

2. Representations; Warranties; and Obligations.

- a. Authorized Operator represents and warrants that:
  - i. Authorized Operator is a franchisee or licensee of Customer and Customer has authorized the Authorized Operator to use the Services;
  - ii. Authorized Operator has received a copy of the Agreement from Olo or Customer and is familiar with the terms and conditions therein;
  - iii. Authorized Operator (i) has the legal power and authority to enter into this Agreement; (ii) it will not violate, or use the Services in violation of any applicable Laws, including any applicable privacy laws, or any third party right; and (c) it will use the Services in compliance with its agreements with third parties; and
  - iv. these AO T&Cs are a legal, valid and binding obligation on Authorized Operator, Customer and Olo and are enforceable against Authorized Operator, Customer and Olo in accordance with its terms.
- b. Authorized Operator will promptly provide Olo with information Olo reasonably requires in connection with onboarding and deployment of the Services. In connection with its use of the Services under the Adopted Agreement, Authorized Operator agrees to facilitate the timely implementation and deployment of the Services in good faith, including complying with the following implementation requirements:
  - i. Update bank account name, routing number and account number through Olo Dashboard Portal for Electronic Funds Transfer (EFT) billing; and
  - ii. Activate necessary services with payment processor(s) to ensure stores are paid for orders.
- c. Authorized Operator is responsible for providing complete and accurate billing and contact information to Olo, and notifying Olo promptly of any changes to such information.

3. Termination.

- a. Subject to the termination provision of the Adopted Agreement, these AO T&Cs shall govern Authorized Operator's use of the Services until the earlier of:
    - i. the termination of the Agreement,
    - ii. the termination of the franchise agreement between Customer and Authorized Operator,
    - iii. Authorized Operator no longer owning or operating the franchised location, in which case these AO T&Cs shall terminate as to such franchised location only,
    - iv. Olo providing written notice of termination to Authorized Operator following three (3) months of non-payment; or
    - v. **Authorized Operator providing thirty (30) days' prior written notice of termination to Olo.**
  - b. Upon termination:
    - i. **Authorized Operator's** right to use the Services will cease immediately with respect to all Customer franchised locations of Authorized Operator; and
    - ii. neither party will have any further obligations to the other, except for those obligations that either **expressly or by their nature survive such termination, including Authorized Operator's payment to Olo** of all fees accrued prior to the termination date.
4. Notices. All notices and other communications sent under these AO T&Cs must be in writing (including by email) and will be deemed effective when delivered.
5. Governing Law. These AO T&Cs are governed by and construed in accordance with the laws of New York, without regard to the conflicts of law rules thereof.

**EXHIBIT B**  
**OLO SECURITY POLICY**

The following Security Policy is available at <https://www.olo.com/security-policy/>. The parties **acknowledge and agree that the information set forth below reflects Olo's Security Policy on the Effective Date**, and the security program terms of the Security Policy may be updated by Olo from time to time during the Term. Olo agrees to provide written notice to Customer of any material updates and that any future updates to the Security Policy shall impose no less stringent security requirements on Olo than those set forth herein.

**Last Updated: September 8, 2020**

Unless otherwise defined herein, capitalized terms have the meanings ascribed to such terms in the Master Services Agreement (MSA).

A. Customer Responsibilities

1. **Customer will, at Customer's discretion, either (a) incorporate the Olo Privacy Policy into, or link to the Olo Privacy Policy from, Customer's digital ordering websites and/or applications; or (b) provide on Customer's digital ordering websites and applications Customer's own privacy policy which complies with applicable legal requirements and regulations and is consistent with the terms of the Olo Policy.**
2. **Customer will, at Customer's discretion, either (a) incorporate the Olo Terms of Use into, or link to the Olo Terms of Use from, Customer's digital ordering websites and applications; or (b) provide on Customer's digital ordering websites and applications Customer's own terms of use agreement to End Users, which terms of use shall require End Users to accept responsibility for safeguarding End Users' account credentials, and for any activity performed using the End User's account credentials (Customer's own user agreement, together with Customer's own privacy policy, the "Customer Policies") to release Olo from any activity performed using the End User's account credentials, and for any actions or inactions of its End Users .**
3. **Customer Policies shall include provisions at least as protective of Olo as the provisions of the Olo Privacy Policy. Olo will notify Customer of any material changes to the Olo Privacy Policy that are reasonably likely to require a corresponding change in Customer Policies. Customer shall be responsible for any claims arising out of Customer Policies.**
4. **Customer may request that Olo make Customer Data available to Customer Third Party Providers in accordance with the process set forth in the Master Services Agreement. If Olo receives a request from a Customer Third Party Provider to share certain Customer Data with such Customer Third Party Provider, Olo will notify the Customer representative, as designated in the Order Form. Upon authorization, Olo will provide Customer Third Party Provider with access to such Customer Data.**
5. **Customer will not, will not attempt to, and will not assist or knowingly permit any third party to: (i) except as otherwise expressly permitted by Olo copy, reproduce, distribute, republish, download, display, modify, disassemble, decompile, reverse engineer, or create derivative works of any Licensed Application (or portion thereof); (ii) breach, break, decrypt, disable, interfere with, or develop or use any workaround for, or otherwise misuse or damage, any Licensed Application; (iii) copy, distribute, sell, resell, or exploit for any commercial purposes any portion of the Licensed Applications; (iv) use any manual or automated software, devices or other processes, including, without limitation, spiders, robots, scrapers, data mining tools, and the like, to "scrape" or download data from any web pages contained in the Licensed Applications; (v) use your access to the Licensed Applications to assist you or a third party, including, but not limited to, a Customer Third Party Provider, in building a competing or similar website, application or service; or (vi) provide access to the Licensed Applications to an unauthorized third party by any means,**

including but not limited to the sharing of login information or credentials. Customer will take all reasonable measures to ensure appropriate safeguards and protections for such credentials, and will be solely responsible for any acts or omissions of an unauthorized third party resulting from such third party's access to the Licensed Applications. Olo will have the right to revoke Customer's access to the Licensed Applications at any time and at its sole discretion if Olo reasonably suspects Customer of violating this Section 5.

#### B. Olo Responsibilities

1. Olo will collect, use, disclose and otherwise process End User PII to provide the Services.
2. Olo will maintain an End User-viewable Privacy Policy which shall detail to End Users how End User PII is handled in connection with the Services and End Users' responsibilities with respect to the Services. Customer agrees that Olo will require End Users to accept responsibility for safeguarding End Users' account credentials, including their passwords, and for any activity performed using the End User's account credentials. Olo shall not be liable to Customer or any End User for any activity in End Users' accounts that is authenticated by login credentials established by the End User to whom the account pertains.
3. Olo has in place a comprehensive, written information security program designed to protect the information under its custody, management or control, including all PII, from unauthorized access, use, disclosure, and loss and theft, using industry standard security practices and technologies. Olo's information security program includes the following safeguards: (a) secure business facilities, data centers, servers, and back-up systems and disaster recovery; (b) network, device application, database and platform security; (c) secure transmission, storage and disposal; (d) encryption of PII placed on any electronic notebook, portable hard drive or removable electronic media with information storage capability, such as compact discs, USB drives, flash drives, tapes; (e) encryption of PII in transit over public networks; (f) segregating PII from information of other clients of Olo; and (g) personnel security and integrity including, but not limited to, background checks consistent with applicable law and the requirements of this Agreement.
4. Olo will regularly, but in no event less than annually, evaluate the effectiveness of its information security program and shall promptly adjust and/or update such programs as reasonably warranted by the results of such evaluation.
5. Olo will take reasonable steps to ensure the reliability, integrity and trustworthiness of persons that process PII on Olo's behalf (such as employees), including obtaining appropriate background checks on its employees with access to Personal Data. All Olo personnel with access to PII are provided appropriate information security and privacy training regarding Olo's obligations and restrictions under this Agreement and compliance with applicable laws and Olo's information security program.

#### C. Breaches of Security

1. **"Breach of Security" means any loss, misuse, disclosure of, or unauthorized access to PII under Olo's custody, management or control that materially compromises the privacy, security, integrity or availability of the PII.**
2. Olo will promptly notify Customer of any Breach of Security by email to the Customer designee listed in the Order Form. The notification will include an explanation of any actions Olo determines it must take in response to a Breach of Security.
3. Customer shall promptly notify Olo by email at Security@olo.com of any suspicious activity in connection with the Services, which Customer detects or of which Customer becomes aware, that may indicate an actual or suspected Breach of Security is occurring or has occurred. The notification should include an explanation of any actions Customer determines it must take in response to such actual or suspected Breach of Security.

4. Olo will reasonably cooperate with Customer to mitigate any harm caused by a Breach of Security, and will take all steps that Olo determines are reasonably necessary or appropriate to isolate, investigate, and remediate the effects of such occurrence, ensure the protection of those End Users that are affected or likely to be affected by such occurrence, prevent the recurrence of any such Breach of Security, and comply with applicable laws.
5. Olo may determine that responding to a Breach of Security requires Olo to suspend the Services. When this occurs, Olo will notify Customer of such suspension as soon as reasonably practicable. Any suspension under this Section 5 shall not be considered Downtime as defined under the Digital Ordering **Terms & Conditions Addendum, if applicable to Customer's use of the Services.**
6. Olo may determine that responding to a Breach of Security requires Olo to communicate directly with End Users by email, in-app or in-site messages, or other means, regarding actions that End Users must take to enable Olo to respond to a Breach of Security, including without **limitation, resetting End Users'** login credentials. Olo will undertake such actions in its sole discretion.
7. Olo will provide reasonable additional assistance under this Section 7 as reasonably requested by **Customer, at Customer's expense.**
8. Customer shall be responsible for determining whether any notification to End Users, regulators, law enforcement authorities, or other third parties is required in response to any Breach of Security, and for providing any such notifications. Customer may request that Olo notify affected End Users of a Breach of Security, in which case Olo will provide such notice to End Users solely using the contact information which End Users have provided in connection with the Services.
9. To the extent a Breach of Security does not result directly from **Customer's** action or omission, Olo will promptly reimburse Customer for all reasonable and documented costs actually incurred by Customer in responding to and mitigating such a Breach of Security, including the cost of notifying affected End Users and providing credit monitoring to End Users to the extent that notification and/or credit monitoring are required by applicable law or the parties agree in good faith that notification and/or credit monitoring is appropriate under the circumstances.

#### D. PCI-DSS

1. At all times during the duration of the Agreement, Olo shall be fully compliant with the Payment Card Industry Data Security Standards ("PCI DSS").
2. At all times during the duration of the Agreement, Olo shall comply with all applicable rules and guidelines regarding service providers, third-party agents and processors as issued by the Card Associations (the "Card Rules"), as updated from time to time, and including Card Rules applicable to U.S. credit card transactions. The term "Card Associations" means MasterCard, VISA, American Express, Discover, or any other credit card brand or payment card network for or through which Olo processes payment card transactions on behalf of Customer.
3. Olo shall validate its PCI DSS compliance as required by the applicable Card Rules. As of the date set forth below, Olo has complied with all applicable requirements to be considered compliant with PCI-DSS, and has performed all necessary steps to validate its compliance with the PCI-DSS. Without limiting the foregoing, Olo represents and warrants that it (i) undergoes yearly On-Site PCI Data Security Assessments ("Annual Assessment") by a qualified security assessor ("QSA") and pursuant to its most recent Annual Assessment, it is currently certified as compliant with the current version of PCI DSS by the QSA; (ii) undergoes a quarterly network scan ("Scan") by an approved scanning vendor and that it is has passed its most recent Scan.
4. Olo shall notify Customer within seven (7) days if it (i) receives a non-compliant Annual Assessment from a QSA, (ii) fails to complete any Annual Assessment prior to the expiration of the previous year's Annual Assessment, or (iii) is no longer in compliance with PCI DSS; provided that Olo shall first have a remediation period of thirty (30) days ("the Cure Period") to come into compliance with PCI DSS after

determining it is noncompliant, and if Olo cures such noncompliance within the Cure Period, Olo shall not be required to notify Customer hereunder.

5. Olo agrees to supply evidence of its most recent Annual Assessment prior to or upon execution of this **Agreement. Thereafter, Olo, upon Customer's reasonable request, shall supply to Customer evidence of** Olo's successful completion of its Annual Assessment.
6. For the avoidance of doubt, and notwithstanding the foregoing, Customer shall be solely responsible for ensuring compliance with PCI DSS (a) of its custom built front end websites, mobile applications, or other web properties, or (b) to the extent Customer has incorporated any custom, non-standard software **code into Olo's standard white label front end website offering. Olo shall have no obligation to monitor** such custom web properties for compliance with PCI DSS or to notify Customer of any noncompliance.

#### E. Security Vulnerabilities

If you believe you have found a security vulnerability in one of our products or our services, or if you have found sensitive Olo data outside of our systems, you may reach the Olo security team at [security@olo.com](mailto:security@olo.com). The Olo security team can provide various methods to encrypt sensitive communications.



**Order Form #1**

<b>Prepared by:</b> Lauren Esposito, Sales Director Lauren.esposito@olo.com	<b>Date Prepared:</b> 09/26/2023
	<b>Order Form Effective Date:</b> 09/28/2023
<b>Reference:</b> Dairy Queen + updated ordering and delivery management program for American Dairy Queen company under existing DQ channel	

**1. Customer**

American Dairy Queen Corporation	
8331 Norman Center Drive, Suite 700 Bloomington, MN 55437 US	

**2. Service(s) Description, Scope & Deployment**

Description of Services and integrations:

Olo to provide Ordering (API), Rails, and Dispatch (the “Services”) in the United States and Canada for the American Dairy Queen company under the existing Dairy Queen channel including integrations with Brink POS, Punchh Loyalty, Fiserv for payments, third-party delivery marketplaces (e.g. DoorDash, Uber Eats, GrubHub), and Radar for geofencing. WillowTree to support custom UX for web and app.

As of the Order Form Effective Date, Customer anticipates that the following locations will use the Services specified in this Section 2 (such locations, the “Estimated Locations”):

Company-owned locations:	0
Authorized Operator locations:	3,255
Total locations:	3,255

The parties will support deployment for the Services at the Estimated Locations as described below and use commercially reasonable efforts to support the activation of all locations as soon as is practicable:

Service(s)	# Authorized Operator Locations	Customer Initials
Ordering	3,200	<u>KB</u> KB
Rails	3,255	<u>KB</u> KB

Dispatch	3,200	<u>KB</u> KB
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During the Term, Customer may, in its sole discretion, decide to use the Services described in this Section 2 for locations in addition to the Estimated Locations by providing written notice (email sufficient) to Olo (such locations, the “Additional Locations”). Olo shall provide additional customer support services when Customer is prepared to launch Additional Locations.

The deployment period hereunder (“Deployment Period”) shall be a 180-day period beginning on April 1, 2024.

For clarity, Olo reserves the right to activate any contracted Service at any contracted location hereunder, each as specified in this Section 2, once the Service or location is ready to be activated as determined in Olo’s sole discretion, and Customer approves Olo activating such location. “Active” shall mean Olo is actively billing a location for at least one Service.

**3. Term**

The Term defined herein will be established as the “Initial Term”. The Initial Term shall begin on April 1, 2024 and shall remain in force for 48 months. The Initial Term shall be automatically renewed for successive 12-month periods (each a “Renewal Term” and collectively with the Initial Term, the “Term”) unless, at least 90 days prior to any Renewal Term, either party gives the other party written notice that this Order Form shall not be renewed.

**4. Fees and Charges; Payment Terms**

- a. Fees and Charges. Commencing as of April 1, 2024, Olo shall charge Customer or the applicable Authorized Operators, as specified below, the fees set forth below in accordance with the Payment Terms set forth in subsection 4(b). Billing begins upon the activation of each location.

Program Deployment Fee	One-time fee to cover implementation and deployment if at least 2,090 locations have not implemented Dispatch by the end of the Deployment Period.  This fee will be charged to the Customer at the end of the Deployment Period, if applicable.
	\$25,000
Post-Activation Monthly Order Packages and Transaction Fee	This transaction fee will apply to each order processed by Digital Ordering, Rails and Dispatch, based on the total number of systemwide Active locations and the pricing tiers set forth below.  Olo will assess Active location count as of the first day of each month to determine which pricing tier will apply to the system. If the Active location count dictates a systemwide change in pricing tier, then there will be a temporary pause in the ability to adjust location level Order Packages within a specific tier during such month and the new pricing tier rates will go into effect as of the first day of such month. Moving up to a tier with more Active locations and lower pricing will occur

the month immediately following the month during which the Active location count reaches the lowest required number of Active locations. Moving down to a tier with less Active locations and higher pricing will occur only once the number of Active locations is more than fifty (50) locations below the threshold number.

For example, on January 1, Olo will assess the number of Active locations. If the total number of Active locations is 3,800 and that moves the system up into a new pricing tier, then during the month of January Olo will not be able to accommodate location-level changes in Order Packages and the new pricing tier will go into effect as of January 1, as reflected in the January invoices. If on February 1, the total number of Active locations is 3,690, the system tier will not be moved down and will remain the same until the first of such month when the total number of Active locations is either reduced to at most 3,648 or increased to at least 4,200.

Order Packages are selected and billed in arrears on a per location basis and separate packages are needed for each unique channel or menu. Each package includes a monthly quantity of orders and establishes the cost of any additional orders processed beyond the package amount during the month. Except during any month in which an Order Package Pricing Tier is changing, Order Packages within a specific tier may be updated at any time; provided, that to the extent a selected Order Package is upgraded or downgraded at least 5 days prior to the end of a calendar month, the change in fee will be **reflected in the subsequent month's charges, otherwise, the change in fee will be reflected in the charges of the month following the subsequent month.** For the avoidance of doubt, billing will not be prorated if activation occurs mid-month and Order Package changes will not become effective mid-month.

This fee will be charged to each individual location.

**Order Package Pricing Tiers**

Less than 3,200 Active locations systemwide:

Package	XS	S	M	L	XL
Monthly Fee	\$27.23	\$47.85	\$61.88	\$69.30	\$74.80
Included Orders (Monthly)	150	300	450	600	800
Cost Per Included Order	\$0.182	\$0.160	\$0.138	\$0.116	\$0.094
Cost Per Additional Order	\$0.182	\$0.160	\$0.138	\$0.116	\$0.094

3,200 – 3,699 Active locations systemwide:

Package	XS	S	M	L	XL
Monthly Fee	\$24.75	\$43.50	\$56.25	\$63.00	\$68.00

Included Orders (Monthly)	150	300	450	600	800
Cost Per Included Order	\$0.165	\$0.145	\$0.125	\$0.105	\$0.085
Cost Per Additional Order	\$0.165	\$0.145	\$0.125	\$0.105	\$0.085

3,700 – 4,199 Active locations systemwide:

Package	XS	S	M	L	XL
Monthly Fee	\$23.51	\$41.33	\$53.44	\$59.85	\$64.60
Included Orders (Monthly)	150	300	450	600	800
Cost Per Included Order	\$0.157	\$0.138	\$0.119	\$0.100	\$0.081
Cost Per Additional Order	\$0.157	\$0.138	\$0.119	\$0.100	\$0.081

4,200 or more Active locations systemwide:

Package	XS	S	M	L	XL
Monthly Fee	\$22.89	\$40.24	\$52.03	\$58.28	\$62.90
Included Orders (Monthly)	150	300	450	600	800
Cost Per Included Order	\$0.153	\$0.134	\$0.116	\$0.097	\$0.079
Cost Per Additional Order	\$0.153	\$0.134	\$0.116	\$0.097	\$0.079

Location Transfer Fee	Applied when the original Authorized Operator is replaced by a new Authorized Operator.  This fee will be charged to the new Authorized Operator.  \$50 per location
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b. Payment Terms.

- (i) All dollar amounts in this Order Form are expressed in US Dollars. All Olo fees are subject to applicable sales tax. In addition, the self-assessment and remittance of federal, state and local taxes on End User orders (including without limitation any sales or value added tax) is the sole responsibility of the Customer and/or Authorized Operator. Customer shall, upon request **by Olo, provide a Multiple Point Use (“MPU”) certificate** or equivalent certification for compliance purposes.
- (ii) All amounts due under this Order Form (including charges with respect to locations owned by Authorized Operators) shall be charged to and payable by the Customer; provided, that, if an Authorized Operator assumes payment obligations with respect to locations owned or operated by such Authorized Operator under this Order Form, for any fees charged on a per location or per transaction/order/unit basis, (1) the Customer shall be responsible for such fees to the extent the amounts are for locations or transactions/orders/units conducted with locations owned by the Customer, and (2) an Authorized Operator shall be responsible for

such fees to the extent the amounts are for locations or transactions/orders/units conducted with locations owned or operated by such Authorized Operator.

- (iii) All one-time and recurring program fees will payable as specified below:
1. With respect to all corporate-owned locations in the United States and Canada that elect to pay via ACH, during the first five (5) business days of each month, Olo will invoice all fees for the month just ended (e.g., July service fees will be invoiced during the first five (5) business days of August). Customer shall pay the invoiced amount via ACH within five (5) business days following the invoice date.
  2. With respect to all Authorized Operator locations in the US and any corporate-owned locations in the US that elect to pay via EFT, during the first five (5) business days of each month, Olo will invoice all fees and initiate EFT payment for the month just ended (e.g., July service fees will be invoiced during the first five (5) business days of August). The fees will be withdrawn within three (3) business days following the invoice date.
  3. With respect to Authorized Operator locations in Canada and any corporate-owned locations in Canada that elect to pay via credit card, during the first five (5) business days of each month, Olo will invoice all fees for the month just ended and initiate credit card payment (e.g., July service fees will be invoiced during the first five (5) business days of August). The fees will be charged within three (3) business days following the invoice date.
  4. During the period between invoicing and the EFT withdrawal or payment date, as applicable, the Customer and Authorized Operators may review the proposed charges.
    - A. If they have questions or want to dispute the invoice, they may contact [billingsupport@olo.com](mailto:billingsupport@olo.com).
    - B. If the invoice contains material inaccuracies (e.g., extra zeros) and Olo is notified of such misstatements, Olo may halt the planned EFT withdrawal.
    - C. **Non-material adjustments will be made on the following month's invoice.**
  5. Olo reserves the right to invoice each location for Dispatch Delivery Fees (and Tips) on a periodic basis throughout the month. Olo will invoice and initiate the EFT payment (or, for Canadian locations, collect these fees **through the location's GoCardless account**) on the 11th and 21st of each month. The fees will be withdrawn or paid, as applicable, within three (3) business days following the invoice date. A true-up amount for the month will appear on the monthly invoice.

## 5. Terms & Conditions

- a. This document and any attachments or an online order completed by Customer comprise an Order Form which is incorporated by reference into that certain Master Services Agreement dated September 28, 2023 (**the "Agreement"**) **between Olo and Customer, and is entered into as of the Order Form Effective Date**. By entering into this Order Form or completing an online order, Customer agrees to be bound by the applicable terms of the Agreement.
- b. Capitalized terms used but not defined in this Order Form shall have the meanings given to them in the Agreement. To the extent that the terms of this Order Form conflict with the terms of the Agreement or any prior Order Form executed between Customer and Olo, the terms of this Order Form take precedence.
- c. Upon signature by Customer and submission to Olo, this Order Form shall become legally binding and governed by the Agreement and the applicable product specific terms between Olo and Customer.

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

American Dairy Queen Corporation
By <u><i>Kevin Baartman</i></u> <small>Kevin Baartman (Sep 29, 2023 11:35 CDT)</small>
Name <u>Kevin Baartman</u>
Title <u>E.V.P. - Information Technology</u>

Olo Inc.
By <u><i>NG</i></u> <small>Noah Glass (Sep 29, 2023 12:37 EDT)</small>
Name <u>Noah Glass</u>
Title <u>Founder &amp; CEO</u>

# ADQ\_Olo\_MSA\_FINAL 09.28.2023

Final Audit Report

2023-09-29

Created:	2023-09-28
By:	Lauren Esposito (lauren.esposito@olo.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAxroox6YjzGcFz7Q6VmccvJQp0b55X6Cn

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-  Document created by Lauren Esposito (lauren.esposito@olo.com)  
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-  Signer kevin.baartman@idq.com entered name at signing as Kevin Baartman  
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-  Document e-signed by Kevin Baartman (kevin.baartman@idq.com)  
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-  Document emailed to Noah Glass (noah@olo.com) for signature  
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-  Document e-signed by Noah Glass (noah@olo.com)  
Signature Date: 2023-09-29 - 4:37:01 PM GMT - Time Source: server- IP address: 67.243.134.135
-  Agreement completed.  
2023-09-29 - 4:37:01 PM GMT



1. Customer Information

American Dairy Queen Corporation
8331 Norman Center Drive, Suite 700 Bloomington, MN 55437 USA

Brand Name: Dairy Queen		
	New	Existing
Company		Dairy Queen
Channel		Dairy Queen

Term	
Order Form Effective Date	The Order Form Effective Date is the date of the last signature below.
Initial Term Expiration Date	The Initial Term shall begin on the Order Form Effective Date and shall remain in force through March 31, 2028 (the "Initial Term").
Renewal Term	The Initial Term for "Phase 2 Products" and "Payments" shall be automatically renewed for successive 12-month periods (each a "Renewal Term" and collectively with the initial Term, the "Term") unless, at least 90 days prior to the end of the Initial Term or any Renewal Term, either party gives the other party written notice that this Order Form shall not be renewed

## 2. Services and Products Purchased

Phase 1- Products								
Product	Fee Type	Billing Frequency	Billing Type	Billing Start Date	Term (Months)	Monthly Fee	Contracted Locations*	Monthly Platform Price
Order Platform	Subscription	Monthly	Location	4/1/2024	12	\$50	3,250	\$162,500
<i>Order Platform includes: Ordering, Dispatch, Rails</i>								
<b>Total Monthly Subscription Price</b>								<b>\$162,500</b>

\*Note: Olo will not enforce the Contracted Location commitment until 10/1/2024.

Phase 2- Products								
Product	Fee Type	Billing Frequency	Billing Type	Billing Start Date	Term (Months)	Monthly Fee	Contracted Locations	Monthly Platform Price
Order Platform	Subscription	Monthly	Location	4/1/2025	36	\$60	3,250	\$195,000
<i>Order Platform includes: Ordering, Dispatch, Rails</i>								
<b>Total Monthly Subscription Price</b>								<b>\$195,000</b>

Payments							
Product / Services	Fee Type	Billing Type	Start Date	Term (Months)	Applicable Locations	Total Transaction Value Fee	Transaction Fee
Payment Gateway (if applicable)	Transaction	Location	4/1/2024	48	All active	0.25%	N/A

Olo will not charge the Subscription Fees before the applicable Billing Start Date, even if a location launches the Product prior to this date. Commencing on October 1, 2024 and any future applicable Billing Start Date, Olo will charge the Customer the Subscription Fee for all Contracted Locations that have not launched a Product prior to the applicable Billing Start Date. Thereafter, once a Contracted Location is live with the Product, the Subscription Fee will no longer be charged to the Customer and will instead be charged to such location. For the avoidance of doubt, if a Contracted Location goes live with the Product mid-month, the Subscription Fee will be charged to the Customer and the location on a proportionate basis for the month in which the Contracted Location launches. The Subscription Fee for any Additional Locations (defined below) will be charged to each location and prorated if an Additional Location launches mid-month. For the avoidance of doubt, each location may select the Products they wish to activate from the list of included Products above, but the Monthly Fee will not change based on the Products being used.

For the avoidance of doubt, each location is required to use either Olo Pay or the Payment Gateway for all payment processing transactions. The Payment Gateway Fees identified above are not applicable to Rails transactions, but are applicable to transactions processed by Ordering and Dispatch. The Olo Pay Platform Fee will be charged to each location using the Olo Pay Platform. The Payment Gateway Fee will be charged to each location using the Payment Gateway.

Olo reserves the right, at its sole discretion, to increase all fees charged hereunder by up to 5% during any Renewal Term, including following an automatic renewal. Customer acknowledges that as of the Billing Start Date Olo will **be deemed to have performed all deployment obligations required to enable Customer’s** use of the Products (including but not limited to any necessary technical integrations and the provision of required documentation) whereby locations can go live and the subscription can commence. Notwithstanding the foregoing, Olo shall provide additional customer support services when Customer is prepared to launch Additional Locations.

### 3. Locations

The following locations (the “Contracted Locations”) will use the Services specified in Section 2:

Type of Locations	Amount
Company-Owned	2
Authorized Operator	3,248
Total	3,250

During the Term, Customer may, in its sole discretion, decide to use the Products described in Section 2 for locations in addition to the Contracted Locations by providing written notice (email sufficient) to Olo (such locations, the “Additional Locations”); provided that all Additional Locations will be subject to a Location Activation Fee, as described in Section 4.

### 4. Additional Fees

Type		Fee
<b>Location Transfer Fee</b>	Applied when the original corporate or Authorized Operator location owner is replaced by a new corporate or Authorized Operator location owner.  This fee will be charged to the new corporate or Authorized Operator location owner.	\$50 per location

### 5. Payment Terms

- (a) All dollar amounts in this Order Form are expressed in US Dollars. All Olo fees are subject to applicable sales tax. In addition, the self-assessment and remittance of federal, state and local taxes on End User orders (including without limitation any sales or value added tax) is the sole responsibility of the Customer and/or

**Authorized Operator. Customer shall, upon request by Olo, provide a Multiple Point Use (“MPU”) certificate or equivalent certification for compliance purposes.**

- (b) All amounts due under this Order Form (including charges with respect to locations owned by Authorized Operators) shall be charged to and payable by the Customer; provided, that, if an Authorized Operator assumes payment obligations with respect to locations owned or operated by such Authorized Operator under this Order Form, for any fees charged on a per location or per transaction/order/unit basis, (1) the Customer shall be responsible for such fees to the extent the amounts are for locations or transactions/orders/units conducted with locations owned by the Customer, and (2) an Authorized Operator shall be responsible for such fees to the extent the amounts are for locations or transactions/orders/units conducted with locations owned or operated by such Authorized Operator.
- (c) All one-time and recurring program fees will payable as specified below:
  - (i) With respect to all corporate-owned locations in the United States that elect to pay via ACH, during the first five (5) business days of each month, Olo will invoice all fees for the month just ended (e.g., July service fees will be invoiced during the first five (5) business days of August). Customer shall pay the invoiced amount via ACH within five (5) business days following the invoice date.
  - (ii) With respect to all Authorized Operator locations in the US, and any corporate-owned locations in the US that elect to pay via EFT, during the first five (5) business days of each month, Olo will invoice all fees and initiate EFT payment for the month just ended (e.g., July service fees will be invoiced during the first five (5) business days of August). The fees will be withdrawn within three (3) business days following the invoice date.
  - (iii) With respect to Authorized Operator locations in Canada, and any corporate-owned locations in Canada that elect to pay via credit card, during the first five (5) business days of each month, Olo will invoice all fees for the month just ended and initiate credit card payment (e.g., July service fees will be invoiced during the first five (5) business days of August). The fees will be charged within three (3) business days following the invoice date.
  - (iv) During the period between invoicing and the EFT withdrawal or payment date, as applicable, the Customer and Authorized Operators may review the proposed charges.
    - (1) If they have questions or want to dispute the invoice, they may contact [billingsupport@olo.com](mailto:billingsupport@olo.com).
    - (2) If the invoice contains material inaccuracies (e.g., extra zeros) and Olo is notified of such misstatements, Olo may halt the planned EFT withdrawal.
    - (3) Non-material adjustments will be made on the following month’s invoice.
  - (v) Olo reserves the right to invoice each location for Dispatch Delivery Fees (and Tips) on a periodic basis throughout the month. Olo will invoice and initiate the EFT payment (or, for Canadian locations, collect these fees through the location’s GoCardless account) on the 11th and 21st of each month. The fees will be withdrawn or paid, as applicable, within three (3) business days following the invoice date. A true-up amount for the month will appear on the monthly invoice.

## 6. Terms & Conditions

- (a) This document and any attachments or an online order completed by Customer comprise an Order Form which is incorporated by reference into that certain Master Services Agreement dated September 28, 2023 (the “Agreement”) between Olo and Customer, and is entered into as of the Order Form Effective Date. By entering into this Order Form or completing an online order, Customer agrees to be bound by the applicable terms of the Agreement.
- (b) Capitalized terms used but not defined in this Order Form shall have the meanings given to them in the Agreement. To the extent that the terms of this Order Form conflict with the terms of the Agreement or

any prior Order Form executed between Customer and Olo, the terms of this Order Form take precedence.

- (c) Upon signature by Customer and submission to Olo, this Order Form shall become legally binding and governed by the Agreement and the applicable product specific terms between Olo and Customer.

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

American Dairy Queen Corporation	Olo Inc.
By: <u>Kevin Baartman</u> <small>Kevin Baartman (Feb 7, 2024 21:31 CST)</small>	By: <u></u> <small>Noah Glass (Feb 7, 2024 22:36 EST)</small>
Name: <b>Kevin Baartman</b>	Name: <b>Noah Glass</b>
Title: <b>E.V.P. - Information Technology</b>	Title: <b>Founder &amp; CEO</b>
Date: <b>02/07/2024</b>	Date: <b>02/07/2024</b>

# **PUNCHH PARTICIPATION AGREEMENT (DQ REWARDS)**

#### MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (THE "**AGREEMENT**"), INCLUDING THE TERMS AND CONDITIONS BELOW ("**TERMS AND CONDITIONS**") IS ENTERED INTO AND EFFECTIVE AS OF APRIL 1, 2024 (THE "**MSA EFFECTIVE DATE**") BETWEEN PUNCHH INC. ("**PUNCHH**"), AND THE ENTITIES LISTED ON THE SIGNATURE PAGE, WITH THEIR PRINCIPAL BUSINESS LOCATIONS PROVIDED BELOW (COLLECTIVELY, "**CUSTOMER**").

WHEREAS, as of the date of this Agreement, Punchh provides a loyalty offering to some of Customer's Franchisees via an indirect relationship with a third party; and

WHEREAS, Customer desires to begin contracting directly with Punchh for the Punchh Services as set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

#### TERMS AND CONDITIONS

##### 1. DEFINITIONS.

- 1.1 "**Affiliate**" means any person or entity, that now or hereafter, that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Party specified.
- 1.2 "**Applicable Laws**" means all applicable present laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders of any governmental or judicial authorities.
- 1.3 "**Authorized Users**" means Customer, Customer employees or contractors, and all other third parties acting on Customer's behalf including its Affiliates who have been designated by Customer (excluding Punchh employees or contractors), on notice to Punchh, to receive unique login credentials permitting access to the Services.
- 1.4 "**Confidential Information**" has the meaning set forth in Section 10 hereof.
- 1.5 "**Documentation**" means any documentation made available to Customer by Punchh for use with the Services.
- 1.6 "**Fees**" means the fees payable by Customer to Punchh hereunder, as set forth on the Order or as may be otherwise agreed to by the Parties in writing.
- 1.7 "**Force Majeure**" has the meaning set forth in Section 17.7 hereof.
- 1.8 "**Franchisee**" means independently owned and operated franchise locations within the Dairy Queen® system.
- 1.9 "**including**" means "including without limitation."
- 1.10 "**Initial Term**" has the meaning set forth in Section 11.1 hereof.
- 1.11 "**Intellectual Property Rights**" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now or hereafter exist, and all applications therefor and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.
- 1.12 "**Order**" means any order form executed by Punchh and Customer which is subject to these Terms and Conditions, and any other order form subsequently entered by the Parties that expressly references and incorporates these Terms and Conditions, all under this Agreement. Punchh and Customer have entered into (and/or may in the future enter into) one or more written Orders and corresponding statements of work ("SOWs") specifying certain Services and Professional Services.

- 1.13 **"Participating Location"** means any franchised location within the Dairy Queen® franchise system that has signed the relevant Participation Agreement set forth as Exhibit C hereto.
- 1.14 **"Party"** means either Punchh or Customer, and **"Parties"** means both Punchh and Customer.
- 1.15 **"Personal Data"** is defined in the data processing agreement attached as Exhibit B.
- 1.16 **"Platform"** means Punchh's online platform through which the Customer makes use of the Services.
- 1.17 **"Professional Services"** means implementation, mobile application development, consulting or other professional services performed by Punchh for the Customer, as may be set forth in a separate SOW signed by the parties.
- 1.18 **"Promotional Programs"** means various customer acquisition, customer retention, and/or customer marketing programs, including loyalty programs facilitated by Punchh.
- 1.19 **"Punchh Technology"** means i) the ideas, know-how, inventions, methods, or techniques developed or conceived as a result of providing the Services hereunder, including any derivative works, modifications, additions, improvements, enhancements and/or extensions made from or to the Services; ii) the Platform and the databases, software, hardware, and other technology used by or on behalf of Punchh to provide the Platform; and iii) any other Punchh property related to the Services or the Platform.
- 1.20 **"Services"** means Punchh's proprietary software as a service (SaaS) solution, available by means of the Platform, which permits Customer to design, execute, manage, and analyze Promotional Programs. Services do not include the Professional Services provided by Punchh to the Customer.
- 1.21 **"Transition Assistance Period"** is defined as the period of twelve (12) months for the orderly transition of Services to Customer or another supplier of Customer, beginning upon the expiration or termination of the Agreement.
- 1.22 **"Transition Assistance Services"** means Services and Professional Services provided to Customer and Participating Locations under the Transition Assistance Plan that is mutually agreed upon by the Parties as set forth in Section 11.5 .
- 1.23 **"Term"** has the meaning set forth in Section 11.1 hereof.
- 1.24 **"Upgrades"** means, with respect to the Services, fixes, updates, enhancements, or upgrades thereto; provided, however, that "Upgrades" shall not include additional modules for the Services, or new products or services, that Punchh may make available from time to time.

**2. SERVICES.** SUBJECT TO CUSTOMER'S COMPLIANCE WITH THIS AGREEMENT, PUNCHH AGREES TO PROVIDE CUSTOMER WITH THE RIGHT, DURING THE TERM, FOR ITS AUTHORIZED USERS TO ACCESS AND USE THE SERVICES SOLELY FOR CUSTOMER'S INTERNAL BUSINESS PURPOSES. SERVICES ARE PROVIDED UNDER THIS AGREEMENT ONLY IF SPECIFIED IN AN APPLICABLE ORDER. CUSTOMER MAY OBTAIN ADDITIONAL SERVICES BY ENTERING INTO ADDITIONAL ORDERS. PUNCHH RESERVES ALL RIGHTS NOT EXPRESSLY GRANTED UNDER THIS AGREEMENT. PUNCHH SHALL USE COMMERCIALY REASONABLE EFFORTS: (I) TO MAINTAIN THE AVAILABILITY OF THE SERVICE, SUBJECT TO DOWNTIME BY REASON OF FORCE MAJEURE OR FOR THE PURPOSE OF PERFORMING MAINTENANCE OR IMPLEMENTING UPGRADES OR MODIFICATIONS (SEE EXHIBIT A SERVICE LEVEL AGREEMENT FOR FULL DESCRIPTION OF AVAILABILITY OF THE SERVICE); AND (II) TO RESPOND WITHIN A REASONABLE TIME TO CUSTOMER'S REASONABLE REQUESTS FOR SUPPORT OR CUSTOMER'S IDENTIFICATION OF ANY MATERIAL ERRORS OR DEFECTS IN THE SERVICE.

**2.1 PROFESSIONAL SERVICES.** CUSTOMER MAY ELECT TO PURCHASE PROFESSIONAL SERVICES FROM PUNCHH. THE PROVISION OF SUCH PROFESSIONAL SERVICES WILL BE SUBJECT TO ADDITIONAL FEES AND WILL BE GOVERNED BY TERMS AND CONDITIONS AGREED TO UNDER A SEPARATE SOW, WHICH WILL REFER TO AND BE INCLUDED AS PART OF THIS AGREEMENT.

**3. PURPOSE AND PRIMARY ACTIVITIES.**

**3.1 Punchh Endorsement.** Customer shall endorse Punchh as the preferred provider of the Customer's loyalty program in the United States and Canada and permit Punchh to participate in approved marketing activities to promote the Services to its franchise system.

**3.2 Franchisees and this Agreement.** Punchh will bill Customer at a system-wide level and not at a franchisee level, for all Participating Locations that participate in Customer's National Marketing program. However, Punchh will enter into applicable Participation Agreements with participating franchisee locations that participate in Customer's National Marketing program whereby the Participating Location shall be responsible for compliance with the applicable provision under the terms and conditions set forth therein. For clarity, except for Customer-owned locations, Customer is not liable or responsible for any actions by Participating Locations, but only for directly billing such Participating Locations that participate in Customer's National Marketing program and remitting the undisputed fees to Punchh. Punchh agrees to take all commercially reasonable efforts to provide complete invoices to Customer at the time payment is due, and may not be able to seek recovery for unbilled fees that Punchh, due to Punchh's own fault, failed to bill in a timely manner (as set forth in each Order). Punchh will bill Participating Locations that do not participate in Customer's National Marketing program directly. Punchh will enter into applicable Participation Agreements with (a) Participating Locations that do not participate in Customer's National Marketing program (a schedule of which will be updated from time to time in writing by Customer and provided to Punchh), which require payment directly to Punchh, in addition to compliance with the applicable provision under the terms and conditions set forth therein, and (b) Franchisees that are Participating in the National Marketing program but to ensure contractual privity between Customer's Franchisees and Punchh in the event of a Franchisee's breach of this Agreement. For clarity, Customer is not liable or responsible for any actions by the Participating Locations that do not participate in Customer's National Marketing program, including but not limited to such Participating Location's failure to pay Punchh for the Services. Customer will provide Punchh with an updated list of stores that do not participate in Customer's National Marketing program on an annual basis, and Punchh will bill those stores directly as of the beginning of the next calendar year. In the event that the number of Participating Locations that are Non-National Marketing program participants increases by more than 25% year-over-year, Punchh reserves the right, in its sole discretion, to charge reasonable administrative fees to manage the direct billing obligations of Punchh that may be passed through to the Participating Locations utilizing the services.

#### **4. PLATFORM.**

**4.1 Access.** All access to the Platform by Customer will be as specified in the Order(s) and SOW(s). All access to the Platform is solely for Customer's own internal business purposes, in accordance with the Terms and Conditions and Documentation.

**4.2 Accounts.** Customer may establish accounts for Authorized Users (each, an "Account"). Each Account may be used only by the Authorized Users for whom the Account is created. Customer remains responsible for the security of the username and password for each Account and for all use of the Services through each Account. Customer will notify Punchh immediately of any unauthorized uses of any Account or any other breaches of security.

**4.3 Restrictions.** Punchh Technology, as well as the Punchh Analytics (as defined below), constitute valuable trade secrets of Punchh. Customer will not, and will not permit any third party to: (1) access or attempt to access the Punchh Technology or Punchh Analytics, except as expressly provided in this Agreement; (2) use the Punchh Technology or Punchh Analytics in any unlawful manner or take any action that could damage, disable, overburden or impair the Punchh Technology; (3) use automated scripts to collect information from or otherwise interact with the Punchh Technology or Punchh Analytics; (4) alter, modify, reproduce, create derivative works of the Punchh Technology or Punchh Analytics; (5) distribute, sell, resell, lend, loan, lease, license, sublicense or transfer any of rights to access or use the Punchh Technology or Punchh Analytics or otherwise make the Punchh Technology or Punchh Analytics available to any third party; (6) reverse engineer, disassemble, decompile, or otherwise attempt to derive the method of operation of the

Punchh Technology or the methods through which the Punchh Analytics is provided; (7) attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Punchh Technology or Punchh Analytics; (8) interfere with the operation or hosting of the Punchh Technology or Punchh Analytics; (9) alter, obscure or remove any copyright notice, copyright management information or proprietary legend contained in or on the Punchh Technology or Punchh Analytics; or (10) use or access the Punchh Technology or Punchh Analytics for any prohibited end uses under Applicable Laws.

**5. LICENSES.**

**5.1 Customer Content.** Except as set forth in Section 5.2 hereunder, Customer grants to Punchh a non-exclusive, non-transferable, royalty-free, worldwide license (including authorization to issue the App on the applicable app stores in order to perform the Services, but without the right to sublicense), to reproduce, digitize, adapt, modify, transmit, distribute, perform, publicly display, create derivative works of, and otherwise use all information, data, text, visuals, graphics, artwork, animation, video content, and other content or materials identified or made available by Customer or its Authorized Users for use in connection solely with Punchh performing the Services or Professional Services ("**Customer Content**").

**5.2 Customer Marks.** During the Term, Customer grants to Punchh a non-exclusive, non-transferable, royalty-free, worldwide license to use the trademarks, service marks, fonts, logos and trade names of Customer specified in writing by Customer ("**Customer Marks**") in connection with performing the Services under this Agreement. All use of the Customer Marks will be in accordance with this Agreement and any additional trademark guidelines provided by Customer. Punchh will reasonably cooperate with Customer in facilitating the monitoring and control of the nature and quality of the use of the Customer Marks. All goodwill associated with the Customer Marks and any use thereof by Punchh will inure to the benefit of Customer. The parties agree to issue a mutually agreed upon press release within thirty (30) days following the execution of this Agreement.

**6. THIRD-PARTY AGREEMENTS.** PUNCHH MAY RELY ON THIRD-PARTY PROVIDERS TO PROVIDE CERTAIN SERVICES. ALL SUCH SERVICES ARE PROVIDED UNDER THE TERMS OF THIS AGREEMENT UNLESS PUNCHH PROVIDES THE CUSTOMER WITH A SEPARATE AGREEMENT APPLICABLE TO SUCH SERVICES (A "**THIRD PARTY AGREEMENT**"). THE TERMS OF ANY APPLICABLE THIRD-PARTY AGREEMENT WILL APPLY TO THE SERVICES COVERED BY THAT THIRD-PARTY AGREEMENT INDEPENDENT OF THE TERMS OF THIS AGREEMENT. THE CUSTOMER WILL BE SOLELY LIABLE TO ANY THIRD-PARTY PROVIDER PARTY FOR ANY THIRD-PARTY AGREEMENT THAT CUSTOMER OR ITS AUTHORIZED USERS BREACH. PURSUANT TO SCHEDULE B, PUNCHH REMAINS LIABLE FOR ANY ACTIONS OF ITS SUBCONTRACTORS, AND FOR FURTHER CLARITY, CUSTOMER SHALL NOT BE LIABLE TO FOR ANY PUNCHH-AUTHORIZED THIRD-PARTY PROVIDER UTILIZED BY PUNCHH IN PERFORMING THE SERVICES OR PROFESSIONAL SERVICES WHICH CUSTOMER HAS NOT ENTERED INTO A THIRD PARTY AGREEMENT WITH.

**7. FEES AND PAYMENT.**

**7.1 Fees.** Customer, or Customer's Franchisee(s) as applicable, shall pay Punchh the applicable Fees for the Services specified in each Order. If Customer elects to add features to an Order, additional fees may apply. Any discounts applied to an Order are specific to such Order.

**7.2 Payment.** All Fees specified in each Order are due and payable upon signing of such Order unless otherwise specified in such Order. The Customer agrees to pay the fees via ACH direct debit in accordance with the terms set out in the applicable Order and will occur upon Customer's receipt of the invoice ("**Payment Period**"), unless otherwise specified on such invoice. Customer will notify Punchh of any disputes in writing within sixty (60) days after the due date of such invoice and provide reasonable detail of the basis for such dispute within the Payment Period. Punchh may not backbill or make similar billing adjustments for Services that it failed, due to Punchh's oversight more than sixty (60) days after issuing the invoice in which such amounts should have been included. Delinquent payments for undisputed Fees on invoices that require no further revision, and that remain past due are subject, in Punchh's sole discretion, to late payment fees of 1.5% of the overdue balance per month (or the maximum amount permitted by law, whichever is lower) starting sixty (60) days after a payment's due date. All Fees paid are irrevocable and non-refundable, except as provided herein.

If Customer's account is past due sixty (60) days or more after Customer receives notice thereof (except with respect to, and only applicable to the disputed amount, Fees for which there is a reasonable and good faith dispute that is being addressed pursuant to this Section 6.2), Punchh may suspend the Services upon written notice (email communication is acceptable) without liability until such amounts are paid in full, in addition to all of its other rights or remedies available under the Agreement, at law or in equity.

**7.3 Taxes.** Fees are exclusive of all taxes, levies, tariffs, and duties imposed by taxing authorities, and Customer is responsible for all such taxes, including sales, uses, excise, import, export or any similar tax or fee to comply with any applicable government imposed environmental regulations, excluding withholding or taxes based solely on Punchh's income.

**8. OWNERSHIP.**

**8.1 Customer Content.** Punchh acknowledges that Customer or its licensors will remain the sole owners of all Customer Content and all Intellectual Property Rights therein. Punchh will not acquire any rights in the Customer Content by virtue of this Agreement, except as set forth in this Agreement or an applicable Order or under this Agreement.

**8.2 Customer Marks.** Punchh acknowledges that Customer or its licensors will remain the sole owners of all Customer Marks and all Intellectual Property Rights therein. Punchh will not acquire any rights in the Customer Marks by virtue of this Agreement, except as may be expressly set forth in an Order or under this Agreement.

**8.3 Punchh Technology.** Customer acknowledges that Punchh or its licensors will remain the sole owners of all Punchh Technology, Punchh Analytics and all Intellectual Property Rights therein. Punchh does not provide customer with any license to any of the Punchh Technology, Punchh Analytics or any Intellectual Property Rights therein, except for the limited rights provided under this Agreement. Customer will not acquire any rights in or to the Punchh Technology or Punchh Analytics by virtue of this Agreement or otherwise.

**9. DATA.**

**9.1 Personal Data.** Customer may provide to Punchh, or Punchh may collect, certain Personal Data from Data Subjects in the course of Punchh providing Services or Professional Services to Customer, including Personal Data from Data Subjects who participate in the Promotional Programs. For any Personal Data provided to or collected by Punchh on Customer's behalf, Punchh comply with the Data Processing Agreement ("DPA") attached as Exhibit B. Customer remains responsible for any errors or omissions in Personal Data. As between Punchh and Customer, all Personal Data will be owned by Customer. Subject to the foregoing and as permitted by Applicable Laws and Exhibit B, Customer will obtain for Punchh the right to use the Personal Data as permitted in this Agreement and as necessary for the Services. Punchh will not otherwise use or share any Consumer Data other than as expressly permitted herein and in the Privacy Policy.

**9.2 Non-personally Identifiable Data.** To the extent permitted under Applicable Laws, Punchh may collect and use Deidentified Data (as defined in the DPA) regarding Data Subjects for any lawful business purpose.

**9.3 Punchh Analytics.** Punchh will provide and make available to Customer certain data, analytics or information through the Platform and Services ("**Punchh Analytics**"). All Punchh Analytics are provided and made available subject to the terms of this Agreement. As between Punchh and Customer, all Punchh Analytics (to the extent such Punchh Analytics do not include Customer Data) will be owned by Punchh. During the Term of this Agreement and subject to the provisions thereof, Punchh grants Customer and Authorized Users the right to access the Punchh Analytics on the Platform and use those Punchh Analytics solely for Customer's own internal business purposes in connection with the Promotional Programs with which the Punchh Analytics is provided. Customer is not granted any other rights in the Punchh Analytics and will not otherwise use or share any Punchh Analytics other than as expressly permitted herein.

**9.4 Privacy Policy.** If Punchh is collecting Personal Data directly from Data Subjects on Customer's behalf, Customer must provide Punchh a privacy policy that Punchh can provide to the Data Subject at or before the point of collection (the "**Privacy Policy**"). Customer represents and warrants that the Privacy Policy will comply with all Applicable Law and sufficiently describes Punchh's processing of Personal Data herein and as

*Confidential Information*

otherwise required for the Services.

**10. CONFIDENTIAL INFORMATION.** EACH PARTY (EACH, A "RECEIVING PARTY") SHALL RETAIN IN CONFIDENCE THE TERMS OF THIS AGREEMENT AND ALL NON-PUBLIC INFORMATION AND KNOW-HOW OF THE OTHER PARTY (THE "DISCLOSING PARTY") DISCLOSED TO OR ACQUIRED BY THE RECEIVING PARTY IN CONNECTION WITH THIS AGREEMENT WHICH IS EITHER DESIGNATED AS CONFIDENTIAL OR PROPRIETARY OR WHICH SHOULD REASONABLY BE CONSIDERED CONFIDENTIAL OR PROPRIETARY GIVEN THE NATURE OF THE INFORMATION AND THE CIRCUMSTANCE OF DISCLOSURE, INCLUDING WITHOUT LIMITATION, PRICING AND COST INFORMATION, BUSINESS PLANS AND SALES INFORMATION ("CONFIDENTIAL INFORMATION"). WITHOUT LIMITING THE FOREGOING, THE PUNCHH TECHNOLOGY, DOCUMENTATION, PLATFORM AND PUNCHH ANALYTICS SHALL BE CONSIDERED THE CONFIDENTIAL INFORMATION OF PUNCHH AND THIS AGREEMENT SHALL BE CONSIDERED THE CONFIDENTIAL INFORMATION OF EACH PARTY. THE RECEIVING PARTY MAY DISCLOSE THE CONFIDENTIAL INFORMATION OF THE DISCLOSING PARTY ONLY TO THOSE OF ITS AFFILIATES, EMPLOYEES AND CONTRACTORS WHO HAVE A NEED TO KNOW SUCH INFORMATION FOR PURPOSES OF PERFORMING THEIR OBLIGATIONS RELATED TO THE SERVICES OR PROFESSIONAL SERVICES OF THIS AGREEMENT AND WHO ARE LEGALLY BOUND (BY AGREEMENT OR OPERATION OF LAW) BY AN OBLIGATION TO MAINTAIN THE CONFIDENTIAL NATURE OF SUCH CONFIDENTIAL INFORMATION AT LEAST AS PROTECTIVE AS THE TERMS OF THIS AGREEMENT (COLLECTIVELY, THE "OTHER THIRD PARTIES" UNDER THIS SECTION 9). THE RECEIVING PARTY FURTHER AGREES TO HOLD, AND TO CAUSE ITS AFFILIATES, EMPLOYEES AND CONTRACTORS TO HOLD, ALL SUCH CONFIDENTIAL INFORMATION OF THE DISCLOSING PARTY IN STRICT CONFIDENCE, AND TO PROTECT THE CONFIDENTIAL INFORMATION OF THE DISCLOSING PARTY FROM UNAUTHORIZED DISCLOSURE USING PRECAUTIONS AT LEAST AS PROTECTIVE AS THOSE TAKEN TO PROTECT THE RECEIVING PARTY'S OWN CONFIDENTIAL INFORMATION OF A SIMILAR NATURE BUT IN NO CASE LESS THAN REASONABLE PRECAUTIONS. NOTWITHSTANDING THE FOREGOING, CONFIDENTIAL INFORMATION SHALL NOT INCLUDE ANY INFORMATION THAT: (I) WAS KNOWN BY THE RECEIVING PARTY PRIOR TO DISCLOSURE THEREOF BY THE DISCLOSING PARTY; (II) BECOMES GENERALLY KNOWN TO THE PUBLIC THROUGH NO FAULT OF THE RECEIVING PARTY AND NOT IN VIOLATION OF THIS AGREEMENT; (III) IS DISCLOSED TO THE RECEIVING PARTY BY A THIRD PARTY LEGALLY ENTITLED TO MAKE SUCH DISCLOSURE WITHOUT VIOLATION OF ANY OBLIGATION OF CONFIDENTIALITY; OR (IV) IS INDEPENDENTLY DEVELOPED BY THE RECEIVING PARTY WITHOUT REFERENCE TO ANY CONFIDENTIAL INFORMATION OF THE DISCLOSING PARTY. THE RECEIVING PARTY IS ENTITLED TO DISCLOSE CONFIDENTIAL INFORMATION AS COMPELLED TO DO SO BY COURT ORDER, SUBPOENA, OR SIMILAR INSTRUMENT LEGALLY COMPELLING DISCLOSURE OR AS OTHERWISE REQUIRED BY APPLICABLE LAWS, PROVIDED THAT THE RECEIVING PARTY SHALL (TO THE EXTENT LEGALLY PERMITTED) PROVIDE PROMPT WRITTEN NOTICE OF SUCH REQUIRED DISCLOSURE TO THE DISCLOSING PARTY AND ALLOW THE DISCLOSING PARTY THE OPPORTUNITY TO SEEK A PROTECTIVE ORDER. NOTWITHSTANDING ANYTHING TO THE CONTRARY, CUSTOMER MAY DISCLOSE PUNCHH'S CONFIDENTIAL INFORMATION TO ITS FRANCHISEES OR OTHER THIRD PARTIES; (I) AS NECESSARY IN USING THE SERVICES AND PROFESSIONAL SERVICES IN CONJUNCTION WITH CUSTOMER'S INTEGRATED TECHNOLOGY PLATFORM; AND (II) AS NECESSARY IN PROMOTING AND/OR INFORMING CUSTOMER'S FRANCHISEES OF CUSTOMER'S INTEGRATED TECHNOLOGY. CUSTOMER WILL NOT BE LIABLE OR RESPONSIBLE IN ANY MANNER FOR THE FRANCHISEES' OR OTHER THIRD PARTIES' FAILURE TO KEEP SUCH INFORMATION CONFIDENTIAL IN CONJUNCTION WITH THE PRECEDING SENTENCES DISCLOSURE ALLOWANCES.

**11. TERM AND TERMINATION.**

**11.1 Term.** The term of this Agreement ("Term"), shall begin on the MSA Effective Date and shall remain in effect for thirty six (36) months, or for so long as any Order(s) remain in effect unless earlier terminated in accordance with the provisions of this Section 11 (the "Initial Term"), and unless otherwise stated in the Order Form, shall automatically renew for 12 months. In addition, immediately following the eleventh (11<sup>th</sup>) month from the MSA Effective Date and once every 12 months thereafter, and only for a period of thirty (30) days in each instance (the "Termination Period"), Customer shall have a limited option to terminate this Agreement (and any associated Order) for any reason by providing written notice to Punchh of its intent to terminate, to be effective sixty (60) days from the date of such notice (the "Termination Notice"). If Punchh does not receive a Termination Notice by the conclusion of the applicable Termination Period during

the applicable year of the Term, then such ability to terminate for convenience shall expire and the Term shall continue in full force and effect until the next Termination Period. Unless otherwise specified in the Order, the term of the Initial Order shall commence on its effective date, and any other Order will be as set forth in the Order.

**11.2 Early Termination.** Either party may terminate this Agreement in writing upon 30 days' prior notice to the other party if the other party is in material breach of any of its obligations under this Agreement and such party fails to remedy the breach within such 30-day period.

**11.3 Effect of Termination or Expiration.** Any termination or expiration of this Agreement will terminate all Orders and Participation Agreements. Upon any termination or expiration of the Agreement: (a) all undisputed Fees for Services or Professional Services performed through the date of termination or expiration, which have not yet been previously paid, will become immediately due and payable; (b) upon early termination by Punchh or Customer, for reasons other than Customer's breach, Punchh will refund Customer or its Franchisee(s) as applicable for any Platform Fees (as defined in the applicable Order Form) or Professional Services which have been prepaid but unused on a pro-rata basis based on the date of the termination of the applicable Services or Professional Services; (c) all rights and licenses granted to Customer and its Authorized Users hereunder will end; (d) Punchh may cease providing Services; (e) Customer will cease all access to and use of the Platform and Services; (f) each party will return to the other party or destroy (at the other party's option) all Confidential Information and other property of the other party in such party's possession or control; (g) all final reports are to be promptly provided to Customer.

**11.4 Survival.** Sections 4.3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18 shall survive any expiration or termination of this Agreement.

**11.5 Transition Assistance.** In connection with the expiration or termination of this Agreement or any Order hereunder for any reason, and notwithstanding any dispute between the Parties, Punchh will provide to Customer and Participating Locations transition assistance services for the Transition Assistance Period (as defined herein) or as otherwise agreed upon in writing between the Parties as follows:

11.5.i. Applicable Requirements and Access. Punchh will provide to Customer any applicable requirements, training material, and other documentation relating to the Punchh Platform and Services as is generally available to other Punchh customers under this Agreement and the Punchh Platform, subject to Customer's confidentiality obligations herein (and if provided to any third party subject to an applicable confidentiality agreement), and answer all reasonable and pertinent verbal or written questions from Customer regarding the Punchh Platform and the Services on an "as needed" basis.

11.5.ii. Development of Transition Assistance Plan. If requested by Customer, Punchh will assist Customer and/or a third-party service provider designated by Customer in developing a transition assistance plan, methodology and timeline.

11.5.iii. Comparable Prices. Punchh will provide the Services during the Transition Assistance Period at prices no worse to Customer (and Participating Locations) than those for comparable Services prior to termination, or if comparable Services were not performed for Customer (or Participating Locations) prior to termination or expiration, then at prices no worse than the fair market value for such services.

11.5.iv. Transition Assistance Services. At Customer's request, Punchh will provide additional Professional Services during the Transition Assistance Period, which services and the cost, if any, shall be mutually agreed upon by the Parties in a SOW. Such additional Professional Services provided in conjunction with the Transition Assistance Services may be paid directly by Customer or by each Participating Location (as mutually agreed).

11.5.v. **Absolute Obligation.** Punchh agrees that it has an absolute and unconditional obligation to provide Customer (and Participating Locations) with Transition Assistance Services, and unless part of the mutually agreed upon Transition Assistance Plan, both Parties agree to continue to adhere to all requirements of this Agreement.

**12. REPRESENTATIONS AND WARRANTIES.**

**12.1** By Both Parties. Both Parties represent and warrant that by entering into this Agreement, it does not violate the terms of any other material agreement by which such Party is bound.

**12.2 Customer.** Customer further represents and warrants that: (i) It has the necessary rights to grant Punchh the rights and licenses granted hereunder; (ii) Customer has the right and authority to enter into and be bound by this Agreement; (iii) the Customer Content and Customer Marks, and the use thereof by Punchh as contemplated and authorized in this Agreement, do not and will not cause the infringement of Intellectual Property Rights of any third party; (iii) the Customer Content, and the use thereof as contemplated and authorized in this Agreement, does not and will not violate the publicity or privacy right of any third party, or defame any third party; and (iv) all Promotional Programs are in compliance with all Applicable Laws, and Customers has obtained any and all required consents and permissions that are necessary for Punchh to perform its obligations hereunder or for the collection or use of any Personal Data.

**12.3 Punchh.** Punchh further represents and warrants that: (i) the Platform, and the use thereof by Customer and its Authorized Users as contemplated and authorized in this Agreement, does not infringe upon the Intellectual Property Rights of any third party; (ii) Punchh has the right and authority to enter into and be bound by this Agreement; (iii) the Professional Services will be performed in a good and workmanlike manner; (iv) the Services and Professional Services will comply with all Applicable Laws; (v) no malicious or detrimental content will be included in the Services; and (vi) the Services and Professional Services will substantially conform in all material respects to any Documentation provided with the Services or Professional Services, this Agreement, or the applicable Orders. Punchh will have no obligation or other liability with regard to any non-compliance with the Documentation or these representations and warranties that is caused by Customer's or its Authorized User's actions or inactions, including any negligence or the misuse or improper use of the Platform or any Promotional Programs by or on behalf of Customer.

**13. DISCLAIMER.** THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY THE PARTIES. EACH PARTY EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE. THE PARTIES AGREE THAT PUNCHH IS NOT INVOLVED IN SELECTING CUSTOMER CONTENT OR THE ELEMENTS OF THE PROMOTIONAL PROGRAMS AND DISCLAIMS ANY AND ALL LIABILITY RELATING THERETO.

**14. INDEMNIFICATION.** EACH PARTY (AN "INDEMNITOR") WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (TOGETHER, AN "INDEMNITEE") FROM AND AGAINST ANY DAMAGES, LOSSES, FINES, PENALTIES, COSTS, EXPENSES, LIABILITIES, AND OTHER AMOUNTS (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) (COLLECTIVELY, "CLAIMS") INCURRED OR SUFFERED BY THE INDEMNITEE IN CONNECTION WITH OR OTHERWISE RELATING TO ANY THIRD PARTY CLAIM OR ARISING OUT OF (I) ITS GROSSLY NEGLIGENT ACTS OR OMISSIONS, OR WILLFUL MISCONDUCT IN PERFORMING UNDER THIS AGREEMENT; OR (II) ALLEGATIONS THAT ANY OF PUNCHH'S PLATFORM OR SERVICES OR DOCUMENTATION INFRINGES ANY INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY IN THE TERRITORY AS FURTHER SUBJECT TO SECTIONS 14.1 AND 14.1.I BELOW; OR (III) ANY INDEMNIFICATION OBLIGATION OF A SUBCONTRACTOR; OR (IV) A DATA BREACH CAUSED BY PUNCHH; OR (V) BREACH OF APPLICABLE LAW. EACH PARTY AGREES TO: (I) PROVIDE THE INDEMNITOR WITH PROMPT NOTICE OF ANY CLAIM FOR INDEMNIFICATION UNDER THIS SECTION; (II) GRANT THE INDEMNITOR CONTROL OVER THE DEFENSE OR SETTLEMENT OF ANY SUCH CLAIM (PROVIDED THAT THE INDEMNITOR MAY NOT AGREE TO ANY SETTLEMENT OTHER THAN MONETARY DAMAGES); AND (III)

COOPERATE FULLY WITH THE INDEMNITOR, AT THE REASONABLE EXPENSE OF THE INDEMNITOR, IN THE DEFENSE OR SETTLEMENT OF ANY SUCH CLAIM.

**14.1 INFRINGEMENT.** Punchh shall indemnify, defend, and hold harmless Customer, its affiliates and franchisees, and each of their respective officers, directors, employees, and agents (together, a "Customer Indemnitee") from and against any actions, liabilities, damages, obligations, costs and expenses (including reasonable attorneys' fees and costs) incurred or suffered by a Customer Indemnitee arising out of, related to, or in connection with any Claim by a third-party that the Punchh Platform or any of the Punchh Services and Documentation contemplated under this Agreement infringes or misappropriates such third-party's U.S. or Canadian patent claim, copyright, or trade secret ("Infringement Claim").

**14.1.i.** If the Punchh Platform or Punchh Services, or Documentation (each, an "Infringing Item") is or may become the subject of a claim under Section 14.1 above, Punchh may, at its option, and at no additional cost to Customer, (i) modify or replace the affected parts so the Infringing Item becomes non-infringing, (ii) obtain a license for Customer's continued use so the Infringing Item is no longer infringing, or (iii) terminate this Agreement and refund Customer for any prepaid and unused recurring fees and pay reasonable transition, implementation, and replacement costs incurred by Customer (prorated to consider the remainder of the Term length). Punchh shall have no obligation with respect to any such Claim to the extent caused by (a) Customer's combination of software or hardware from third-parties not provided by Punchh (or not expressly approved in writing by Punchh) that are not intended for or reasonably contemplated to be used by the Customer or with the Customer's environment or application and that combination results in a Claim, or (b) Customer's use of a prior version of the Punchh Services or Documentation if the Claim would have been avoided had such prior version not been used by Customer, subject to and contingent upon, Punchh providing to Customer at least sixty (60) days prior written notice (of as much advance notice as is feasible given the nature of the Claim) of (1) the potential infringement Claim and (2) an updated, implementation-ready version of the Punchh Services or Documentation, at no additional cost to Customer. Section 14.1 and subsection 14.1.i states the entire liability of Punchh, and Customer's sole and exclusive remedy, for any infringement involving the Punchh Platform, the Punchh Services or the Documentation.

**15. LIMITATION OF LIABILITY.** SUBJECT TO A CLAIM FOR INFRINGEMENT AS SET FORTH IN SECTION 14.1, EXCEPT FOR DAMAGES AS A RESULT OF EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9 HEREIN, OR DUE TO THE FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY (OR THAT CANNOT OTHERWISE BE LIMITED BY APPLICABLE LAW), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR (A) ANY LOST PROFITS OR CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, EVEN IF ONE OR BOTH PARTIES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF PAYMENTS ACTUALLY MADE BY CUSTOMER TO PUNCHH UNDER THIS AGREEMENT DURING THE 18 MONTH PERIOD PRECEDING THE TRANSACTION OR EVENT GIVING RISE TO THE CLAIM.

**15.1 MAXIMUM CAP FOR DATA BREACH CLAIMS.** FOR FIRST OR THIRD PARTY CLAIMS ARISING OUT OF A DATA BREACH (AS DEFINED IN THE DPA) CAUSED BY PUNCHH, PUNCHH'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT (INCLUDING ALL DIRECT, CONSEQUENTIAL, OR INDIRECT DAMAGES WHATSOEVER) SHALL NOT EXCEED TWENTY MILLION DOLLARS (\$20,000,000).

**16. CONSUMER COMMUNICATIONS.** FOR INDIVIDUALS PARTICIPATING IN CUSTOMER'S PROMOTIONAL PROGRAMS, CUSTOMER MAY SEND SUCH INDIVIDUALS EMAILS, SMS MESSAGES, PHONE CALLS (WHETHER BY AUTOMATED MEANS OR OTHERWISE), AND OTHER TYPES OF COMMUNICATIONS FOR MARKETING AND OTHER COMMERCIAL PURPOSES (COLLECTIVELY, "CONSUMER COMMUNICATIONS") THROUGH THE PLATFORM OR BY OTHERWISE INSTRUCTING PUNCHH. CUSTOMER REPRESENTS, WARRANTS AND COVENANTS THAT IT WILL BE

SOLELY RESPONSIBLE AND LIABLE FOR (I) THE CONTENT OF CONSUMER COMMUNICATIONS, INCLUDING ANY CUSTOMER CONTENT THEREIN, AND (II) OBTAINING ALL CONSENTS REQUIRED BY THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (47 U.S.C. § 227) AND ANY OTHER APPLICABLE LAWS TO SEND, TRANSMIT OR OTHERWISE DISTRIBUTE ANY CONSUMER COMMUNICATIONS TO INDIVIDUALS (COLLECTIVELY, “**CONSUMER COMMUNICATIONS CONTENT AND CONSENTS**”). REGARDLESS OF ANY CURRENT OR PRIOR ASSISTANCE THAT PUNCHH PROVIDED TO CUSTOMER REGARDING CONSUMER COMMUNICATIONS CONTENT AND CONSENTS, INCLUDING ANY ASSISTANCE RELATED TO ANY “OPT-IN” OR “OPT-OUT” CONSENT MECHANISMS, PUNCHH WILL NOT BE RESPONSIBLE OR LIABLE FOR, AND CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS PUNCHH AND ITS RELATED INDEMNITEES FROM AND AGAINST ANY CLAIMS INCURRED OR SUFFERED BY PUNCHH AND ITS RELATED INDEMNITEES IN CONNECTION WITH, CONSUMER COMMUNICATIONS CONTENT AND CONSENTS.

17. **Insurance.** Punchh must obtain and maintain in effect the insurance coverage specified below, at Punchh’s expense. The insurance policies must be placed with an insurance company with an A.M. Best’s rating of A VIII or higher. Punchh will provide proof of insurance satisfactory to Customer within 30 days of execution of this Agreement, and at any time during the term of the Agreement at Customer’s request. The policies may not be cancelled or non-renewed without 30 days prior written notice to Customer. The general liability and umbrella policies must name Customer, its Affiliates, and Franchisees as additional insured parties with the Additional Insured Vendor Endorsement. The amounts and types of insurance below are the minimum required by Customer and Punchh may obtain insurance with greater limits or broader coverage as Punchh considers appropriate based on a comprehensive risk analysis reviewed at least annually or on substantial business change.
- a. **Commercial General Liability.** On an occurrence form containing limits of at least \$5,000,000 per occurrence/\$5,000,000 general aggregate, protecting against property damage, bodily injury and personal injury claims arising from the exposures of premises or ongoing operations, independent contractors, and contractual liability.
  - b. **Business Automobile Liability.** With a combined single limit of \$1,000,000 insuring against bodily injury and/or property damage arising out of the operation, maintenance, use, loading or unloading of any auto including owned, non-owned, and hired autos.
  - c. **Workers’ Compensation and Employer’s Liability.** With limits of not less than \$500,000/\$500,000/\$500,000 and providing statutory benefits imposed by applicable Law such Customer will have no liability to Punchh, its employees or Punchh’s agents, and Punchh will satisfy all Workers’ compensation obligations imposed by Applicable Law.
  - d. **Cyber Liability/Supplier Liability (Errors and Omissions) Insurance.** On a claims-made form with a limit of \$40,000,000 in the aggregate including coverage for losses arising out of failure of security, unauthorized disclosure of private information, failure to protect private information from misappropriation, damage/loss/theft of or to data, degradation and downtime. Punchh agrees to increase its Cyber Liability/Supplier Liability (Errors and Omissions) Insurance during the Term of the Agreement as the number of Participating Locations purchasing the Services increases as follows:
    - a. 3,000 Participating Locations = \$50,000,000 in the aggregate
    - b. 5,000 Participating Locations = \$60,000,000 in the aggregate

18. **GENERAL.**

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**18.1 Assignment.** Neither party may assign or transfer this Agreement without the other party's express written consent, and any such consent may not be unreasonably withheld, conditioned or delayed. Any attempt to assign or transfer this Agreement without such consent will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

**18.2 Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of Delaware, excluding conflict of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the State of Delaware, and the parties hereby irrevocably consent to personal jurisdiction and venue therein.

**18.3 Severability.** If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

**18.4 Waiver.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

**18.5 Order of Precedence.** In the event of a conflict between this Agreement and the terms of an Order, this Agreement will control over the subject matter of such conflict.

**18.6 Data Security Audit and Reporting.** At least once per year, Punchh shall conduct site audits of the information technology and information security controls for all facilities used in providing the Services under this Agreement, including obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on recognized industry best practices. Upon Customer's request, Punchh shall make available to Customer for review all of the following, as applicable: Punchh's latest current attestation of compliance signed by a Payment Card Industry (PCI) Qualified Security Assessor, and Statement on Standards for Attestation Engagements (SSAE) No. 18 SOC 1, Type II and SOC 2, Type II audit reports for Reporting on Controls at any service organization. Customer shall treat such audit reports as Punchh's Confidential Information under this Agreement. Any exceptions noted on the SSAE report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by Punchh's management. Repeated instances of the same exception(s) noted on any successive report that have a material impact to Customer as a result of the failure of the exception to be remedied from the prior report, will be considered a material breach of this Agreement.

**18.7 Compliance Audit.** One time per calendar year, at Customer's request, with not less than 10 days' prior written notice to Punchh, Punchh will allow Customer or its designated representatives to enter upon Punchh's premises to audit applicable invoices, books, and records, related to payments made by Customer or Franchisees for the Services under this Agreement, solely to the extent necessary to verify Punchh's compliance with the terms of this Agreement. Punchh will reasonably cooperate with Customer or its designated representatives in connection with such audit. Upon completion of an audit, Customer and Punchh will review the audit report together and work in good faith to agree upon any adjustment of charges, including any reimbursement of overpayment by Customer or Participating Locations, resulting from the audit. Audits will be conducted during Punchh's normal business hours, and Customer will use commercially reasonable efforts to limit the disruption to Punchh's business operations during any audit. Punchh will pay for Customer's reasonable costs and expenses in conducting the audit, in addition to all costs of remediation, if:

- (a) an error or discrepancy in amounts billed to Participating Locations representing greater than a 5% overcharge is discovered;
- (b) [intentionally deleted].

**18.8 Notices.** All notices required or permitted under this Agreement will be in writing and delivered by confirmed electronic transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party to the other in accordance with this Section.

**18.9 Force Majeure.** Neither Party will be in default for any failure or delay in performing its  
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obligations under this Agreement (other than payment obligations) due to causes beyond its reasonable control, including labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, civil commotion, third party internet service interruptions or slowdowns, vandalism or "hacker" attacks, government demands or acts of God.

**18.10 Relationship of Parties.** The Parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither Party will have the power to bind the other Party or to incur any obligations on its behalf without the other Party's prior consent.

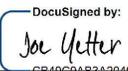
**18.11 Entire Agreement.** This Agreement, including these Terms and Conditions, Statements of Work and each Order hereunder, constitutes the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter.

*[SIGNATURE PAGE IMMEDIATELY FOLLOWS]*

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement and have rendered it effective as of the MSA Effective Date.

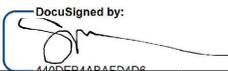
**For Punchh:**

Punchh Inc.  
Delaware corporation  
8383 Seneca Turnpike  
New Hartford, New York 13413

DocuSigned by:  
  
Signature: \_\_\_\_\_  
Name: Joe Yetter  
Title: General Manager - Punchh  
Date: 2/17/2024

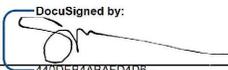
**For Customer:**

**American Dairy Queen Corp.**  
**Delaware Corporation**  
**8331 Norman Center Drive, Suite 700**  
**Bloomington, MN 55437**

DocuSigned by:  
  
Signature: \_\_\_\_\_  
Name: Susie Moschkau  
Title: VP of Digital Experience  
Date: 2/16/2024

**For Customer:**

**Dairy Queen Canada, Inc.**  
**Canada Federal Corporation**  
**1111 International Blvd., Suite 601**  
**Burlington, ON L7L6W1**

DocuSigned by:  
  
Signature: \_\_\_\_\_  
Name: Susie Moschkau  
Title: VP of Digital Experience  
Date: 2/16/2024

## EXHIBIT A – SERVICE LEVEL AGREEMENTS

### 1. Definitions

The following capitalized terms shall be given the meaning set forth below. Capitalized terms not defined below will have the meaning ascribed to them in the Terms.

- 1.1 “API Average Response Time” is the average response time in milliseconds during a calendar month for a named collection of API methods chosen by Punchh for monitoring purposes, as measured by third party performance and monitoring services contracted by PAR Punchh at its sole discretion (the “Monitoring Service”). Response time measurements that occur during conditions arising from the Exclusions defined in this Schedule may be excluded from the calculation of an API Average Response Time.
- 1.2 “Emergency Maintenance” means an unplanned and unavoidable period that is necessary for the purposes of maintaining the integrity or operation of the Services and for which there is not enough time to declare Scheduled Maintenance.
- 1.3 “Monthly Unavailable Percentage” is the percentage of time during a calendar month during which the Services are Unavailable as defined in this Service Level Commitment. This is calculated by dividing the sum of the length of time(s), in minutes, during which the Services were deemed Unavailable by the total number of minutes in the month.
- 1.4 “Monthly Uptime Percentage” is calculated by subtracting from 100% the “Monthly Unavailable Percentage”.
- 1.5 “Platform Fees” means the recurring fees paid for access to the Punchh Services, which excludes Professional Services fees and fees for non-recurring services.
- 1.6 “Scheduled Maintenance” means a period used for the purpose of maintaining or improving the Services, occurring within a standard Punchh maintenance window and announced at least 48 hours in advance, or occurring within any period of time approved in advance by Customer.
- 1.7 “Services” has the same meaning as defined in the Terms for Punchh services.
- 1.8 “Service Level” is a contractual performance metric. The Service Levels are defined in Section 3 of this Schedule.
- 1.9 “SLA Violation” means a failure to meet a defined Service Level.
- 1.10 “Unavailable”. The Punchh Services shall be deemed Unavailable if they are not available for use according to third party performance and monitoring services contracted by Punchh at its sole discretion (the “Monitoring Service”) for any continuous period of 3 minutes or more. In no case shall the Services be deemed Unavailable during or due to any condition arising from the Exclusions defined in this Schedule.
- 1.11 “Warrantable Usage Rate” means a metric defining a rate of use of a specific Punchh service or feature, for example campaign messages sent per hour or mobile API requests per second. The Warrantable Usage Rates in this document may be amended at any time by mutual agreement in writing (email acceptable). Unless otherwise agreed, Warrantable Usage Rates are solely used to define usage that constitutes an Exclusion for purposes of calculating SLAs.

### 2. Exclusions

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Notwithstanding anything to the contrary, no SLA Violation shall be deemed to have occurred with respect to any Unavailability, suspension or termination of the Services that:

- (i) Is caused by factors outside of Punchh’s reasonable control, including, without limitation, any force majeure event or internet access or related problems beyond the demarcation point of Punchh or its direct hosting subcontractor (AWS);
- (ii) Results from any action or inaction on the part of Customer, including any unpaid amounts due and owing to Punchh for the Punchh Services, or any third party (other than Punchh’s subcontractors);
- (iii) Results from Punchh’s suspension, limitation, or termination of Customer’s right to use the Punchh Services in accordance with the Terms;
- (iv) Occurs during Scheduled Maintenance;
- (v) Occurs during Emergency Maintenance;
- (vi) Results from problems or issues related to alpha, beta, preview, test, or otherwise not generally available features;
- (vii) Occurs in a portion or portions of the Punchh Services that Customer did not use or attempt to use at least once during the measurement period;
- (viii) Results from Punchh taking action to protect its systems and data (e.g., from an attack or other security incident); or
- (ix) Occurs while the Customer is exceeding a Warrantable Usage Rate or results from the Customer having exceeded a Warrantable Usage Rate ((i)-(ix) collectively, the “Exclusions”).

**3. Service Level Commitment** (on a calendar month basis)

SERVICE LEVEL	SERVICE CREDITS
Consumer Facing App (e.g., mobile app) Availability >=98% and <99.5%	5% of the monthly Platform Fees
Availability >=95% and <98%	10% of the monthly Platform Fees
Availability <95%	25% of the monthly Platform Fees
Mobile API Average Response Time >500ms	15% of the monthly Platform Fees
Gift Card API Average Response Time >1000ms	15% of the monthly Platform Fees
Payment API Average Response Time >1000ms	15% of the monthly Platform Fees

**4. Warrantable Usage Rates**

Metric	Definition
API request rate <= 100 requests/second averaged over a one-	The count of all API Requests in a one-minute (60 second) window divided by 60 to yield average

minute window	requests/second for that window.
API request rate <= 4,000 requests/minute averaged over a one-hour window	The count of all API Requests in a one-hour (60 minute) window divided by 60 to yield the average requests/minute for that window.
Peak API request rate < 200 requests/second	The instantaneous rate of API Requests measured in requests per second.
Campaign messages sent (messages per day) <= 1 million	The total number of messages (email, push, or SMS) sent in a calendar day using Pacific Standard Time for day start and end times.

### 5. Service and Support Process and Expectations

Punchh has two types of Support for PAR Punchh Services. These are **DevOps** and **Technical Support**.

**A. DevOps:** DevOps’ main purpose is to ensure overall Services are available and accessible.

DevOps is responsible for 24/7 Services Monitoring, Maintenance and Triage. DevOps interacts with Customer via an accessible Status page, only when a Service Outage is experienced. It is Customer’s responsibility to subscribe to Status page and subsequent notices. The default location for this page is <http://status.punchh.com>, although this may vary by Customer.

**B. Technical Support:** Technical Support provides a communication path for Customer to submit Problems and/or Questions, and to have a dialog around resolution of said Problems and/or Questions. Support is only available during Support Hours, unless expressly outlined below. A Problem means there is an actual problem with the functionality of the platform OR configuration issue caused by Punchh. A Question means there is a question asked, or there is a configuration issue caused by Customer (or Customer’s approved 3<sup>rd</sup> party).

**Submitting a Ticket.** Although there are multiple means of submitting a Ticket to Technical Support, only one process allows Customer to designate any level or Priority/Severity. Submissions outside the approved means listed will result in lower Priority, equating to slower Response Times. Response Times are defined as the written or verbal response from Punchh that is NOT an automated reply to a ticket submission. The approved submission method is via the Support Portal at <https://support.punchh.com>. Technical Support will meet Service Level for a Customer’s Contracted Technical Support Service Level Tier as may be attached hereto in a separate table.

Technical Support will meet Service Level for a Customer's Contracted Tier.

Punchh Support Service Levels – Enterprise Tier				
Priority Level	Description	Time to Engage	Time to Repair	Success Target
<b>Urgent Severity 1</b>	Live Environment Only Non-Development Issues Problems Only (Not Questions) Catastrophic failure of the Services or renders the Services inoperable by Customer such that little to no business can be conducted.	<b>2</b> Business Hours	<b>24</b> Business Hours	<b>95%</b>
<b>High Severity 2</b>	Live Environment Only Non-Development Issues Problems or Questions Severe degradation of Services or loss of some functionality having an impact on Customer business, but where all or most Guests can still use the Private Label App.	<b>4</b> Business Hours	<b>3</b> Business Days	<b>95%</b>
<b>Normal Severity 3</b>	Problem or Question Certain elements of usability functionality are impacted but most operations of the Services function normally.	<b>6</b> Business Hours	<b>5</b> Business Days	<b>95%</b>
<b>Low Severity 4</b>	Feature Request Problem or Question Little to No impact on Customer's ability to use Services. Specific Guest Questions.	<b>48</b> Business Hours	<b>10</b> Business Days	<b>Not Measured</b>
<b>Definitions</b> Business Hours (North America, South America) – 8am-8pm Central Standard Time, Monday-Friday Business Hours (EMEA, APAC) – 10am-7pm Indian Standard Time, Monday-Friday Problem – There is an actual problem with the functionality of the platform, OR configuration issue caused by Punchh Question – There is a question asked, or there is an configuration issue caused by Customer (or Customer approved 3 <sup>rd</sup> Party) Time to Engage – Written or Verbal response from Punchh, that is NOT an automated Reply to Ticket Submission Time to Repair (Urgent & High) – A Fix, a Valid Permanent or Temporary Work-around. Time to Repair (Normal & Low) – A Fix, Workaround, or Final Statement confirming future consideration of Ticket as a Low Priority Item				

**EXHIBIT B**  
**DATA PROCESSING ADDENDUM**

That Data Processing Addendum (“DPA”) effectively dated September 23, 2023 referring to Punchh’s services and obligations shall apply to the terms of this Agreement and is incorporated into the Agreement. Unless otherwise defined in this DPA, interpretations and defined terms set forth in the Agreement apply to the interpretation of this DPA. To the extent any terms of the Agreement conflict with this DPA, the terms of this DPA will control.

**EXHIBIT C  
PARTICIPATION AGREEMENT**

This Participation Agreement (this "Participation Agreement") is made effective as of the signature date of the Participating Location (as defined herein) below (the "Participation Agreement Effective Date") and is entered into by and between the undersigned franchisee entity (each, a "Participating Location") and Punchh Inc., with an address of 8383 Seneca Turnpike New Hartford, New York 13413 or Punchh (Canada) Inc. (collectively, "Punchh"); Punchh and Participating Location are sometimes referred to herein individually as a "Party" and collectively as the "Parties").

**RECITALS**

- A. American Dairy Queen Corp. and Dairy Queen Canada, Inc. (collectively, "Customer") and Punchh entered into a certain Master Services Agreement with an effective date of \_\_\_\_\_, as may be amended from time to time (the "Agreement").
- B. The Agreement contemplates the provision of certain products and services by Punchh to Participating Locations, including the execution of this Participation Agreement and the payment of applicable fees by Participating Locations that are not participating in the Dairy Queen® National Marketing Fund, in order to receive Punchh products and services for use of the Dairy Queen® loyalty program.
- C. The purpose of this Participation Agreement is to create a direct relationship between Punchh and Participating Locations to establish contractual privity and allow for direct billing, as applicable.

NOW THEREFORE, in consideration of the promises contained in this Participation Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Participating Location and Punchh agree as follows:

1. Incorporation of the Agreement. This Participation Agreement is entered into under the provisions of the Agreement, and except as provided in this Participation Agreement or as specified in the Agreement, all of the terms and conditions of the Agreement, as may be amended in a writing signed by Punchh and Customer (for clarity, Participating Locations are not permitted to request or make amendments to the Agreement) and as specifically referenced in Section 4 below, are incorporated into this Participation Agreement by this reference, as if fully set forth herein. Except as specifically set forth hereunder, Participating Location hereby agrees to be bound by terms and conditions (including obligations of "Customer" therein) of the Agreement, as if Participating Location was a signatory to the Agreement (and as such Punchh shall have all rights against the undersigned as if the undersigned was Customer pursuant to the Agreement). For clarification, while Participating Location agrees to be bound by terms and conditions of the Agreement, a Participating Location is not equivalent to Customer and Customer retains all rights accruing to it in the Agreement, including any ownership rights in Section 7 (Ownership) and Section 8 (Data). In the event of any inconsistency between the terms of this Participation Agreement and the Agreement, the Agreement shall control as to the subject matter of this Participation Agreement. Capitalized terms used in this Participation Agreement, to the extent not otherwise defined in this Participation Agreement, shall have the meanings ascribed in the Agreement.
2. Term. The term of this Participation Agreement will commence on the Participation Agreement Effective Date and will continue thereafter until the expiration or termination of the Agreement

between Punchh and Customer, unless this Participation Agreement is terminated earlier in accordance with the terms of the Agreement itself or pursuant to the termination provisions of the Agreement that are incorporated into this Participation Agreement by reference.

3. Fees for the Participating Locations.
  - a. For Participating Locations that DO participate in the National Marketing Fund. You will not be direct billed, as Customer will be collecting your respective payment and providing it to Punchh directly and any billing obligations of Customer will not apply to your Participating Locations.
  - b. For Participating Locations that DO NOT participate in the National Marketing Fund. You are required to complete the ACH Authorization Form and Customer Information Form attached as Schedule A to this Participation Agreement. To clarify, the customer referenced on the ACH Authorization Form and the Customer Information Form is the Participating Location, not "Customer" under the Agreement. The amount of the ACH direct debit to Punchh by the Participating Location shall depend upon the Participating Location's election of which loyalty product was selected by Participating Location in the onboarding process, payable per month for the applicable Loyalty Platform Fees, *plus* taxes, and pass-through third-party expenses required to utilize the platform (e.g., SendGrid and Twilio) which will be billed separately per the terms of the Order. Section 6.2 of the Agreement regarding the ability of Punchh to suspend Services in the event your account is 60 days or more overdue following notice shall apply to this Participation Agreement.
4. Applicable Agreement Provisions.
  - a. This Participation Agreement shall include the following sections from the Agreement to bind Participating Location as if they were the Customer: Section 1 (Definitions), Section 2 (Services), Section 4 (Platform), Section 6 Fees and Payment), Section 9 (Confidentiality), Section 11 (Representations and Warranties), Section 12 (Disclaimer), Section 14 (Indemnification), Section 15 (Limitation of Liability), Section 16 (Consumer Communications), and Section 18 (General).
  - b. Any other Section that is only applicable to or exercisable by Customer due to Customer's rights as the franchisor and to the nature of the franchise relationship shall be further excluded from this Participation Agreement.
  - c. Participating Location agrees to complete and provide, on an ongoing basis within three (3) business days of any change in information, the ACH form provided by Punchh.
5. Governing Law. This Participation Agreement will be governed by and construed in accordance with the laws of Delaware, excluding conflict of law principles. Any legal action or proceeding arising under this Participation Agreement will be brought exclusively in the federal or state courts located in the State of Delaware, and the parties hereby irrevocably consent to personal jurisdiction and venue therein.
6. Notices. All notices required or permitted under this Participation Agreement will be in writing and delivered by confirmed electronic transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth in this Participation Agreement or to such other address as may be specified by either party to the other in accordance with this Section. Notices to Punchh shall include a copy to [legal@partech.com](mailto:legal@partech.com).
7. Counterparts. This Participation Agreement may be executed in one or more counterparts, all of

which taken together shall constitute one single agreement between the Parties hereto. If any signature is delivered by e-mail delivery of a “.pdf” format data file, such signature will create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such “.pdf” signature page was an original thereof.

8. Miscellaneous. The Parties agree that the Participating Location is individually entering into this Participation Agreement solely on its own behalf and therefore, neither American Dairy Queen Corp., Dairy Queen Canada, Inc. or any other affiliate of American Dairy Queen Corp. or Dairy Queen Canada, Inc. shall be liable to Punchh for any payments due and owing by the Participating Location for products or services provided by Punchh under this Participation Agreement (except as may be specifically agreed in a writing signed by Punchh and Customer) or for any other obligations of the Participating Location under this Participation Agreement.

Franchisee Legal Entity Name: \_\_\_\_\_

Franchisee Mailing Address: \_\_\_\_\_

Store Number(s): \_\_\_\_\_

ACCEPTED AND AGREED:

Signed:

Name:

Title:

Date:



**Sample Check (United States)**

Jane Doe  
1234 Main St, Apt 101  
Lenexa, KS 66215

1001

PAY TO THE ORDER OF

Your Bank  
Address of Your Bank  
Lenexa, KS 66215

1001

⑆ 234 56 789 ⑆ ⑆ 234 56 78 ⑆ 100 ⑆

⑆ 234 56 789 ⑆ Bank Routing Number  
⑆ 234 56 78 ⑆ Bank Account Number  
⑆ 100 ⑆ CHECK #

**Sample Check (Canada)**

PROPRIÉTÉ PROTEGÉE PAR LE DROIT DE LA PROPRIÉTÉ INTELLECTUELLE

YOUR NAME

DATE 20  
Y Y Y M M D D

PAY TO THE ORDER OF \$

BANQUE DE MONTREAL  
3333 DUFFERIN ST  
MONTREAL, QC H3H 1S3

100 DOLLARS

⑆ 00 ⑆ ⑆ 2760 ⑆ ⑆ ⑆ 234 56 78 ⑆

Transit # Bank code Account #

Customer certifies that all information set forth above is true and correct. Customer agrees to give PAR not less than ten (10) days advance written notice of any termination or change in this Authorization, which shall remain in full force and effect until PAR has received such written notification from Customer.

Customer may revoke this Authorization by giving written notice to PAR or Customer's bank. If Customer revokes this Authorization without making other payment arrangements or by providing an alternate Authorization to PAR for the Product(s)/Services provided under the Agreement and Customer's payment is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute) and such default has not been cured within ten (10) business days (or such other times as agreed upon by Customer and PAR under the Agreement) after written notice from PAR to Customer, in addition to any of its other rights or remedies under the Agreement, in the case of Services, PAR reserves the right to suspend the Services provided to Customer, without liability to Customer, until such amounts are paid in full.

**CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THE FINANCIAL ACCOMMODATIONS AND PERIODIC PAYMENTS UNDER THE AGREEMENT HAVE BEEN AGREED TO BY PAR UPON THE CONDITION THAT PAR WILL BE ABLE TO REALIZE COST SAVINGS BY ADMINISTERING THE AGREEMENT USING ACH DEBIT AS AUTHORIZED HEREIN. IF, FOR ANY REASON, THIS AUTHORIZATION IS TERMINATED OR SUSPENDED OR PAR IS UNABLE TO ADMINISTER THE AGREEMENT BY ACH DEBIT ENTRIES AS AUTHORIZED HEREIN, CUSTOMER AGREES THAT THE PERIODIC PAYMENTS UNDER THE AGREEMENT MAY BE INCREASED BY TWO PERCENT (2%) UNTIL PAR'S ABILITY TO ADMINISTER THE AGREEMENT BY ACH DEBIT AS AUTHORIZED HEREIN HAS BEEN RESTORED TO THE REASONABLE SATISFACTION OF PAR.**

**THE PERSON SIGNING BELOW AFFIRMS THAT HE/SHE IS A DULY AUTHORIZED CORPORATE OFFICER OR OFFICIAL, PARTNER OR PROPRIETOR OF THE CUSTOMER LISTED ABOVE.**

CUSTOMER: \_\_\_\_\_

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

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

Required for customers ordering products or services from ParTech, Inc. and its subsidiaries

Company Information		
Legal Business / Entity Name:		Federal Tax ID (EIN):
Billing Address:		
City:	State:	Zip Code:
Business Established:	Total Annual Revenue:	Ownership Structure:
Primary Contact Name:	Email Address:	# of Stores Owned:
Phone Number	Mobile Number	Fax Number
Accounts Payable/Remit to Name	Accounts Payable/Remit Email	Accounts Payable/Phone

Company Ownership Information		
Name Owner #1:	Title:	% Owned:
Name Owner #2:	Title:	% Owned:
Name Owner #3:	Title:	% Owned:

If more than 3 owners, please list on separate page.

**AUTHORIZATION & ACKNOWLEDGEMENT**

By signing below, I, on behalf of the company listed above, certify that (a) the information contained in this form is complete and accurate; (b) I represent a company who is a business seeking to receive products and services for business purposes only, and (c) I am a principal of the company and duly authorized to execute and submit this form. I authorize ParTech, Inc. (its subsidiaries or affiliates) ("PAR") or an agent acting on its behalf to run a credit check and/or request credit and other reports on the company named above and/or verify references supplied herein. Submission of this form does not entitle company to any products or services and does not create any binding obligations on PAR. Company understands and agrees that PAR shall be under no obligation to provide any products and services until an agreement has been executed by both company and PAR and that the payment terms approved by PAR may be different than those requested by company.



SIGNATURE:

TITLE:

\_\_\_\_\_

\_\_\_\_\_

PRINT NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

**Attn: Accounting Department**

8383 Seneca Turnpike New Hartford, NY 13413  
Phone: (800) 448-6505 • Fax: (315) 738-0343 REV 04/20/22



## STATEMENT OF WORK

This Statement of Work ("SOW") is entered into by and between Punchh Inc., a Delaware corporation, with its principal place of business at 8383 Seneca Turnpike, New Hartford, NY, USA ("Punchh"), and the customer ("Customer") listed below as of the date of the last signature below (the "SOW Effective Date"). This SOW is included by reference and incorporated into the Order of the same date and is governed by the terms and conditions of the Master Services Agreement between Punchh and Customer.

### Parties to this SOW:

Customer:	Punchh:
American Dairy Queen Corp. Dairy Queen Canada, Inc.	Punchh Inc.
8331 Norman Center Drive, Suite 700	8383 Seneca Turnpike
Bloomington, MN 55437	New Hartford, NY 13413
USA	USA

## SUMMARY OF FEATURES

Punchh confirms that the delivery of the following services and/or features will be provided in accordance with the Statement of Work ("SOW"). Details about these features are outlined in the designated sections below.

### Section I: Summary of Features:

Punchh confirms the delivery of the following features will be provided in accordance with most recent Order agreed to by the parties.

**ESSENTIALS LOYALTY**

ESSENTIALS LOYALTY	Program Management (Membership Tiers, Rewards, Expiry Logic, Reporting)
	Full Segmentation
	Offer Management (Redeemables)
	Feedback (Reviews & Ratings)
	Referral Marketing
	Program and Audience Analytics
	Loyalty Fraud Prevention

ESSENTIALS CAMPAIGNS	
ESSENTIALS CAMPAIGNS	Rich Content Editor & Templatization
	Segmentation (Profile, Redemption)
	Email Marketing
	Campaign Analytics
	Offers Management (Coupons & Promos)

CORE PLATFORM	
CORE PLATFORM	Customer 360° CRM
	Dashboard Analytics
	Personalization (Merge Tags)
	Data Exports

## 1. MANAGED SERVICES

### SCOPE OF SERVICES – Managed Services

Customer will receive ongoing execution services from a Punchh Managed Services Specialist (“MS”). The MS will execute on marketing activities and other actions as needed related to loyalty programs within the Punchh online platform (“Punchh Dashboard”) on behalf of Customer.

PLATINUM MANAGED SERVICES
U.S. AND CANADA
Weekly Deals (up to 25 campaigns/week)
10 campaigns a month (for non-Weekly Deals)
30 MS activities per month
Weekly Campaign Execution Meeting (combined Canada/U.S. meeting)

Description of Services

Punchh Dashboard Activities

- Punchh will, on behalf of the Customer, execute on Punchh Dashboard actions and activities as defined herein.
- Copy, creative, redeemable details, segment details or custom segment lists, and scheduling (together, the "Campaign Brief") are to be provided in entirety and finality by the Customer to Punchh within the agreed timeframe.
- Creative edits assistance and custom email templates are limited to Punchh standard functionality within the Email Editor. HTML edits are limited to non-code impacting changes. Revisions on creative edit changes (excluding errors by Punchh) are limited to 3 rounds of revisions no sooner than 2 business days prior to the campaign go-live.
- Managed Services are limited to actions or activities then-available in the Punchh Dashboard and the standard functionality therein. Any requests pertaining to actions or activities outside of the Punchh Dashboard including, but not limited to, new creative services, data analyzing, copywriting, marketing strategy or marketing coordination (meaning, for purposes of this SOW, management of or adherence to Customer's marketing calendar pursuant to Punchh's defined process) requested outside of the provided marketing brief, are expressly excluded from this SOW and may only be added upon a separate SOW signed by both parties.

Campaign Execution Meeting

- Weekly campaign execution meetings will be scheduled at a mutually agreed time between the Customer and the MS.

- Managed Services attendance at the Campaign Execution Meeting will consist of any team member assigned to a Customer's campaign.

Other

- Punchh may provide data exports within the Punchh Dashboard.

**SERVICE LEVEL AGREEMENT FOR MANAGED SERVICES:**

- a. Managed Services will be available to Customer during normal operating business hours; not including U.S. Federal Holidays.
- b. Punchh will confirm receipt of any request within one (1) business day of ticket submission (see below table for Response Times).
- c. Project Plans (prepared separately in writing) require a minimum four (4) business days for Punchh completion/execution by Punchh, excluding Customer Review Period.
- d. An additional two (2) business days for response will be added for any activities where a 3rd party tool must be utilized to complete the requested Punchh Dashboard Activity (this includes, but is not limited to, Sendgrid/Twilio and Typeform)
- e. Punchh will verify proper operation of the campaign prior to submitting to Customer for Customer review.
- f. A "Customer Review Period" is defined as the designated time period for Customer to review, test and provide approval of the proposed Managed Services prior to project execution. The length of time for the Customer Review Period will be mutually agreed upon by the parties.
- g. Punchh will accept one (1) change to the Project Plan at least two (2) business days prior to the expected project execution date, excluding during the Customer Review Period.
- h. Punchh will not accept any changes to a Project Plan within two (2) business days of expected project execution date, excluding during the Customer Review Period.
- i. Once Customer completes the Customer review during the Customer Review Period and provides its approval, Punchh will execute the campaign pursuant to the Project Plan.
- j. If Punchh commits Negligent Misconfigurations across a campaign, Customer is entitled up to a maximum of three (3) credits per month, each credit in the amount of a 15% fee reduction applied to the next month's fees (if the subscription has expired, the subscription will be extended). A "Negligent Misconfiguration" is defined as when Punchh Managed Services incorrectly configures a campaign that was submitted correctly from the outlined process listed in Section 3

**ADDITIONAL CONSIDERATIONS**

- This SOW is accompanied by one or more Orders and is subject to the terms therein.
- Any actions or activities requested by Customer not defined in this SOW are considered out of scope and shall be subject to additional fees, as applicable, and will be set forth in a separate SOW. The parties may amend this SOW at any time in a mutual writing signed by both parties.
- Any actions or activities defined in the Project Plan that are not performed or used within the period defined herein will not "roll over" into subsequent periods.

## 2. DATA PIPELINE

### A. Customer's project for Data Pipeline will include following deliverables:

Deliverable ID	Description
D-01	<p><b>Data Pipeline</b>                      The Punchh Data Pipeline option delivers an ongoing feed of data from the Punchh system to a landing location in the Customer's preferred cloud account: <b><u>(MUST SELECT ONE)</u></b>  <input type="checkbox"/> AWS (S3) <input checked="" type="checkbox"/> Azure (Azure Data Lake Storage) <input type="checkbox"/> GCP (Google Cloud Storage)</p> <p>The standard offering for the Data Pipeline includes data from approximately 46 tables in the Punchh database, including guest profile, check-ins, redemptions, reward data, and campaign participation. Example tables can be found in the "Data Objects and Volume" section below. Customer may request the configuration of additional tables to the pipeline in writing at any time. The data is delivered to the Customer's object store (either to S3, ADLS or Google Cloud Storage from the above selection) (the "<b>Destination Location</b>") in the form of Parquet/ JSON files, with each file including data from one Punchh table for an interval of time, as selected by Customer in the range set forth in the associated Order.</p> <p>Each file includes insert, update and delete events from the associated Punchh table for that interval of time.</p>
D-02	<p><b>Data Pipeline Schema</b>                      Punchh shall publish information describing the contents of the Data Pipeline - its schema in the knowledge base, also known as the documentation platform. The schema may change from time to time as the Punchh system grows and evolves. Schema change details will be communicated one week ahead of time and published in the knowledge base; however, certain types of changes (e.g., emergency production changes) may not allow for one week's notice.</p>
D-03	<p><b>Data Pipeline Technical Consulting and Schema Training</b>                      Technical consulting will be available to Customer to assist with onboarding questions in the first two (2) weeks of implementation, however, any additional consulting requests shall be purchased at the rates set forth in a separate work order.</p>

<b>D-04</b>	<b>Data Pipeline Support</b> Data Pipeline support will fall under current support SLAs as noted in this SOW below.
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**B. The deliverables listed above and their timely completion depend on the following considerations:**

Requirement ID	Description
<b>R-01</b>	Customer shall self-configure the data pipeline
<b>R-02</b>	Customer shall make available an Amazon Web Services S3 bucket/ Azure ADLS container SAS token/ Google storage bucket, or other cloud account location authorized by Punchh, configured with permissions allowing Punchh to write files to the destination.
<b>R-03</b>	Parties shall agree upon a pre-defined delivery cadence/ frequency

**SERVICE LEVELS**

**Initial Load Time**

When a Data Pipeline is configured to push data for a given database table to the Customer, the first task is to push all historical data through the Data Pipeline to “catch up” to the current time - the “Initial Load.” This process may take several days for very large tables, and the speed varies depending on the performance of the Customer’s Destination Location. Punchh endeavors to complete the Initial Load as quickly as possible, but cannot offer an Initial Load time SLA. Punchh will continue to attempt to complete the Initial Load in the event of unanticipated failures (e.g., no fault of Customer).

**Re-loading of Historical Data**

It may become necessary or expedient to Re-load a table, for example, if Customer decides to move from one data platform to another. If Re-load is necessary, a secondary SOW outlining the scope and effort may be necessary to address the difference with this SOW. “Re-loading” consists of performing the Initial Load process again.

By necessity, tables undergoing their Initial Load or Re-load are excluded from the below calculations, as described in the Exclusions (defined below).

For purposes of this SOW, the following are defined as “Exclusions”:

- (i) Is caused by factors outside of Punchh’s reasonable control, including, without limitation, any force majeure event or internet access or related

problems beyond the demarcation point of Punchh or its direct hosting subcontractor AWS; or

(ii) Results from any action or inaction on the part of Customer or any third party (other than Punchh's subcontractors); or

(iii) Results from Punchh's suspension, limitation, or termination of Customer's right to use the Punchh Services in accordance with the Agreement; or

(iv) Occurs during Scheduled Downtime (as defined in the Agreement); or

(v) Occurs during emergency downtime; or

(vi) Results from problems or issues related to alpha, beta, preview, test, or otherwise not generally available features; or

(vii) Occurs in a portion or portions of the Punchh system that Customer did not use or attempt to use at least once during the measurement period; or

(viii) Results from Punchh taking action to protect its systems and data from an attack or other security incident; or

(ix) Occurs during any period for which Customer has not paid all amounts due under any active Order by the corresponding due date.

#### Service Level Agreement (SLA) for Synchronization Latency

After a given table has completed its Initial Load or a Re-load, it begins "Ongoing Synchronization." In this mode, Punchh periodically delivers to Customer's Destination Location those database rows that have changed since the last delivery. Deliveries happen in near real time or at Customer's chosen intervals as described above. The time required to propagate a data change from its source to Customer's Destination Location also varies depending on the size of the database table, with large tables having higher Synchronization Latency than smaller ones. The time between when an event happens in the Punchh system and when that event is delivered to Customer's Destination Location is the Synchronization Latency metric.

If the Synchronization Latency for a given data table exceeds the SLA below then, barring Exclusions, Punchh considers that to be a "Production Incident." Punchh will treat a Data Pipeline SLA violation as a Production Incident with an impact rating no lower than 2 and an urgency rating no lower than 2 (as set forth in the applicable SLA in the Agreement).

Pipeline Frequency	Synchronization Latency SLA
Near real time	≤ 12 hours
Every 6 hours	≤ 18 hours
Daily	≤ 36 hours

Weekly	≤ 48 hours
--------	------------

**NOTE: The Punchh Data Pipeline delivers various sets of data, each with its own lifecycle. If there are no events that occurred during the most recent load, no data files are generated. The Service Level Agreement (SLA) is defined at the Data Pipeline level. The SLA can be determined by finding the time difference between the maximum “delivery” timestamp and the maximum “updated\_at” timestamp across all tables.**

#### Data Objects and Volume

The standard offering of Data Pipeline includes the following tables.

Tables included in the standard offering		
accounts	feedbacks	rewards
app_downloads	free_punchh_campaigns	subscription_discounts
bulk_guest_upload_connections	gift_cards	subscription_discounts
business_admin_location_groups	line_item_products	taggings
business_admin_locations	line_item_selectors	tags
business_migration_users	locations	tips
businesses	mass_giftings	user_cards
campaign_statistics	qualification_criteria	user_coupon_redemptions
campaigns	receipt_details	user_favourite_locations
card_designs	receipt_stats	user_incinerates
checkin_allocations	redeemables	user_subscriptions
checkin_failures	redemption_codes	users
checkins	redemptions	
conversion_rules	referrals	
coupons	reward_archives	
feedback_categories	reward_credits	
feedback_replies	reward_debits	

Additional tables may be requested by Customer in writing at any time, and may incur an additional fee (e.g. data not readily available or custom tables). A dedicated Punchh team member will be able to help with the provisioning and will be subject to data availability and Punchh capabilities.

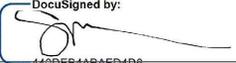
#### Volume

Data transfer volumes will vary depending on number of locations, number of transactions and guest count and the price listed in the Order Form will reflect

anticipated volume. This SOW will allow the transfer of up to one billion rows of data (excluding historical load) stored on the Punchh platform in the initial year from signature for new customers. Any overages in the initial year will serve as a baseline for renewal pricing in the subsequent year. Pricing will be set forth in the associated Order Form.

Punchh Inc. ("Punchh") and the customer named above ("Customer"), collectively referred to as the "Parties" have caused this SOW, executed by their duly authorized representatives, to be effective as of the later of the two signature dates below ("SOW Effective Date"). This SOW is entered into under the terms and conditions of and forms a part of the most recent Punchh Master Services Agreement and Order entered into by the Parties.

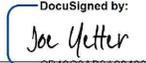
AGREED AND ACCEPTED BY

Customer  
By:  (signature)  
DocuSigned by:  
440DEB4ABAFD4D6...

Printed Name: Susie Moschkau

Title: VP of Digital Experience

Date: 2/16/2024

Punchh Inc.  
By:  (signature)  
DocuSigned by:  
CB49C9AB3A20492...

Printed Name: Joe Yetter

Title: General Manager - Punchh

Date: 2/17/2024



**Address:** 8383 Seneca Turnpike, New Hartford, NY 13413, United States

**☎:** (315) 738-0600

**ORDER**

<b>CUSTOMER INFORMATION</b>			
<i>Customer Name:</i>	American Dairy Queen Corp. Dairy Queen Canada, Inc.	<i>Customer Contact:</i>	
<i>Address:</i>	8331 Norman Center Dr. Suite #700 Bloomington, MN 55437		
<i>Phone:</i>		<i>Email:</i>	
<i>Billing contact (if different):</i>			
<b>ORDER DETAILS</b>			
<i>Order Term:</i>	36 months	<i>Offer Expiration Date:</i>	N/A
<i>Billing Terms:</i>	X Monthly <input type="checkbox"/> Annually <input type="checkbox"/> Quarterly, all net 30		

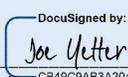
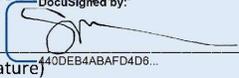
<b>FEES*</b>			
<b>PLATFORM FEES</b>			
<i>Products</i>	<i>List Price Per Location / Month</i>	<i>Number of Locations</i>	<i>Minimum System-Wide Recurring Fee / Month</i>
Loyalty – Treat & Food locations (US and Canada)	\$40.50	Minimum 2500	\$101,250
Loyalty – Treat only locations (US and Canada)	\$35.25	Minimum 475	\$16,743.75
Coupons & Promos (US non-integrated locations only)	\$14.30	No Minimum	[varies]
<b>Monthly Platform Fees</b>			<b>\$117,993.75</b>
<b>IMPLEMENTATION &amp; PROFESSIONAL FEES</b>			
	<i>Price Per Location/Month</i>	<i>Number of Locations</i>	<i>Recurring Fee/Month</i>
<b>Enterprise Package (US and Canada)</b>			
Managed Services – US (flat fee)	[not per Location]	N/A	\$10,800
Managed Services – Canada (flat fee)	[not per Location]	N/A	\$10,800
Data Pipeline ongoing- daily data pull	[not per Location]	N/A	\$2,280
<b>Total Monthly Professional Fees</b>			<b>\$23,880</b>
<b>OTHER FEES</b>			
			<i>One-time Fee</i>

Data Pipeline Set-Up	[\$7,000] waived
<b>Set-up Fees Total</b>	<b>\$0</b>

**\*Not Included:** Third Party Fees (See Attachment 1)

Punchh Inc. (“**Punchh**”) and the customer(s) named above (“**Customer**”), collectively referred to as the “**Parties**” have caused this Order, executed by their duly authorized representatives, to be effective as of the later of the two signature dates below (“**Order Effective Date**”). This Order, including the Order Conditions on the following pages, is entered into under the terms and conditions of, and forms a part of, that Master Services Agreement entered into by the Parties as of \_\_\_\_\_ (the “**Agreement**”). Except as specifically set forth in the Agreement, this Order may not be terminated for convenience.

**AGREED AND ACCEPTED BY**

<p><b>American Dairy Queen Corp.</b>  <small>DocuSigned by:</small>                    By: _____                  (signature) <small>440DEB4ABAFD4D8...</small></p> <p>Printed Name: <b>Susie Moschkau</b></p> <p>Title: <b>VP of Digital Experience</b></p> <p>Date: <b>2/16/2024</b></p>	<p><b>Punchh Inc.</b>  <small>DocuSigned by:</small>                    By: _____                  (signature) <small>CB49C9AB3A20492...</small></p> <p>Printed Name: <b>Joe Yetter</b></p> <p>Title: <b>General Manager - Punchh</b></p> <p>Date: <b>2/17/2024</b></p>
<p><b>Dairy Queen Canada, Inc.</b>  <small>DocuSigned by:</small>                    By: _____                  (signature) <small>440DEB4ABAFD4D8...</small></p> <p>Printed Name: <b>Susie Moschkau</b></p> <p>Title: <b>VP of Digital Experience</b></p> <p>Date: <b>2/16/2024</b></p>	