Exchange fiscal year during the term of this agreement the Exchange shall provide franchisor with a list of the next twelve ensuring fiscal monthly cutoff dates. Franchise initiation fee for each Burger King activity opened under this contract shall be paid at least seven days before the start of operations.

AMENDMENT OF  
SOLICITATION/CONTRACT (AGREEMENT)

1. AMENDMENT OF:  SOLICITATION  CONTRACT (AGREEMENT)

SOLICITATION/CONTRACT NUMBER SD-F 09-076	AMENDMENT NUMBER Two (2)	CONTRACT CONTROL NO. (If Applicable)
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2. IF A SOLICITATION AMENDMENT

Refer to Section I "Instructions to Offerors" on reverse of this form and the following as indicated:

a. The time and date specified for receipt of proposals is:

Not extended

Extended until (local time at place of receipt of proposals)

Hour \_\_\_\_\_ Date \_\_\_\_\_

M, \_\_\_\_\_

b. The above solicitation is modified as set forth in Block 4 below.

3. IF A CONTRACT AMENDMENT

Refer to section II "Instructions to Contractors" on reverse of this form and the following as indicated:

a. The expiration date of the above CONTRACT is changed:

FROM \_\_\_\_\_ TO \_\_\_\_\_

b. The above CONTRACT is:

Not further modified.

Modified as set forth in Block 4 below.

4. DESCRIPTION OF AMENDMENT.

a. The parties hereby agree to delete Section 8.b. of Exhibit A in its entirety and replace it with the following:

b. This contract may be terminated in whole or in part by either party upon one hundred twenty (120) days' notice in writing to the other party.

b. Exhibit E, Fee Schedule, is deleted in its entirety and replaced with a new Exhibit E, Fee Schedule, consisting of two pages. Amendment Two revises paragraph 2, Advertising Fee and paragraph 4, Payment of Fees is deleted in its entirety and replaced with a new paragraph 4. The revised Exhibit E, is included as Attachment One to Amendment Two.

c. The parties hereby agree to add the following to Exhibit I, Military Installation Exceptions, as follows:

"4. The Parties hereto, acknowledging entry to a military installation is controlled by the U.S. military, agree Franchisor and Franchisor's representatives, may, subject to Federal law, make use of the inter-base bus services and on-installation lodging and have exchange privileges in OCONUS. Such use shall be coordinated with the contracting officer or the contracting officer's representative. In the event Franchisor or Franchisor's representatives commits any act, or is charged with a crime, or becomes involved in any situation or occurrence reasonably tending to bring Franchisor or AAFES into public disrepute, contempt, scandal or ridicule, or reflecting unfavorably upon AAFES' reputation or its products, such an event is an Event of Default and AAFES may, at AAFES' sole option, terminate the rights granted herein above."

////////////////////////////////////Last Item on This Page////////////////////////////////////

IN ALL OTHER RESPECTS, THE TERMS AND CONDITIONS OF THE SOLICITATION/CONTRACT, AS AMENDED, REMAIN IN FULL FORCE AND EFFECT.

SIGNATURES

5. NAME AND ADDRESS OF OFFEROR/CONTRACTOR  
(Street, City, County, State, and Zip Code)

Burger King Corporation  
5505 Blue Lagoon Drive  
Miami, Florida 33126

6. ISSUED BY

Army and Air Force Exchange Service  
ATTN: PL-K-F, K. Brown  
3911 S. Walton Walker Blvd.  
Dallas, TX 75236

SIGNATURE OF PERSON AUTHORIZED TO SIGN  
*Josh Kobza*

DATE  
5/21/14

TYPED OR PRINTED NAME AND TITLE  
Josh Kobza - CFO

SIGNATURE OF CONTRACTING OFFICER  
*Karen Brown*

DATE  
2 June 2014

TYPED OR PRINTED NAME OF CONTRACTING OFFICER  
KAREN BROWN

## SECTION I

Instructions to Offerors -- Amendment of Solicitation. The following instructions apply unless specified otherwise in an Exchange letter accompanying this amendment.

a. Offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of proposals in the original solicitation, or the hour and date specified in this amendment if such has been amended. Offeror must acknowledge by one of the following means:

- (1) By signing and returning all except one copy of this amendment.
- (2) By acknowledging receipt of this amendment on each copy of the proposal submitted;
- (3) By separate letter or telegram which includes a reference to the solicitation and amendment number.

b. Proposals must be based upon and refer to the solicitation as amended. Unless an acknowledgment of this amendment is received by the contracting officer before the hour and date specified for receipt of proposals, offeror's proposal may be considered nonresponsive.

c. If you desire to revise a proposal previously submitted, such revision must be received prior to the hour and date specified for receipt of proposals enclosed in a sealed envelope addressed to the issuing office, with the name and address of the offeror and the solicitation number on the face of the envelope. Telegraphic proposals will not be considered unless authorized by the solicitation; however, proposals may be modified by telegraphic notice provided such notice is received prior to the time set for receipt of proposals. Telegraphic modifications should not reveal the amount of the original or of the revised proposal.

## SECTION II

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Unless otherwise instructed, all except one copy of this amendment are to be executed by the person authorized to bind the firm contractually and returned to the contracting officer. The effective date will be the date the amendment is signed in block 6 by the contracting officer or the date(s) indicated in block 4, whichever is later.

## EXHIBIT E

### FEE SCHEDULE

#### 1. Franchise Initiation Fee:

a. Prior to the opening of a newly identified site, the following one-time franchise initiation fee will be due:

- (1) \$15,000.00 per Fixed Stand-Alone Facility Location
- (2) \$7,500.00 per Mobile Facility
- (3) \$7,500.00 per Burger King Food Court/Retail Add-on Location

b. Should an existing Burger King activity be closed and replaced with another Burger King activity on the same installation (offset), this fee will transfer to the new (offset) location (no franchise initiation fee will be due on the offset location).

c. Franchise Initiation Fees are waived for any locations considered as deployed (an event which requires or has required the deployment of US military forces in response to such things as natural disasters, terrorist or subversive activities, collapse of law and order, political instability, humanitarian assistance, or military operations) or hostile.

#### 2. Advertising Fee:

a. The Advertising Fee shall be 2% of Gross Sales generated at each Restaurant. Advertising Fees will be paid on all Gross Sales. 100% of the advertising fees from OCONUS Restaurants and 25% of the advertising fees from the CONUS Restaurants will be allocated to an ISA. Effective May 1, 2014, the ISA will be managed by AAFES and will be spent by AAFES for Local Store Marketing (LMS) and/or other types of promotional events on a local, regional or worldwide basis, to be used exclusively within the military community. (For example, if total gross sales for OCONUS are \$100,000 and CONUS are \$200,000, \$3,000 (OCONUS = \$2,000 + CONUS = \$1,000) will be allocated to the ISA. AAFES shall provide Franchisor with an accounting of all such expenditures on a quarterly and year-end basis, and AAFES through its Senior Restaurant Program Planner and the Director of Food Operations shall certify in writing to Franchisor that the obligation to spend the ISA as set forth in this section has been met and, upon request, AAFES shall submit to Franchisor all invoices, promotional copies and other supporting documentation which evidences the expenditure by AAFES of the ISA. Failure to expend the ISA as set forth in this section shall be deemed a default under Section 2, Article IV (Additional Terms) of the Schedule. AAFES shall only use marketing agencies and vendors that have been approved by Franchisor. AAFES shall at all times comply with Franchisor's general applicable policies and procedures relating to advertising, marketing and/or promotional matters, as may be modified by Franchisor, from time to time, and communicated to AAFES, including without limitation the *BKC Global Brand Standards Guide* and the *Global Policy on Self-*

## EXHIBIT E

*Directed Marketing Funds*, the current versions of which are attached hereto and incorporated by reference herein.

(1) Effective 1 June 2012 through 1 June 2016, the Advertising Fee for CONUS Restaurants will be adjusted as follows for the Game Changer Platform. For CONUS Restaurants, the Advertising Fee will be reduced from 2% of Gross Sales generated at each Restaurant to 1.5% of Gross Sales generated at each Restaurant to offset the cost of implementing the Game Changer (equipment, surveys, and labor) in CONUS Restaurants. The Game Change Platform will be implemented at CONUS locations (includes Hawaii and Alaska). Effective with this amendment through 1 June 2016, the Game Changer Platform is to include OCONUS Restaurants, and the Advertising Fee will be reduced from 2% of Gross Sales generated at each Restaurant to 1.5% of Gross Sales generated at each Restaurant to offset the cost of implementing the Game Changer (equipment, surveys, and labor) in OCONUS Restaurants. For the avoidance of doubt, effective 1 June 2016, the Advertising Fee will increase to 2% of Gross Sales generated at each CONUS and OCONUS Restaurant.

b. Marketing and promotional programs, including grand opening contributions made available by Franchisor nationwide to Burger King franchisees in the United States will be made available to the Exchange worldwide; except (i) national television advertising marketing as used in the U.S.; (ii) advertising and/or promotions which are either legally or logistically impossible or impractical for Franchisor to provide to the Exchange; and (iii) grand opening contributions will be available only for those Restaurants in CONUS.

3. **Royalty Fee:** The Royalty Fee paid by the Exchange to Franchisor will be 4% of Gross Sales, generated from the Restaurants.

4. **Payment of Fees:** The Exchange shall pay all Royalty Fees on gross sales sold at or from the franchised operation to the franchisor within 30 days after the close of each Exchange fiscal month. Fees due for January will be processed within 60 days to allow for yearend closeout. On or before the 10<sup>th</sup> day of February of each Exchange fiscal year during the term of this agreement the Exchange shall provide franchisor with a list of the next twelve ensuing fiscal monthly cutoff dates. Franchise initiation fee for Burger King activity opened ~~under this contract~~ shall be paid at least seven days before the start of operations.