

## FRANCHISE DISCLOSURE DOCUMENT

American Dairy Queen Corporation  
8000 Tower, Suite 700  
8331 Norman Center Drive  
Bloomington, Minnesota 55437

A Delaware Corporation

(952) 830-0200

Email: [development@idq.com](mailto:development@idq.com)

[www.dq.com](http://www.dq.com)



**DQ® Treat Franchise.** American Dairy Queen Corporation (“ADQ”) offers single unit franchises for the operation of DQ® Treat stores at authorized locations. A DQ® Treat store is a retail quick service food establishment from which you will sell trademarked Dairy Queen® soft-serve, treat products, and beverage menu items, and a limited number of approved food items.

The total investment necessary to begin operation of a single DQ® Treat franchise is \$549,100 - \$1,604,700. This includes the \$25,200 that must be paid to the franchisor or affiliate.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar-days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

The terms of your contract will govern your franchise relationship. Don’t rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “[Consumer Guide to Buying a Franchise](#),” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: March 28, 2024, [as amended October 1, 2024](#)

## EXHIBITS

- A. List of State Administrators/Agents for Service of Process
- B. Operating Agreement with Undertaking and Guarantee, Ownership Addendum, Relocation Addendum, Renewal Addendum, and State Addenda - Illinois, Minnesota, North Dakota, Washington
- C. Conversion Addenda
- D. Franchise Application
- E. ~~Gift Card Program~~ [Third-Party Agreements Related to the EPOS System](#)
- F. Design Services Agreement
- G. Construction Consultation Services Agreement
- H. Sublease
- I. Tables of Contents for Manuals
- J. List of franchises
- K. List of franchisees whose franchise agreements were terminated or transferred
- L. Financial Statements (with Guarantee of Performance)
- M. Receipts

## **Item 1: The Franchisor, and any Parents, Predecessors, and Affiliates**

To simplify the language in this franchise disclosure document (“disclosure document”), “ADQ” means American Dairy Queen Corporation, the franchisor. “You” means the person who buys the franchise. If the franchisee is a corporation, partnership or other entity, “you” may also mean its owners. Certain provisions of the franchise agreement apply to your owners and will be noted in this disclosure document.

ADQ is a Delaware corporation incorporated in 1962. ADQ’s principal business address is 8000 Tower, Suite 700, 8331 Norman Center Drive, Bloomington, MN 55437. ADQ has not had any predecessors during the 10-year period immediately before the close of its most recent fiscal year. ADQ does business under its corporate name and the trade names “Dairy Queen” and “DQ.”

ADQ is a wholly-owned subsidiary of its parent corporation, International Dairy Queen, Inc. (“IDQ”), whose principal business address is the same as ADQ’s. IDQ is a wholly-owned subsidiary of its parent corporation, Berkshire Hathaway, Inc., whose principal business address is 1440 ~~Kiewit~~Blackstone Plaza, Omaha, Nebraska 68131.

ADQ’s affiliates that offer franchises in any line of business or provide products or services to franchisees are: Unified Supply Chain, Inc. (“USCI”); DQF, Inc. (“DQF”); DQGC, Inc. (“DQGC”) and federal Canadian corporation Dairy Queen Canada Inc. (“DQC”). In addition, the following ADQ affiliate owns and operates DQ Grill & Chill® restaurants: DQ Training Restaurants, LLC (“DQTR”). The principal business address for USCI, DQF, DQGC and DQTR is the same as ADQ. The principal business address for DQC is 1111 International Boulevard, Suite 601, Burlington, Ontario, Canada L7L 6W1.

ADQ’s agents for service of process are disclosed in Exhibit A of this disclosure document.

### **Description of the Franchises Being Offered**

ADQ offers franchises for the development of DQ® Treat stores. A DQ® Treat store is a quick service food establishment with indoor seating (and outdoor, in certain locations) from which you will sell the full line of approved DQ® soft-serve, treat, and beverage menu items, and a limited number of approved food items, and which will be operated under the DQ® and other marks that ADQ may designate (the “Trademarks”).

ADQ offers DQ® Treat franchises for captive venue (“Captive-venue”) locations, which are locations in shopping malls or centers (enclosed or open air, such as a lifestyle center) with a minimum of 500,000 square feet of gross leasable area, transportation terminals, hospitals, college and university facilities, parks and recreation areas, office buildings and other locations that cater to high volume walking traffic. Captive-venue locations will operate under the trade name DQ®/Orange Julius®. ADQ also offers DQ® Treat franchises for “Street” locations, which are defined as freestanding, streetscape or strip mall locations with less than 500,000 gross leasable area. Street locations will operate under the trade name DQ®/Dairy Queen®.

- (5) Included in the total for DQ Grill & Chill® are 496 DQ Grill & Chill® restaurants and 2 Dairy Queen®/Brazier® restaurants. As the systems, menus and products for these two concepts has evolved, the distinction between them has diminished.
- (6) Included in the total for DQ® Treat are 40 Dairy Queen®/Limited Brazier® stores, 101 DQ® Treat stores, and 49 Dairy Queen® Soft-Serve-Only stores. As the systems, menus and products for these concepts has evolved, the distinction between them has diminished.

## **Item 2: Business Experience**

The following are the directors, principal officers and other individuals who will have management responsibility relating to the sale or operation of franchises offered under this disclosure document, and the principal positions and employers for each during the last five years.

### **Director, Chief Executive Officer and President: Troy A. Bader**

Troy Bader has been a Director of ADQ since March 2008 and has been Chief Executive officer and President of ADQ since January 1, 2018. He served as ADQ's Chief Operating Officer – U.S. & Canada from January 2016 to December 2017 and Chief Operating Officer – U.S. from November 2011 to December 2015. ADQ and its affiliates have employed Mr. Bader in various other management positions since 2001, including as Chief Development and Legal Officer from January 2008 to October 2011.

### **Director, Executive Vice President, General Counsel, and Secretary: Shelly O'Callaghan**

Shelly O'Callaghan has been a Director, Executive Vice President, General Counsel, and Secretary of ADQ since November 2011. ADQ has employed Ms. O'Callaghan in various management positions since 2010, including as Vice President and Assistant General Counsel from January 2010 to October 2011.

### **Director, Chief Operating Officer, US and Canada: Daniel J. Kropp**

Daniel Kropp has been a Director, Chief Operating Officer, US and Canada since August 1, 2020. He served as Director, Chief Operating Officer, US between January 1, 2018 and July 31, 2020. From November 2011 through December 31, 2017, Mr. Kropp served as Executive Vice President - U.S. Operations. ADQ has employed Mr. Kropp in various other positions since 1996, including as Executive Vice President - Franchise Operations (East) from January 2010 to October 2011.

### **Executive Vice President, Marketing, U.S. and Canada: Maria Hokanson**

Maria Hokanson has been Executive Vice President, Marketing, U.S. and Canada since August 1, 2020. She served as Executive Vice President, Marketing, U.S. between August 1, 2017 and July 31, 2020. Between November 2004 and July 2017, Maria held several roles within the marketing department for ADQ, including Vice President of Product and Brand Marketing (2015-17), Sr. Director of Product & Brand Marketing (2013-2014), Director of Marketing (2010-2013), Sr Manager (2008-2013) and Manager (2004-2008).

### **Executive Vice President, Research & Development: Jane Friedrich**

Jane Friedrich has served as Executive Vice President, Research & Development since April 17, 2024. Prior to that she served in several roles at Cargill including, between March 2019 and April

[2024, Vice President, Cargill Animal Nutrition, R&D and Innovation Leader; Vice President, Global Core R&D Leader; and Assistant Vice President, Group R&D Leader Proteína Latinoamérica Group & Protein Asia Europe Group.](#)

**Executive Vice President of USCI: W. Scott Muyres**

Scott Muyres has been Executive Vice President of USCI since January 2015. USCI or IDQ have employed Mr. Muyres in various positions since 1998, including as Vice President – Purchasing of USCI from May 2010 to December 2014.

**Executive Vice President, Finance, and Accounting: Jeff Grund**

Jeff Grund has been Executive Vice President, Finance, and Accounting since March 2023. He served as Vice President, Corporate Controller for ADQ from September 2019 through February 2023. Prior to joining ADQ, Mr. Grund served as the Chief Financial Officer for Omni Workspace from October 2018 to September 2019; as an independent consultant from May 2018 to September 2018; and as North American Controller for Pentair from 2009 to 2018.

**Vice President, Franchise Development: Gregg Benvenuto**

Gregg Benvenuto has been Vice President, Franchise Development of ADQ since April 2024. From September 2021 to January 2023 he worked for The Coffee Bean & Tea Leaf as the Vice President of Development & Franchising. He worked for Dine Brands Global (IHOP) as Vice President U.S. Development from February 2017 to September 2021 and as Executive Director U.S. Franchising from May 2011 to February 2017.

**Executive Vice President, Information Technology: Kevin Baartman**

Kevin Baartman has been Executive Vice President, Information Technology since July 27, 2020. He served as Vice President - Information Technology between April 29, 2019 and July 26, 2020. From September 2001 to April 2019, he worked for Lund Food Holdings, Inc. as the Vice President, Information Services leading the Information Technology team and E-commerce Operations.

**Vice President of Concept Support Services: Jolynn Fielder**

Jolynn Fielder has been Vice President of Concept Support Services since May 2021. She served as Vice President of U.S. Franchise Operations, West from February 2017 through April 2021. ADQ has employed Ms. Fielder in various other positions since 1997, including as Area Vice President for the East Great Lakes area from July 2013 to February 2017 and as Director of PRIDE Check Consulting from February 2007 to June 2013.

**Vice President of U.S. Franchise Operations, West: Roger C. Brewin**

Roger Brewin has been Vice President of U.S. Franchise Operations, West since May 2021. He served as Vice President of U.S. Franchise Operations, East from July 2018 through April 2021 and Vice President of Concept Support Services from October 2015 through June 2018. ADQ has employed Mr. Brewin in various other positions since 2005 including as Area Vice President of Operations – Western Hemisphere from January 2012 to September 2015; Director of Concept Support Services from March 2007 to December 2011; and Business Consultant from June 2005 to February 2007.

### **Vice President of U.S. Franchise Operations, East: David Giacone**

David Giacone has been Vice President of U.S. Franchise Operations, East since May 2021. He served as Vice President of Concept Support Services from July 2018 through April 2021. Mr. Giacone was employed as Director of Operations for the Texas Region from February 2017 through June 2018 and Director of Development Operations from 2013 to 2017. From 2011 to 2013, Mr. Giacone was Director of Operations for Fourteen Foods, Inc., a multi-unit franchisee of ADQ. From 2000 to 2011, Mr. Giacone held various field operation positions with ADQ.

### **Director of National Franchise Sales and Development, U.S. and Canada: Jennifer Rude**

Jennifer Rude has been Director of National Franchise Sales and Development in the U.S. and Canada since February 2023. She served as a national franchise sales and development manager in the U.S. from November 2021 through January 2023, and as a franchise developer from July 16, 2014 through November 2021. ADQ has employed Ms. Rude in various other franchise development positions since 2006.

## **Item 3: Litigation**

### **Pending Cases**

Oakland Family Restaurants, Inc. and Lake Area Restaurants, Inc. v. American Dairy Queen Corporation (United States District Court, Eastern District of Michigan, Southern Division, #2:21-cv-12539-TGB-EAS, filed October 28, 2021). Plaintiffs, Dairy Queen® franchisees, ~~have~~ initiated this litigation seeking a declaratory judgment that ADQ must allow them to divide their respective territories and assign their existing 1965 agreement to multiple transferees, each for a separate portion of their territory, rather than requiring each transferee to sign ADQ's current form of franchise agreement. Additionally, Plaintiffs ~~are claiming~~ claimed breach of contract resulting in monetary damages, promissory estoppel, attorney's fees and costs. ~~ADQ has denied the claims and the case is pending on dispositive motions. On March 31, 2024, the court ruled in favor of ADQ and against Plaintiffs on all claims. Plaintiffs filed a Notice of Appeal on April 18, 2024.~~

LG2, LLC v. American Dairy Queen Corporation (United States District Court, District of Minnesota, #0:22-cv-01044, filed April 26, 2022). Plaintiff, a DQ franchisee, initiated this action seeking compensatory damages and a declaratory judgment that ADQ must allow Plaintiff to relocate its DQ business without being required to obtain ADQ's permission, sign ADQ's current form of franchise agreement, or change its menu. ADQ's system standards do not allow for relocation of restaurants with Plaintiff's non-system food menu. Plaintiff alleges breach of contract and the implied covenant of good faith and faith dealing. Additionally, Plaintiff is seeking injunctive relief, interest, attorney's fees and costs.

2-MNA, LLC vs. American Dairy Queen Corporation (State of Minnesota Fourth Judicial District Court, Hennepin County, #27-CV-24-12897, filed August 30, 2024). Plaintiff, a DQ franchisee, initiated this litigation seeking a temporary restraining order preventing ADQ from terminating Plaintiff's franchise agreement for the use and/or storage of rerun (defined as the use and/or storage of soft-serve mix that has been run through a soft serve machine) which is a public health and safety zero-tolerance violation of the franchise agreement. Plaintiff alleges breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of the Minnesota Franchise Act.

Additionally, Plaintiff is seeking temporary and permanent injunctive relief, compensatory damages, attorneys' fees, and costs. On September 12, 2024, ADQ filed an opposition to Plaintiff's Motion for Temporary Restraining Order and Temporary Injunction. The Court will hold an evidentiary hearing in October 2024. ADQ will continue to vigorously defend itself.

### **Concluded Cases**

Timothy A. and Amy Lefevre, Dairy Queen of Bainbridge, Jerry Chabrian, Lavern Engelman, Ken Fugett, Thomas and Karyl Cleary, Thomas E. Klein and MAR-KA, Inc. vs. American Dairy Queen Corporation and International Dairy Queen, Inc. (American Arbitration Association, No. 002-8DF-9JF, filed January 15, 2013). The plaintiffs initiated this arbitration claiming that ADQ improperly increased or “flexed” franchisees’ sales promotion fees to levels greater than what was permitted under the franchisees’ franchise agreements. The plaintiffs in the action sought class certification on behalf of themselves and other similarly-situated franchisees. Plaintiffs also included claims for breach of contract and the implied covenant of good faith and fair dealing, conversion, and violations of the Minnesota Franchise Act and sought declaratory and injunctive relief, and damages and legal costs. On or about September 10, 2014, the parties reached a settlement agreement under which ADQ agreed to reimburse any franchisees that were incorrectly flexed the amount of their “flexed” sales promotion fees for an agreed upon number of years. As part of the settlement, ADQ is entitled to recover the amounts it reimbursed the franchisees from future sales promotion fees paid by them. ADQ also agreed to allow the Dairy Queen Operators Association, at its own expense, to audit ADQ’s flexing decisions for the next 5 years.

Rodney Johnson and Food Ventures, Inc. vs. American Dairy Queen Corporation (American Arbitration Association, No. 01-16-0005-3571, filed December 9, 2016). Claimants, a DQ Grill & Chill franchisee and its owner, initiated this arbitration claiming that ADQ unlawfully encroached upon their franchise by franchising another DQ Grill & Chill restaurant in what they allege is too close a proximity to their restaurant. Claimants alleged that the encroachment caused a decline in their restaurant’s sales and profitability. They claimed that ADQ’s actions violated the Washington Franchise Investment Protection Act and the Washington Consumer Protection Act and alleged breach of contract, breach of the implied covenant of good faith and tortious interference with business expectancy. On August 5, 2017, the parties entered into a settlement agreement under which claimants are allowed to pay ADQ a reduced royalty fee and advertising fee for set periods and avoid the modernization requirement for the next transfer of the franchise since the restaurant recently had been remodeled to current image. ADQ also paid claimants \$25,000.

American Dairy Queen Corporation. vs. Universal Investment Corporation f/k/a Neos Corporation (United States District Court, Western District of Wisconsin, No: 16-cv-323, filed May 16, 2016). ADQ commenced this action against the defendant franchisee seeking a declaratory judgment that ADQ properly terminated defendant’s franchise agreement after defendant failed to comply with numerous contractual requirements and then failed to timely cure its defaults of the franchise agreement after notice from ADQ. ADQ also sought injunctive relief and damages under the Lanham Act for defendant’s infringement of ADQ’s trademarks. Defendant counterclaimed against ADQ alleging claims for violation of the Wisconsin Fair Dealership Law, tortious interference with contract, and several counts of intentional breach of contract. On August 25,

You must modernize your building, premises, equipment, signage and grounds to conform to ADQ's then-current standards for similarly situated new DQ® restaurants when you renew your franchise, on transfer of the franchise under certain circumstances, and every 10 years or any shorter period required by any applicable lease or sublease for the premises.

You may only use or purchase products approved by ADQ that meet ADQ's specifications. For purposes of this Item 8, "products" includes products, services, ingredients, supplies, signage, fixtures, furnishings, advertising and sales promotion materials, and equipment (including hardware and software for a computerized electronic point-of-sale ("EPOS") system or other computer systems, communications equipment, or electronic services providers). Approved products must meet ADQ's specifications, and are manufactured, provided or prepared by ADQ approved manufacturers, suppliers or distributors. ADQ periodically identifies approved products for use in DQ® locations, and has the right to periodically change the list of approved products, and to update and alter the specifications for approved products.

ADQ always has the right to designate a single approved manufacturer, supplier or distributor for the following products: (1) soft drinks; (2) third party branded products; (3) products relating to limited time offers and special promotions; (4) equipment, including EPOS equipment and all related point-of-sale and web based software and back-office hardware and software; (5) any product you purchase where ADQ does not receive a fee or payment from the manufacturer with respect to the sale of that product, other than payments from vendors for marketing; and (6) the Orange Julius® proprietary powders and frozen orange juice concentrate.

For other products not listed in (1) - (6) above, as long as there is not in place an agreement for a "unified purchasing program," a franchisee may make written request for approval of a specific product, service or piece of equipment of an additional, qualified manufacturer, supplier or alternate distributor, pursuant to ADQ's then current policies and procedures.

ADQ has received and offered proposals to create a unified purchasing program as a joint effort between ADQ and a cooperative association of DQ® restaurant and store operators, to benefit the entire DQ® system in the United States. For any period during which there is an agreement for a unified purchasing program: (1) ADQ will designate as approved the manufacturers, suppliers or distributors properly selected within the structure of that program; and (2) ADQ has the right to designate a single approved manufacturer, supplier and/or distributor of any approved products.

ADQ has currently designated ParTech, Inc. as the sole supplier of the required EPOS hardware and software that you must purchase for your restaurant. You will be required to sign an agreement with ParTech for the purchase of the equipment, software subscription services, installation and other services ("ParTech Participation Agreement") when you sign your franchise agreement. ADQ also has designated (a) Fiserv (formerly, FirstData Merchant Services) as the sole supplier of payment card processing and related services you must purchase, (b) Verifone as the sole supplier of certain payment card data encryption services that you must purchase; (c) ValueLink, LLC as the sole supplier of the gift cards and related services you must purchase, (d) Olo Inc. as the sole supplier of the DQ Mobile Ordering System; (e) Punchh Inc. as the sole supplier of the DQ Mobile Loyalty platform that you must purchase; ~~and~~ (f) Acumera as the sole supplier of managed firewall services you must purchase and (g) Cineplex Digital Media Inc. as the sole supplier of the digital menu boards you must purchase. Copies of the ParTech Participation

Agreement and the participation agreements that you must sign and/or agree to the terms with ValueLink, Olo, Punchh, Acumera and Cineplex are included in this disclosure document as Exhibit E. When you sign the franchise agreement, you must also sign the then-current participation agreements offered by the other suppliers listed above. ADQ has the right to designate suppliers in place of or in addition to these suppliers.

The franchise agreement requires you to purchase and maintain liability insurance at a minimum limit of liability that ADQ designates periodically. You also must purchase and maintain any other insurance required by law or by any agreement related to the franchised business. You must furnish copies of all insurance certificates to ADQ. ADQ has arranged with a third party insurer to make certain insurance, including liability insurance, available to qualifying franchisees.

ADQ may require you to periodically purchase restaurant training materials from ADQ. See Item 6 and 11 for more information.

ADQ estimates that the purchase or lease of equipment (including computer and EPOS system hardware and software), signage, fixtures, furnishings, products, ingredients, supplies, advertising and sales promotion materials (see Item 11 for information on advertising and sales promotion materials), and services which meet ADQ's specifications represent approximately 80% to 90% of the cost to establish the franchised business (excluding land) and 25% - 35% of the cost to operate the franchised business.

ADQ provides no material benefit (such as renewal or granting additional franchise rights) based on your purchase of particular products or services or use of particular suppliers, but your franchise agreement obligates you to use products and services approved by ADQ. ADQ considers a number of factors when determining whether you might qualify for an additional franchise, including compliance with your franchise agreement and support of ADQ's programs and policies.

### **Approval of Alternate Suppliers**

ADQ has the right to approve the manufacturer, supplier or distributor of any approved products you purchase. If there is no agreement in place for a unified purchasing program, you may request approval in writing of a specific product from an alternate manufacturer, supplier, or distributor, of products other than those listed in (1) – (6) in the "Required Purchases" section above in this Item 8. ADQ only approves alternate manufacturers for products if doing so will not create an inordinate number of manufacturers of the product, and the manufacturer meets ADQ's then-current requirements. ADQ will not make product specifications available to you, but upon request will provide summary specifications to you to provide to a manufacturer to determine if there is an interest in producing the product. ADQ will provide a manufacturer with detailed written specifications for the product, or, if detailed written specifications are not available, ADQ will provide the manufacturer with a parameter specification or information about a comparison product for purposes of obtaining approval of the alternate manufacturer. ADQ may require you and the manufacturer to sign a non-disclosure agreement before providing information on specifications.

ADQ uses the following criteria, which ADQ may change periodically, when evaluating an alternate product or manufacturer:

The EPOS system is an electronic cash and credit management system, which provides an interface for processing customer orders, collecting and managing information about the nature of sales transactions, and providing financial records of those transactions. The optional backoffice software provides certain reports, product inventory management, and time and attendance functionality for your employees. The EPOS system will collect and report to ADQ a variety of information including overall sales, sales levels by item, item menu pricing, product movement statistics, individual unit and category sales data (including by flavor and size), various financial information to prepare store reports, and other information.

Neither ADQ nor any affiliate is obligated to provide ongoing maintenance, repairs, upgrades or updates to you. You are required to purchase from ADQ's designated vendor and pay for ongoing hardware warranty services for your EPOS system for \$45 to \$116 a month depending on the warranty package you choose. In addition, as part of the ongoing software fees you will pay to some of the designated vendors, the vendors are obligated to provide certain maintenance and repair services for their software. You are required to make periodic upgrades and updates to the EPOS system, and there are no contractual limitations on the frequency and cost of this requirement.

In addition to the initial costs for the EPOS system, there are required monthly service fees for the ParBrink, ~~and Olo~~ and Punchh software for the EPOS system and mobile app ranging from \$350 to \$436 a month. Help desk and software support costs are included in this monthly fee. [Copies of the participation agreements that you must sign with these vendors are included in this disclosure document as Exhibit E.](#)

To enable ADQ's access to your EPOS system, you must install one DSL or cable/broadband internet connection, or other necessary communication access device, that is exclusively designated and permanently connected to your EPOS system. There are no contractual limitations on ADQ's right to access the information generated by your EPOS system, although ADQ may choose not to poll information from all restaurants and stores. You must have access at all times to the internet, and must maintain and regularly use an active email account or other form of electronic communication that ADQ designates and keep ADQ informed of your contact information.

You must purchase and maintain a monthly subscription service for credit card processing, which includes the TransArmor solution encryption, from ADQ's designated provider Fiserv (formerly, First Data) and you must sign the merchant processing application and agreement included in this disclosure document as Exhibit F. The cost for the credit card processing services is approximately 2% - 5% of the total amount of each sale made using an approved credit card and the cost for the TransArmor Solution is \$19.95 per month. You must also purchase and pay for Verifone payment card data encryption services at a cost of approximately \$10 per terminal per month and Verifone payment device warranty at a cost of approximately \$80 per device for a 3 year warranty. You must also purchase and maintain a managed firewall service from ADQ's designated provider Acumera. The cost for these services is approximately \$51 per month. Also, you must comply with the Payment Card Industry (PCI) Data Security Standards: <https://www.pcisecuritystandards.org/>. While you are not required to hire a third party contractor to ensure compliance with the PCI Data Security Standards (unless otherwise required to do so by

55317, telephone: 952-556-5511, email: [dqoa@dqoa-dqoc.com](mailto:dqoa@dqoa-dqoc.com), website: [www.dqoa-dqoc.com](http://www.dqoa-dqoc.com); Dairy Queen Operators' Cooperative, 1719 Lake Drive West, Chanhassen, MN 55317, Telephone: 952-556-5511, Email: [dqoa@dqoa-dqoc.com](mailto:dqoa@dqoa-dqoc.com), Website: [www.dqoa-dqoc.com](http://www.dqoa-dqoc.com); and Texas Dairy Queen Operators' Council, 2120 Forum Parkway, Bedford, TX 76021, Telephone: 817-283-2619, E-mail: [lromanus@dqtxexas.com](mailto:lromanus@dqtxexas.com), Website: [www.dqtxexas.com](http://www.dqtxexas.com).

### **Item 21: Financial Statements**

The following audited financial statements of IDQ are included in this disclosure document as Exhibit L: consolidated balance sheets of IDQ at December 31, 2023 and 2022 and related consolidated statements of income and comprehensive income, stockholder's equity and cash flows for each of the years ended December 31, 2023, 2022 and 2021, together with the independent auditor's report.

These financial statements are the consolidated financial statements of IDQ, the parent corporation of ADQ and its other subsidiaries. ADQ's separate financial statements are not included in this disclosure document. Should ADQ fail to fulfill its obligations to its franchisees, however, IDQ unconditionally guarantees to fulfill such obligations. A copy of IDQ's written Guarantee of Performance is included in Exhibit L.

### **Item 22: Contracts**

This disclosure document includes a sample of the following contracts:

- Exhibit B - Operating Agreement with Undertaking and Guarantee, Ownership Addendum, Relocation Addendum, Renewal Addendum, and State Specific Addenda - Illinois, Minnesota, North Dakota, Washington and Wisconsin
- Exhibit C - Conversion Addenda
- Exhibit E - ~~Gift Card Program~~ [Third-Party Agreements Related to EPOS System](#)
- Exhibit F - Design Services Agreement
- Exhibit G - Construction Consultation Services Agreement
- Exhibit H - Sublease

As a prospective franchisee, you should obtain such independent legal and financial advice concerning the franchise offering as you deem appropriate before making any commitment.

### **Item 23: Receipts**

Attached as Exhibit M to this disclosure document are two copies of a detachable acknowledgment of receipt.

**EXHIBIT E**

~~Gift Card Program~~ Third-Party Agreements Related to the EPOS System and Related  
Hardware, Software and Services



**PURCHASE OF EQUIPMENT, SUBSCRIPTION SOFTWARE SERVICES,  
INSTALLATION AND OTHER SERVICES**

**PARTICIPATION AGREEMENT**

By executing this PARTICIPATION AGREEMENT (“Participation Agreement”), effective \_\_\_\_\_, 201\_ (“Effective Date”), the undersigned Participating Location and ParTech, Inc. (“PAR”) hereby agrees to the following:

- 1. PAR Equipment Terms and Conditions of Sale, Subscription Software Services Terms and Conditions and PARPay Terms and Conditions.** Participating Location and PAR acknowledges and agrees to be bound by the Terms and Conditions of Sale attached to this Agreement as Schedule A (including the terms and conditions of the Installation Services set forth on Schedule A-1) and incorporated into and made a part of this Agreement (the “Equipment T&C of Sale”), the Subscription Software Services Terms and Conditions attached to this Agreement as Schedule B and incorporated into and made a part of this Agreement (the “SaaS T&C”), and the PARPay Service Terms and Conditions attached to this Agreement as Schedule C and incorporated into and made a part of this Agreement (“PARPay Service T&C”).
- 2. PAR Sales Order for Equipment, Subscription Software Services and Services.** Participating Location and PAR acknowledges and agrees to be bound by the final executed Sales Order for Equipment, Subscription Software Services and Services, which is incorporated into and made a part of this Agreement by reference (the “Sales Order”). A copy of a sample Sales Order is attached to this Agreement as Schedule D, along with Schedule D-1 Standard Dairy Queen Configurations for Participating Location’s reference.
- 3. Master Hardware and Software Agreement with Dairy Queen.** Participating Location acknowledges that: PAR and American Dairy Queen Corporation (“Dairy Queen”) have negotiated a Master Hardware and Software Agreement (the “Master Agreement”) to cover the acquisition and use of PAR Equipment, delivering of Services, and the license of Subscription Software Services by Dairy Queen and its franchisees, including Participating Location. Upon expiration of the Master Agreement or termination of the Master Agreement for convenience by Dairy Queen, at Participating Location’s option, this Participation Agreement will terminate (subject to payment of all remaining payments for Equipment and Installation Services purchased under any financing agreement, or payable under any Conversion Letter, if applicable) or continue until the expiration of the current term of this Participation Agreement, as applicable, subject to a Transition Period agreed to by PAR and Dairy Queen. Upon termination of the Master Agreement for any reason other than for convenience, this Participation Agreement will terminate, subject to a twelve (12) month Transition Period agreed to by PAR and Dairy Queen and payment of all remaining payments for Equipment and Installation Services under any financing agreement or payable under any Conversion Letter, if applicable.
- 4. Term.** The initial term of this Participation Agreement shall begin when executed by Participating Location and continue for a period of five (5) years from the date of Activation of

the Subscription Software Services at Participating Location, unless earlier terminated by either PAR or Participating Location pursuant to the terms set forth in this Participation Agreement (the “Initial Term”). For purposes of this Participation Agreement, Activation shall be the date that the Equipment purchased by Participating Location is online with the Subscription Software Services. Thereafter, this Participation Agreement shall automatically renew at the end of the Initial Term for additional successive periods of one (1) year (the “Renewal Term(s)”). The Initial Term and the Renewal Term(s) shall be referred to herein collectively as the “Term”. Participating Location may terminate this Participation Agreement for convenience, at any time, for any reason upon thirty (30) days’ notice to PAR (subject to payment of all remaining payments for Equipment and Installation Services purchased under any financing agreement or payable under any Conversion Letter, if applicable).

**5. Installation Commitment.** By executing this Participation Agreement, Participating Location understands and agrees to the following:

- a. PAR will provide Participating Location with notification when PAR will be performing Installation Services within Participating Location’s area (“Area Installation”) at least 8 weeks in advance of such timeframe. In order for Participating Location to be eligible to be installed during the Area Installation, Participating Location agrees to the following:
  - i. If not yet completed, Participating Location will complete the Customer Information Form within 4 days of receiving notification of the install time frame.
  - ii. Participating Location agrees to schedule a Site Survey at a time directed by PAR, which will take place at Participating Location approximately 6 weeks prior to the install timeframe.
  - iii. Participating Location agrees to return a signed Sales Order to PAR within 5 days of receipt of the Sales Order by Participating Location.
  - iv. Participating Location will ensure it has completed the Pre-Installation Checklist prior to its installation date (scheduled and coordinated by PAR) as provided upon completion of Participating Location’s Pre-Installation Site Survey. PAR will provide Participating Location with its specific installation date approximately 2 weeks prior to the performance of the installation services, and Participating Location agrees to install the PAR Solution on the specified date.
- b. if PAR is unable to perform the Installation Services due to Participating Location’s failure to meet any of its obligations above in Section 5.a., the cost for the Installation Services may be increased; and
- c. if Participating Location does not install the PAR Solution within nine (9) months of PAR’s notification to Participating Location of the Area Installation as set forth in Section 5.a., Participating Location will be in breach of this Participation Agreement.

Participating Location address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, Participating Location through its authorized representative has executed this Participation Agreement as of the date of signature below.

**Participating Location:** \_\_\_\_\_

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

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

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

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

**ParTech, Inc:** \_\_\_\_\_

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

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

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

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

## SCHEDULE A



### TERMS & CONDITIONS OF SALE

**1. Terms and Conditions.** These Terms and Conditions of Sale (“Terms”) shall apply to the sale by PAR of the Equipment, Installation Services, Advance Exchange Services and On-Site Remedial Maintenance Services to Participating Location. These Terms constitute the agreement between PAR and Participating Location with respect to Participating Location’s purchase and PAR’s sale of the Equipment, Installation Services, Advance Exchange Services and On-Site Remedial Maintenance Services, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings, or representations between PAR and Participating Location. No addition to or modification of these Terms shall be binding upon either party unless expressly agreed to by PAR and Participating Location in writing, and, if these Terms are deemed an offer, acceptance is expressly limited to these Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section 8(g) below.

**2. Sales Order/Purchase Orders.** Participating Location will purchase the Equipment, Installation Services, Advance Exchange Services and/or On-Site Remedial Maintenance Services from PAR by submitting PAR’s Sales Order (“Sales Order”) or a written purchase order (“Purchase Order”) to PAR. These Terms will apply to the Sales Order or any Purchase Order and supersedes any different or additional terms on Participating Location’s Purchase Order(s). Purchase Orders issued by Participating Location to PAR are solely for the purpose of identifying the Equipment, Installation Services, Advance Exchange Services and/or On-Site Remedial Maintenance Services to be purchased, requesting delivery dates and quantities, specifying the ship-to and bill-to addresses, and specifying the applicable price for the Equipment, Installation Services, Advance Exchange Services and/or On-Site Remedial Maintenance Services; all other terms on such Participating Location Purchase Order(s) shall have no force or effect. Sales Orders/Purchase Orders are subject to acceptance by PAR (which acceptance may be evidenced by PAR’s shipment of the Equipment or performance of the services).

**3. Purchase & Sale of Equipment.**

**(a) Sale of Equipment.** PAR will sell Participating Location the Equipment described in the Sales Order/Purchase order (the “Equipment”).

**(b) Equipment Purchase Price.** The purchase price for the Equipment shall be the purchase price set forth in the Sales Order/Purchase Order (the “Purchase Price”).

**(c) Shipping.** PAR shall ship the Equipment to the location identified on the Sales Order/Purchase Order. PAR shall have the option of selecting the carrier, the route and method of shipment.

**(d) Title and Risk of Loss.** The Equipment is delivered D.D.P. Participating Location (Participating Location’s applicable address) per Incoterms 2010. Title to and risk of loss of the Equipment shall pass to Participating Location at delivery, and delivery shall mean at the time the Equipment is unloaded by carrier at applicable Participating Location’s ship-to address and signed for by an authorized representative of Participating Location. Delivery will be made with instruction for inside delivery only with signature required by an authorized representative of Participating Location; provided however, if a Participating Location has limited hours of operation when an authorized representative may not be present to sign for the delivery, the Participating Location should inform PAR of such limited hours when placing its order with PAR. If there is no representative at the Participating Location to accept and sign for the delivery, then the carrier will take the Equipment back and attempt to make delivery two (2) more times to the Participating Location. After the third attempt, the Equipment will be returned to PAR by the carrier and the

Participating Location will be required to pay to PAR any additional shipping charge or other charges, including any rescheduling fees, prior to any further attempt at delivery of the Equipment.

(e) **Taxes and Other Fees.** Participating Location shall be responsible for the payment of all taxes, withholding, duties and other governmental assessments upon or with respect to the sale, purchase, use, receipt or shipment of the Equipment (other than taxes based solely on PAR's net income), including, without limitation, sales or use tax or similar taxes, provided that PAR will not invoice Participating Location for taxes to the extent Participating Location has provided PAR with evidence that Participating Location is exempt from paying and/or PAR is exempt from collecting such tax.

(f) **Payment and Invoice.** All amounts for the Purchase Price of the Equipment; cost(s) (if any) of Installation Services, Advance Exchange Services, and On-Site Remedial Maintenance Services (only the first month of such equipment support services, as applicable) set forth in the Sales Order/Purchase Order, shipment (as contemplated by subsection (c) above) and taxes and other fees (as contemplated by subsection (e) above) shall be either: (i) pre-paid by Participating Location; or (ii) subject to a 25% down payment, with the remaining balance payable by Participating Location within thirty (30) days from receipt of the invoice (satisfactory completion of a credit check is required for any Sales Order where the total amount is \$25,000 or more). Participating Location may pre-pay by check, credit card, wire transfer or ACH. If a Participating Location chooses to pay via credit card, PAR reserves the right to charge Participating Location an administrative charge as allowable under state law. No earlier than the date of installation of the Equipment, PAR will issue its invoice indicating pre-payment of all amounts. Any abort, reschedule or cancellation fees will be invoiced separately or refunded to Participating Location as applicable. Ongoing monthly payments for Advance Exchange Services and/or On-Site Remedial Maintenance Services must be made by ACH. All sums not paid when due will accrue interest daily at the lesser of an annual rate of 18% (1.5% per month), or the highest rate permissible by law on the unpaid balance until paid in full.

#### **4. Equipment and Equipment Installation Services.**

(a) **Embedded Operating System.** If the Equipment contains an embedded operating system from Microsoft the terms and conditions of the end user license agreement ("Microsoft EULA") is located at <https://support.partech.com/terminals.php> and is incorporated into and made a part of these Terms and shall be applicable to Participating Location, and Participating Location hereby accepts such Microsoft EULA and the terms thereof.

(b) **Installation Services.** PAR will provide the Installation Services set forth in the Sales Order/Purchase Order (the "Installation Services") as follows: the Equipment will be installed by PAR or by an installation subcontractor(s) certified by PAR at the location identified on the Sales Order/Purchase Order. Installation of the Equipment shall be deemed to be complete when PAR or its installation subcontractor notifies Participating Location that the Equipment has been properly installed and is ready for use. PAR will use commercially reasonable efforts to perform the Installation Services in accordance with the time schedule set forth in the Sales Order/Purchase Order.

(c) **Participating Location Responsibilities.** If the Sales Order/Purchase Order includes Installation Services, the Participating Location agrees that Participating Location is responsible for the preparation of the space in which the Equipment will be installed, including confirming the space satisfies PAR's specifications as to environment, power, HVAC, and other requirements as described in PAR's pre-installation guide (the "Pre-Installation Checklist"). Site preparation, in accordance with the Pre-Installation Checklist, must be completed prior to installation. If PAR or its certified installation subcontractor(s) arrives at the Participating Location at which the Equipment is to be installed and the Participating Location is not prepared for installation in accordance with the Pre-Installation Checklist, the Participating Location will be charged an abort fee; or if PAR fails to arrive at the Participating Location or does not complete the installation due to the fault of PAR, then Participating Location will receive a credit as set forth on the Sales Order. Additionally, Participating Location shall be responsible for the payment of all fees for electrical work that must be performed by a licensed electrician, required by law in connection with the Installation

Services, or any fees to comply with applicable government imposed environmental regulations including but not limited to elimination of certain chemical content and recycling fees.

#### **5. Advance Exchange Services.**

**(a) Advance Exchange Services.** PAR will provide the advance exchange services as to the Equipment (“AE Equipment”) identified and set forth in the Sales Order/Purchase Order (the “Advance Exchange Services”) as follows: PAR will provide 24/7 support, tracking and dispatch services and fully operational replacement Equipment for the AE Equipment, in accordance with this Section 5. The Advance Exchange Services include parts, labor, and materials to maintain, repair and replace the AE Equipment under normal use and service, and is provided for AE Equipment during the Advance Exchange Warranty Period (defined in Section 7(b)(i) below), except New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day and Christmas Day.

**(b) Request for Advance Exchange Services.** To request Advance Exchange Services and fully operational replacement Equipment, Participating Location must submit a request in accordance with Section 7(e) below and, in addition to the information required to be provided to PAR pursuant to Section 7(e), Participating Location must provide PAR with: (i) all configuration requirements for the replacement Equipment, (ii) the failed AE Equipment’s model and serial number, and (iii) the address that the replacement Equipment is to be shipped (“ship-to address”).

**(c) Shipment of Replacement Equipment.** PAR will ship replacement Equipment to Participating Location’s ship-to address, freight prepaid, with next day delivery within the United States for requests received prior to 4:00 p.m. (Eastern Time), Monday through Friday and 12:00 p.m. (Eastern Time), Saturday. Replacement Equipment will be shipped by a premium air freight carrier when PAR determines such method of shipment is appropriate. Participating Location must acknowledge receipt of replacement Equipment by signing the freight carrier air bill or similar shipping/delivery documentation accompanying the replacement Equipment.

**(d) Return of Defective AE Equipment.** PAR will provide Participating Location with a pre-paid shipping label and packaging instructions for the return of the defective AE Equipment to PAR. Participating Location will return the defective AE Equipment to PAR using the corresponding replacement Equipment packaging (PAR will ship replacement Equipment in reusable packaging). Participating Location should be prepared to return ship the defective AE Equipment within two (2) business days of Participating Location’s receipt of the replacement Equipment; however, the defective AE Equipment must be returned to PAR no later than 14 days of Participating Location’s receipt of the replacement Equipment. If Participating Location fails to return the defective AE Equipment within such 14-day period, PAR will notify Participating Location that it has not received the return of the defective AE Equipment, and if Participating Location does not return such defective AE Equipment within 14 days after such notification, Participating Location will be required to purchase the replacement Equipment and pay a 10% restocking fee; and, if Participating Location fails to pay the invoice for such replacement Equipment, then the Equipment Warranty on the replacement Equipment will be ineffective until Participating Location’s account is current. PAR reserves the right to charge Participating Location PAR’s then-current time-and-materials rates for Advance Exchange Services provided to Participating Location when PAR determines that the root cause of the defective AE Equipment was as a result of events or circumstances described in Section 7(b)(ii) below. If PAR determines that more than 50% of the AE Equipment returned by Participating Location in any consecutive six (6) month period was not defective, Participating Location will be invoiced diagnostic and handling fees for each subsequent defective AE Equipment returned where no defect is found.

#### **6. On-Site Remedial Maintenance Services (If Applicable)**

**(a) On-Site Remedial Maintenance Services.** PAR will provide on-site remedial maintenance services for the Equipment (“RMS Equipment”) identified and set forth in the Sales Order/Purchase Order (the “RMS Service” and/or “On-Site Maintenance Services”) as follows:

**(b) Principle Periods of Maintenance.** PAR will provide RMS Service availability during the Principal

Period of Maintenance (“PPM”) set forth below:

Call Priority	PPM (all times are Local Site Time)
P1	8 a.m. – 12 midnight - 7 Days/week
P2	8 a.m. - 12 midnight - Monday thru Saturday only, excluding PAR Holidays

- i. **Help Desk Support.** PAR will provide a toll-free number and the availability of support personnel 24 hours a day, 7 days a week, for Participating Location’s non-exclusive use to notify PAR of all service requests for diagnostic support.
- ii. **Remedial Maintenance.** PAR will provide RMS Service as required during the PPM, following notification by the Participating Location and PAR’s technical assistance confirmation that RMS Equipment is inoperative or malfunctioning. Maintenance will consist of the repair or replacement of parts deemed necessary by PAR to return RMS Equipment to good operating condition. PAR reserves the right to refuse to perform RMS Services when, in PAR’s judgment, conditions at the Participating Location present a hazard to the safety or health of PAR’s employees. Maintenance materials, tools, documentation, replaced parts, diagnostic and test equipment provided by PAR shall remain PAR’s property.
- iii. **Call Priorities and Response/Restoration Times.**
  - a. **Call Priority.** Requests for RMS Service will be prioritized as follows:

Call Priority	Definition
P1	<ul style="list-style-type: none"> <li>• 50% of front counter terminals are down.</li> <li>• 50% of drive-thru terminals are down.</li> <li>• 50% of KVS monitors are down.</li> </ul>
P2	Equipment failures outside of the P1 definition – store operations are not materially affected

- b. **Response Time.** Upon confirmation of a request for RMS Service, PAR will use commercially reasonable efforts to respond on-site at the Participating Location and restore the RMS Equipment within the response/restoration times as follows:

Call Priority	RMS Response	RMS Restoration	Service Level for Restoration
P1	4 Contract Hours	8 Contract Hours	90%
P2	Next Contract Day	Next Contract Day by 6:00pm local time	90%

“**Contract Hour**” is that or those hours falling within the applicable PPM, as defined above.

Additional time shall be permitted for response to P1 calls based upon the Customer’s location’s geographical distance from a PAR field service location, as follows:

Distance From PAR Field Service Location	P1 Added (Hours)
>0 ≤ 75 miles	0
>75 < 100 miles	0.5

>100 < 125 miles	1
>125 < 150 miles	1.5
>150 < 175 miles	2.0
>175 Miles	Out of Scope

**(c) Participating Location Responsibilities.** Participating Location agrees to:

- i. Designate a knowledgeable resource to accurately communicate and collaborate with the PAR Help Desk employee.
- ii. Be prepared to provide all information needed including error codes, process or procedures leading up to the error and any other information that may be relevant and might help to expedite the resolution. If the knowledgeable resource designated by Participating Location refuses to troubleshoot over the telephone prior to RMS Service dispatch, the Call Priority will be designated a P2 priority and Participating Location will be invoiced for the field service visit at then applicable time and material rates if the field service technician determines, upon arrival, that the problem could have been remedied through Help Desk Support Services.
- iii. Perform regularly scheduled system and database backups and ensure that they are available when required.
- iv. Provide PAR field service technicians with unencumbered and immediate access to RMS Equipment upon their arrival at the site.
- v. Provide PAR’s field service technician with operating supplies, consumables, and such other items as the Participating Location would use during normal operation.
- vi. Provide working space, heat, light, ventilation, phone access, electrical power and outlets for use by PAR’s field service technician.
- vii. Remain current on all payments due to PAR under this Participation Agreement.
- viii. Provide PAR with at least thirty (30) days prior written notice of any relocation of the RMS Equipment covered under RMS Service to a location other than the Participating Location.

**7. General Terms.**

**(a) New or Equivalent.** The Equipment, replacement Equipment provided through Advance Exchange Services, and any parts PAR furnishes may not be newly manufactured and may contain used components; the foregoing does not impact the Equipment Warranty. Equipment that has been replaced (or parts thereof) shall be PAR property.

**(b) Limited Warranty; Limitation of Liability.** (i) PAR warrants to Participating Location that (A) (1) for a period of five (5) years from date of Activation of the SSS in such location (the “Advance Exchange Warranty Period”) and (2) for a period of one (1) year from date of Activation of the SSS in such location for Equipment that is not AE Equipment (the “Depot Warranty Period”, and collectively with the Advance Exchange Warranty Period, the “Equipment Warranty Period”) the Equipment will be free of defects in materials and workmanship normal use and service (the “Equipment Warranty”), and (B) for a period of 30 days from the completion of installation (the “Installation Warranty Period”), the installation was performed in accordance with PAR’s then current installation procedures and will be free from defect in workmanship normal use and service (the “Installation Warranty”). EXCEPT AS EXPRESSLY SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, PAR DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES WHATSOEVER INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS, DAMAGE TO GOODWILL OR REPUTATION, BUSINESS INTERRUPTION, OTHER INDIRECT PECUNIARY LOSS OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE

OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY), CONTRIBUTION, INDEMNITY, SUBROGATION OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES.

(ii) Without limiting the foregoing, (A) the Equipment Warranty shall be rendered null and void or the Equipment will not be covered under AE Service or RMS Service and Participating Location will be subject to all labor, material and expenses, if: (1) the Equipment (including AE Equipment or RMS Equipment) is placed in an operating environment, which differs from the operating environment in which the Installation Services were performed and is not in compliance with the requirements specified by PAR or the original equipment manufacturer (unless such Installation Services were performed at a Participating Location that was not in compliance with the Pre-Installation Checklist and such services were authorized by PAR); (2) the Equipment (including the AE Equipment or RMS Equipment) or any component part is installed or repaired by a third party not certified or authorized by PAR and such installation or repair directly causes the Equipment failure; provided however, this will not apply to installations of AE Equipment by Participating Location or installations or repairs performed by a Participating Location or an authorized third party that is certified by PAR; (3) the Equipment (including the AE Equipment or RMS Equipment) was not used under normal operating conditions or in accordance with any labels, instructions or specifications of PAR or the original equipment manufacturer; or (4) use of any equipment in connection with the Equipment without PAR's consent that directly causes an Equipment failure; (5) any software loaded onto the Equipment without PAR's consent that directly causes an Equipment failure; (6) changes made by the Participating Location to the Equipment or the Equipment's software without PAR's consent that directly causes an Equipment failure; and (7) the Equipment (including the AE Equipment) is subject to dropping, striking (including harsh blows from either persons or objects), misuse, neglect, negligence, accident or vandalism, or deliberate act that directly cause an Equipment failure, including but not limited to: (w) issues as a result of Participating Location's store environment (e.g. foreign objects or substances on or leaking into the Equipment, steam) which can be resolved by relocating the Equipment without materially disrupting Participating Location's operations or environment; (x) improper handling or storage of the Equipment (including the AE Equipment) after acceptance of delivery and prior to installation; or (y) casualty, which shall include but not be limited to, fire, water, wind, flood, lightning, civil disturbance, war, terrorism or other catastrophes or similar causes; (B) PAR shall not be liable for any damage resulting from the failure of the Equipment (including AE Equipment) to comply with local laws or regulations; and (C) Participating Location will be responsible for the cost of a return visit for RMS Service if prompt and safe access to the RMS Equipment is not allowed or is materially hampered by the Participating Location upon the field service technician's arrival at the Participating Location.

**(c) EACH PARTY'S MAXIMUM ANNUAL LIABILITY TO THE OTHER PARTY.**

NEITHER PARTY'S AGGREGATE ANNUAL CALENDAR YEAR (JANUARY 1 TO DECEMBER 31) LIABILITY TO THE OTHER PARTY IN CONNECTION WITH THIS PARTICIPATION AGREEMENT INCLUSIVE OF ALL SCHEDULES HERETO (INCLUDING ALL DIRECT, CONSEQUENTIAL OR INDIRECT DAMAGES WHATSOEVER) WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY) OR OTHERWISE, SHALL EXCEED \$50,000. THE LIMITATIONS IN SECTION (b) ABOVE AND THIS SECTION (c) DO NOT APPLY TO EITHER PARTY'S LIABILITY FOR ITS (OR ITS RESPECTIVE AGENTS AND/OR SUBCONTRACTORS) GROSS NEGLIGENCE OR WILFULL MISCONDUCT, WILFUL FAILURE TO COMPLY WITH LAW, FRAUD, INTELLECTUAL PROPERTY INFRINGEMENT, BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO OR LOSS OF ANY TANGIBLE PROPERTY.

**(d) Exclusive Remedy.** Participating Location's exclusive remedies and PAR's sole liability with respect to the Equipment, including, without limitation, for breach of the limited warranty set forth in subsection (b) above, is expressly limited to repair or replacement of the Equipment. These exclusive remedies shall not be deemed to have failed in their essential purpose so long as PAR is willing to repair or replace the defective

Equipment. These exclusive remedies are not limited to defects in hardware, software and/or services, but “defects” includes defects/mistakes in firmware, preset data programmed by PAR, and defects in documentation. PARTICIPATING LOCATION ACKNOWLEDGES AND AGREES THAT THE REMEDIES HEREUNDER ARE PARTICIPATING LOCATION’S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY CLAIM BY PARTICIPATING LOCATION IN CONNECTION WITH OR RELATING TO THE EQUIPMENT PROVIDED HEREUNDER. THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO PAR’S LIABILITY FOR ITS (OR ITS RESPECTIVE AGENTS AND/OR SUBCONTRACTORS) GROSS NEGLIGENCE OR WILFULL MISCONDUCT, VIOLATION OF LAW, FRAUD, INTELLECTUAL PROPERTY INFRINGEMENT, BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO OR LOSS OF ANY TANGIBLE PROPERTY.

**(e) Warranty Claims.** To make a claim for a breach of Warranty (a “Warranty Claim”), Participating Location must notify PAR of a defect or breach during the applicable Warranty Period by calling 1-800-458-6898. No return of the Equipment (including AE Equipment) will be accepted without a Return Material Authorization (“RMA”) number provided by PAR’s Sales Administration Department (at 800-448-6505). If the defect or breach is not discovered and the Warranty Claim made within the applicable Warranty Period, the Warranty Claim shall be waived. The required notice of defect or breach must specify the facts constituting the defect or breach and the existence of the defect or breach must be verified by PAR. Participating Location agrees to return any allegedly defective Equipment to PAR, and PAR will, at its option and expense (including shipment via ground transportation), either replace the defective Equipment or repair the defective Equipment at PAR’s facility (depot repair). Participating Location agrees to be responsible for the proper packing of any Equipment returned to PAR for repairs and to assume the entire risk of loss or damages during return of any allegedly defective or defective Equipment to PAR directly caused by the improper packing of any Equipment returned to PAR. Any replacement Equipment supplied by PAR in connection with the Equipment Warranty is subject to the same warranty for the remaining original Equipment Warranty Period.

**(f) Force Majeure.** PAR and Participating Location shall not be liable for, and shall not be deemed to have breached these Terms in the event of, any failure or delay in performance when such failure or delay is caused by conditions beyond PAR or Participating Location’s reasonable control, including without limitation war, strike, labor dispute, fire, flood, earthquake, tornado, hurricane, government action or intervention, embargo or blockade, explosion, terrorist threats or acts, civil unrest, shortage of raw materials, breakdown, shortage or non-availability of transportation facilities or equipment or any other national or regional emergency or act of God. If PAR declares a force majeure event hereunder, the Sales Order/Purchase Order shall continue in effect for a period of 60 days from such declaration. After the expiration of such 60-day period, PAR may cancel any unperformed portion of the Sales Order/Purchase Order upon written notice to Participating Location without liability to Participating Location.

**(g) Default and Indemnification.** If Participating Location (i) fails to tender any payment when due in accordance with these Terms and the terms of the applicable invoice, (ii) fails or refuses to accept the Equipment properly tendered (iii) fails in any other respect to perform its obligations in accordance with these Terms, or (iv) becomes insolvent or, if any bankruptcy, insolvency, reorganization, or liquidation proceeding or other proceeding or relief under any bankruptcy law or any law for the relief of debtors is instituted by Participating Location for relief thereunder, or is instituted against Participating Location, the occurrence of any of the events specified in clauses (i) – (iv) above being deemed to constitute a material breach hereof, PAR may, in addition to any other remedies PAR may have at law or in equity, (y) with or without demand or notice to Participating Location declare the entire amount unpaid immediately due and payable and/or (z) enter upon the premises where the Equipment may be found and remove it and resell any of the Equipment, the Purchase Price of which has not been fully paid or which has been shipped and which Participating Location has wrongfully failed or refused to accept, and receive from Participating Location the difference between the Purchase Price with respect to any such Equipment and the price obtained on resale (if less), as well as any incidental costs and expenses incurred by PAR. All rights and remedies of PAR shall be cumulative and not exclusive of any other rights or remedies which PAR would otherwise

have at law or in equity. Participating Location shall cooperate with PAR in PAR's enforcement of its rights and remedies hereunder, including granting PAR access to Participating Location's facilities for the purpose of retaking possession of the Equipment, and shall indemnify PAR for all costs and expenses incurred by PAR in connection with the repossession, transport and/or disposal of the Equipment that is damaged or otherwise is unsalable as a direct or indirect result of Participating Location's default hereunder. In addition, PAR may terminate, without liability to Participating Location, any other agreement between Participating Location and PAR. PAR will defend and indemnify Participating Location, its affiliates and their respective officers, directors, employees, agents, successors, and assigns from and against any and all damages, losses, fines, penalties, costs, expenses, liabilities and other amounts (including reasonable attorney fees and expenses) ("Losses") suffered or otherwise incurred by any of them arising from or in connection with or otherwise relating to: (i) bodily injury (including death) or damage to or loss of any tangible property caused by any Equipment or the negligent acts or omissions of PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns; (ii) gross negligence or willful misconduct of PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns in providing the Equipment, Installation Services, Advance Exchange Services and/or On-Site Remedial Maintenance Services, (iii) an allegation that any Equipment, Installation Services, Advance Exchange Services and/or On-Site Remedial Maintenance Services infringes on any third party Intellectual Property Rights, and (iv) any violation of Law by PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns or any of their respective employees, officers, directors, agents or representatives in providing the Equipment, or in the performance of the Installation Services, Advance Exchange Services and/or On-Site Remedial Maintenance Services. With respect to subsection (iii) above, PAR may modify or replace the Equipment or Services so as to be non-infringing and materially equivalent, or PAR may procure a license for Participating Location's continued use of the Equipment or Services. If PAR is unable to modify or replace the Equipment or Services or procure a license, despite its commercially reasonable efforts, then PAR shall refund any applicable price or fees paid by Participating Location in the case of Equipment less a depreciated amount of the price or fees paid by Participating Location for said Equipment based on a five (5) year straight line depreciation or in the case of Services, refund any pro-rata amount of any pre-paid fees made by Participating Location for such Services. Notwithstanding the foregoing, PAR is not liable to defend, indemnify or hold harmless Participating Location for any Losses to the extent such Losses arise from: (x) the negligent or willful misconduct of the Participating Location or (y) with respect to subsection (iii) above, the modification of the Equipment or Services by Participating Location or a third party at Participating Location's request; the use of the Equipment or Services in conjunction with equipment or software not provided or approved by PAR; or use of the Equipment or Services inconsistent with its intended purpose or which is not in conformance with PAR's reasonable instructions. THE FOREGOING STATES THE ENTIRE LIABILITY OF PAR TO PARTICIPATING LOCATION CONCERNING WARRANTIES OF INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION OF INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING, BUT NOT LIMITED TO, PATENT, COPYRIGHT, TRADEMARK, TRADE DRESS AND TRADE SECRETS.

**(h) Release and Indemnity**

If a Participating Location: (i) chooses not to replace existing equipment and requests that PAR use existing equipment or components (e.g. mounting brackets, cabling, etc.); or (ii) install (except with respect to AE Equipment), relocate or repair Equipment itself or through a third party on its behalf, then Participating Location hereby waives, releases and forever discharges PAR, its parent, subsidiaries, affiliates and subcontractors, together with their officers, directors, employees, agents, predecessors, successors and assigns thereof, from any and all actions, claims, demands and causes of action (including reasonable attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, known or unknown, which the Participating Location may have had, has or may have against PAR, in whole or in part, for any claims for death, personal injury, damage to, or destruction or loss, consequential or otherwise,

to or of any and all property, real and personal (“Property”), including, without limitation, Property of any person or persons, to the extent such claim directly arises from Participating Location’s use of the existing equipment or components or its installation (except with respect to AE Equipment), relocation or repair Equipment itself or through a third party on its behalf. The Participating Location understands and agrees that it is waiving and releasing any and all claims that it may ever have against PAR relating to its use of the existing equipment or components, regardless of their nature or origin related to personal injury, death or property damage that may arise from the use of the existing equipment or components, and that the fact that such claim is not listed in this paragraph does not mean that such claims are not intended to be included in this release of liability.

Further, the Participating Location hereby agrees to indemnify, defend and hold harmless PAR, its parent, subsidiaries, affiliates and subcontractors, together with their respective officers, directors, employees, agents, predecessors, successors and assigns, from any and all liability, claims, demands, actions, damages, or other liabilities of whatsoever kind or nature, including reasonable attorney’s fees and expenses for any claims for death, personal injury, damage to, or destruction or loss, consequential or otherwise, to or of any and all Property, including, without limitation, Property of any person or persons, to the extent such personal injury, death and/or Property damage, destruction and/or loss arises, directly, in whole or in part, from Participating Location’s (i) use of the existing equipment or components; (ii) installation (except with respect to AE Equipment), relocation or repair of the Equipment itself or through a third party on its behalf; or (iii) negligence or the negligence of its employees or subcontractors.

**THIS RELEASE AND INDEMNITY SHALL NOT LIMIT PAR’S LIABILITY FOR CLAIMS IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER THAT ARE DIRECTLY CAUSED BY PAR’S (OR ITS RESPECTIVE AGENTS AND/OR SUBCONTRACTORS) GROSS NEGLIGENCE, WILFULL MISCONDUCT, VIOLATION OF LAW OR FRAUD .**

**(i) Intellectual Property Rights.** All Intellectual Property of either Participating Location or PAR, and all modifications thereto, shall at all times be and remain the sole and exclusive property of such party, and neither these Terms nor any Sales Order/Purchase Order submitted by Participating Location hereunder shall constitute a license to either Participating Location or PAR to use or display the Intellectual Property of the other party, except as expressly provided in Section 4(a) above.

**(j) Export Laws.** Participating Location acknowledges that the sale of the Equipment may be subject to export and import control laws, restrictions and regulations imposed by the United States or other jurisdictions. Participating Location shall comply with all applicable export laws, restrictions and regulations of the United States, the European Union or other foreign agency or authority, and Participating Location agrees not to import, export or re-export, or allow the import, export, or re-export of, any Equipment in violation of any such laws, restrictions, or regulations. Participating Location certifies to PAR that it is not on any U.S. government restricted parties list or similar list, and Participating Location shall be solely responsible for obtaining any and all necessary licenses in connection with the import, export or re-export of the Equipment.

## **8. Miscellaneous.**

**(a) Survival.** Notwithstanding the expiration or termination of these Terms, any rights, and obligations which by their nature extend beyond such expiration or termination shall survive such expiration or termination, including but not limited to the Warranty provisions, indemnification provisions, and the provisions of Sections 7(b), 7(c), 7(f), 7(g), 7(h), 8(b) and this subsection 8(a).

**(b) Applicable Law and Interpretation.** These Terms and the Sales Order/Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the State of Delaware, United States of America, without regard to its conflict of laws principles or rules. The English language version of these Terms and the Sales Order/Purchase Order shall govern and control any translation of these

Terms and the Sale Order into any other language. The parties specifically waive application of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The word “including” shall mean including without limitation.

**(c) Notice.** Notices shall be deemed given upon receipt. Any notices required to be given shall be in writing and in the case of notice to Participating Location, shall be sent to the billing address or fax number on the Sales Order/Purchase Order. In the case of notice to PAR, such notice shall be sent via postage prepaid certified mail or by overnight courier to: ParTech, Inc. (Attn: Legal Department); ParTech Technology Park; 8383 Seneca Turnpike; New Hartford, NY 13413-4991.

**(d) Severability.** If any court of competent jurisdiction holds that any provision of these Terms or of any Sales Order/Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of these Terms and/or of the Sales Order/Purchase Order will not be affected or impaired, and all remaining terms hereof or of the Sales Order/Purchase Order shall remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.

**(e) Prior Dealings.** No course of dealing or failure by Participating Location or PAR to strictly enforce any term, right or condition of these Terms or a Sales Order/Purchase Order will be construed as a waiver thereof. Any purported waiver by Participating Location or PAR will only be enforceable if in writing signed by such party and will not be deemed to waive any later breach of the same or any other term, right or condition. These Terms and the Sales Order/Purchase Order may not be amended except by written agreement of Participating Location and PAR expressly referring thereto.

**(f) Assignment.** Neither Participating Location or PAR may assign or transfer the Sales Order/Purchase Order and/or Terms or any interest therein to a third party, without prior written consent of the other party, which shall not be unreasonably withheld; provided, however, the Sales Order/Purchase Order and/or Terms may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.

**(g) Definitions.** All capitalized terms used in these Terms, to the extent not defined elsewhere in these Terms, shall have the following meanings: “**Participating Location**” means the location within the Dairy Queen or Orange Julius franchise systems which chooses to purchase Equipment and license and receive access to software through the PAR Solution by signing the Participation Agreement. “**IncoTerms**” means the International Commercial Terms. “**Intellectual Property Rights**” are all patents, patent applications, trademarks, inventions (whether or not patentable), know-how, designs, mask works, processes, methodologies, service marks, copyrights and copyrightable works, trade secrets, data, designs, manuals, training materials and documentation, formulas, knowledge of processes, methods, products and product specifications and all other intellectual property rights as these terms are understood under Law, including any modifications, adaptations, adjustments, enhancements, updates, improvements, alterations and corrections thereto and other derivative works thereof. “**Law**” means any federal, state, county or local law, ordinance, statute, rule, or regulation to the extent it applies to either party, its property, or its obligations in connection with this Participation Agreement. “**PAR**” means ParTech, Inc., a New York corporation. “**Warranty**” means collectively, the Equipment Warranty and the Installation Warranty. “**Warranty Period**” means, collectively the Advance Exchange Warranty Period, the Depot Repair Warranty Period and the Installation Warranty Period.

**(h) Subsequent Purchases.** These Terms shall apply to subsequent purchases of Equipment, Installation Services, Advance Exchange Services and/or On-Site Remedial Maintenance Services unless expressly superseded by a document of later date that has been expressly agreed to in writing by PAR and Participating Location.

**(i) Independent Contractors.** The parties are independent contractors with respect to each other.

## SCHEDULE A-1

### INSTALLATION SERVICES

Services to be provided by PAR to each Participating Location:

#### 1.1. **Pre-Installation Site Survey**

PAR will perform a Pre-Installation Site Survey at existing Participating Locations in advance of the POS solution installation. Refer to the Dairy Queen PAR Site Survey Form as set forth in the Installation Guide. Pre-Installation Site Survey services include the following:

- 1.1.1. Schedule the site survey with a representative of the Participating Location, at the Participating Location, to occur at least 6 weeks before the POS installation date.
- 1.1.2. Visually inspect and certify existing Participating Location network cabling as necessary.
- 1.1.3. Capture images of existing equipment placement.
- 1.1.4. Collect store measurements pertinent to future equipment that will be installed during POS installation.
- 1.1.5. Validate required quantity and placement of permanent electrical outlets available for the PAR POS system installation.
- 1.1.6. Record the kitchen display station each menu item group will route to as specified in the Dairy Queen PAR Site Survey Form as set forth in the Installation Guide.
  - 1.1.6.1. Review the survey results and Dairy Queen Site Readiness Checklist as set forth in the Installation Guide with the Participating Location at the completion of the survey process.
- 1.1.7. Within approximately three business days of completing the Pre-Installation Site Survey, provide:
  - 1.1.7.1. an electronic copy of the completed Dairy Queen PAR Site Survey Form to the Participating Location, including a list of any necessary work or modifications that are outside of the scope of PAR's Installation Services, and dates by which such work or modifications must be completed to meet the anticipated installation date; and
  - 1.1.7.2. a detailed estimate of the anticipated charges for any and all Installation Services PAR anticipates performing, customized for that Participating Location, and clearly defining which of those services the Participating Location may perform themselves or contract to another provider.
- 1.1.8. Perform surveys on Sundays, Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays as PAR technician availability dictates.

#### 1.2. **POS Go-live Support Services**

PAR will provide technical and operational support for the PAR Solution via a dedicated support phone line, from the time the Equipment arrives onsite through the first forty-eight (48) hours following system installation "Go-Live". POS Go-live Support Services to include the following:

- 1.2.1. Provide guidance on accessing information for Go-Live.
- 1.2.2. Answer questions related to pre-Go-Live responsibilities including where to obtain login credentials, completing Participating Location readiness requirements, and setting prices.
- 1.2.3. Answer questions related to POS operation, technical POS issues, and POS configuration.
- 1.2.4. Refer Participating Location to other support entities for technical issues with Brink POS integrations.
- 1.2.5. Direct Participating Location to available Brink POS training material as necessary.
- 1.2.6. Answer questions related to setting up the Participating Location's primary register identified as "training terminal" before POS installation.

- 1.2.7. Contact Participating Location approximately 7 days prior to Go-Live to review Participating Location readiness requirements.
- 1.2.8. Contact the Participating Location approximately 3 business days prior to the installation date to review the installation scope and confirm Participating Location's readiness requirements have been completed.
- 1.2.9. Contact Participating Location during Go-Live and review Dairy Queen Day of Go-Live Checklist as set forth in the Installation Guide.

### 1.3. POS Training Services

PAR will provide POS training documentation and materials to each Participating Location prior to installation. POS Training Services to include the following:

- 1.3.1. Provide a Dairy Queen branded Brink POS user guide including reference materials such as how to perform cashier functions, manager functions, set menu prices and taxes, run Brink reports, and general system use. Refer to the Brink POS Manager/Owner Training Guide as set forth in the Installation Guide.

### 1.4. POS System Staging and Delivery Services

PAR will load the PAR terminals and kitchen controllers with the Licensed Software and approved Microsoft Windows Operating System. PAR will configure the system in accordance with the Dairy Queen System Configuration Procedure as set forth in the Installation Guide. POS System Staging Services to include the following:

- 1.4.1. PAR will configure kitchen video controllers, POS terminals, and specified peripherals as defined in the Dairy Queen System Configuration Procedure to minimize installation efforts and promote consistency across installations.
- 1.4.2. Maintain POS image for PAR terminals and kitchen controllers including operating system, device drivers and settings, and Licensed Software "DQ POS Image".
- 1.4.3. Activate the Participating Location with store specific location ID.
- 1.4.4. Ship the Equipment set forth on Participating Location Sales Order to the destination provided, to arrive approximately seven (7) calendar days prior to the scheduled installation date for existing locations or approximately three (3) calendar days prior to the scheduled installation date for new construction or remodeled locations. Shipping costs will be invoiced to the Participating Location. Any expedited shipping requests must be pre-approved by the Participating Location and PAR and Participating Location will be required to pay to PAR any additional shipping charges.
- 1.4.5. Deliver Equipment with instruction for inside delivery only with signature required by an authorized representative of Participating Location upon delivery; provided however, if a Participating Location has limited hours of operation when an authorized representative may not be present to sign for the delivery, the Participating Location should inform PAR of such limited hours when placing its order with PAR. If there is no representative at the Participating Location to accept and sign for the delivery, then the carrier will take the Equipment back and attempt to make delivery two (2) more times to the Participating Location. After the third attempt, the Equipment will be returned to PAR by the carrier and the Participating Location will be required to pay to PAR any additional shipping charges or other charges, including any Rescheduling Fees, prior to any further attempt at delivery of the Equipment.

### 1.5. POS Installation Services

PAR will provide Installation Services to the Participating Location for all Equipment set forth on Participating Location Sales Order and included in the PAR Solution. Refer to the Installation Guide for in scope Equipment. PAR Installation Services will include the following after

Participating Location's execution of the Participation Agreement and Sales Order, and in accordance with the market installation schedule as determined by PAR and Dairy Queen, for a Participating Location:

- 1.5.1. PAR will make available or provide via email a welcome packet including contact information and site readiness information to Participating Location designated point of contact. Refer to the Dairy Queen PAR Brink POS Welcome Information as set forth in the Installation Guide.
- 1.5.2. Provide a date and time to perform the Installation Services at the Participating Location after execution of the Participation Agreement and Sales Order, and in accordance with the Area Installation schedule as determined by PAR and Dairy Queen. If the Participating Location's designated point of contact cannot be reached within three (3) business days, Dairy Queen will be notified to assist with the scheduling communications.
- 1.5.3. Confirm Participating Location's readiness to install the PAR Solution approximately three (3) business days prior to the scheduled POS installation as defined in the Site Readiness Checklist and identified in the Pre-Installation Site Survey. Refer to Dairy Queen Site-Readiness Checklist and the Dairy Queen PAR Site Survey Form the Installation Guide.
- 1.5.4. Upon arrival at the Dairy Queen Participating Location on the scheduled installation date, PAR will review the Pre-Installation Site Survey as specified in the Dairy Queen Site-Readiness Checklist as set forth in the Installation Guide, prior to the removal of any existing equipment.
- 1.5.5. Remove existing equipment to be replaced, including: point of sale terminals, cash drawers, kitchen display equipment, receipt printers, kitchen printers and other system peripherals.
- 1.5.6. Install the Equipment set forth on the Participating Location Sales Order and connect all cables required in accordance with the PAR Dairy Queen Installation Manual, found in the Installation Guide.
- 1.5.7. PAR will test system with Participating Location designated point of contact and record any open issues in the post-installation reporting.
- 1.5.8. PAR will make post-installation reporting available to Dairy Queen including photographic images captured during the installation and the Dairy Queen Manager Post Installation Checklist as set forth in the Installation Guide.

#### **1.6. Network Cabling Services**

PAR will provide network cabling services set forth on Participating Location Sales Order. Network Cabling Services include the following:

- 1.6.1. Obtain the appropriate licenses and permits required to perform work at the Participating Location. Low voltage permit and/or jurisdictional licensing fees as well as the cost to obtain these will be invoiced to the Participating Location. Requests for network cabling must be made at least 45 calendar days prior to the scheduled installation date.
- 1.6.2. Remove existing cabling where required to complete the installation of new cabling.
- 1.6.3. Install cabling required for installation of the Equipment as set forth on the sales order.
- 1.6.4. Certify all cables installed and provide certifications in post-installation reporting.
- 1.6.5. If a Participating Location installs network cabling, a Customer Acknowledgement of Low Voltage Cabling Self-Install as set forth in the Installation Guide form must be completed and submitted to PAR.

## **2.0 Participating Location Responsibilities**

- 2.1 Execute Participation Agreement and Sales Order at least 5 weeks in advance of Installation Services in accordance with the market installation schedule as determined by PAR and Dairy Queen
- 2.2 Provide a designated representative with decision making capability and appropriate access to facilities to be present at Participating Location for duration of all onsite services including but not limited to Pre-Installation Site Survey and POS Installation Services.
- 2.3 Provide a designated representative with decision making capability to work with PAR throughout the duration of the Installation Services. If the Participating Location's designated point of contact cannot be reached within three (3) business days, Dairy Queen will be notified to assist with the communications and specified installation timelines are subject to change.
- 2.4 Provide OSHA compliant, 6-foot ladder, of appropriate size for ceiling access where required, for use by the PAR installer during the installation at the Participating Location.
- 2.5 Accept complete order shipments and storage in a location to prevent damage prior to Installation Services.
- 2.6 Provide PAR with reasonable access to the Participating Location and systems as needed to complete the Installation Services, including, normal and customary utilities and office support services suitable for the performance of the Installation Services.
- 2.7 Ensure required quantity of functioning power outlets are available for system as specified in site readiness material or the site survey. Refer to Dairy Queen PAR Site Survey Form as set forth in the Installation Guide.
- 2.8 Ensure internet service is active and functioning for the POS at the at the time of the installation.
- 2.9 Ensure that the Participating Location's firewall is configured according to the Firewall White List for Brink POS Software and in accordance with the IP scheme in the Dairy Queen System Configuration Procedure, both as set forth in the Installation Guide.
- 2.10 Supply Dairy Queen approved payment devices for installation (unless such devices are included in the sales order for Participating Location). These devices must be injected and properly configured to integrate with Brink Software prior to the Installation Services.
- 2.11 Notify PAR of any installation cancellations or reschedules. Installations cancelled or rescheduled are subject to fees. Refer to Participating Location's Sales Order and the Installation and Abort Scenarios as set forth in the Installation Guide. To cancel services, contact the PAR Installation Planner via telephone or email. PAR business hours for rescheduling are 7:30 AM to 5:00 PM ET.
- 2.12 Pay the cost of all extra materials, tools, labor and other costs or expenses, if any, for PAR to revisit a Participating Location to correct a previous installation if such correction is a result of PAR following Dairy Queen's or Participating Location's installation instructions.
- 2.13 Provide written customer authorization of acceptance of work following onsite service delivery to include any open issues or concerns from service provided.
- 2.14 Ensure all site readiness requirements as defined in the Site Readiness Checklist and identified in the Pre-Installation Site Survey are complete and the Participating Location is ready for Installation Services at the time of the scheduled installation date.
- 2.15 If the Site Survey determines the Participating Location will require kitchen display ceiling mounts, the Participating Location will be responsible for installing any additional support structures required to mount the kitchen displays.

### **3.0 Assumptions**

- 3.1 PAR will not drill holes in counter tops.
- 3.2 PAR will not provide carpentry work.

- 3.3 Upon completion of the Pre-installation Site Survey, Participating location will be invoiced for the Site Survey Services. Participating Location agrees to pay for Pre-installation Site Survey in full even if the Participating Location does not purchase the PAR Brink POS System and POS Installation Services.
- 3.4 Only PAR-provided equipment (including their related cables, subcomponents, etc.,) will be installed.

## SCHEDULE B



### SUBSCRIPTION SOFTWARE SERVICES TERMS AND CONDITIONS

#### 1. RESTAURANT POINT OF SALE SOFTWARE SERVICE.

- a. These Subscription Software Services (“**SSS**”) Terms and Conditions (“**SSS Terms**”) provides Participating Location with a license and right to use and access PAR’s proprietary web-based restaurant point of sale software service.
- b. PAR will provide the Subscription Software Services or SSS through a hosted server environment and through a licensed desktop software client (“**Licensed Software**”) that will act as the interface to the SSS. PAR hereby grants Participating Location a personal, non-transferable, and non-exclusive right and limited license to use the Licensed Software and all digital and printed documentation, training material, and other documentation and material provided by PAR to Participating Location (“**Documentation**”) in connection with the SSS solely for the purpose of managing Participating Location’s internal business.

#### 2. USE OF SSS.

- a. **Participating Location Support.** PAR shall provide Participating Location with Level 1 and Level 2 Help Desk Support Services for the SSS as set forth in Exhibit A to this Schedule B.
- b. **Employee and Contractor Access and Use.** Participating Location may allow its employees and contractors to access the SSS in compliance with the terms of these SSS Terms, which access must be for the sole benefit of Participating Location. Participating Location is responsible for its employees and contractors’ compliance with these SSS Terms.
- c. **Participating Location Responsibilities.** Participating Location: (i) is solely responsible for the accuracy and completeness of the Participating Location Data (defined below) and all activity in its account in the SSS; (ii) must use commercially reasonable efforts to prevent unauthorized access to its account in the SSS and notify PAR promptly of any such unauthorized access; and (iii) may use the SSS only in accordance with the Documentation and applicable Law.
- d. **Restrictions:** Participating Location may not: (i) directly or indirectly access or use the Licensed Software or the SSS to process data or information for any person or entity other than Participating Location, and neither Participating Location nor its authorized users shall use or permit the SSS to be used as a service bureau, (ii) sell, resell, sublicense, loan, rent or lease the Licensed Software or the SSS, (iii) use the SSS to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights, (iv) interfere with or disrupt the integrity or performance of the SSS, or (v) attempt to gain unauthorized access to the SSS or their related systems or networks.

#### 3. SERVICE LEVEL AGREEMENT, DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.

- a. **SSS Availability Warranty.** PAR warrants to Participating Location, (i) PAR will maintain the online availability of the SSS for a minimum of availability in any given month as provided in the Transaction Availability Warranty and the General Availability Warranty charts below (“**Availability Warranties**”), and (ii) that the functionality or features of the SSS may change but will not materially decrease during the Term.

For purposes of Section 3 a. (i) above, the SSS shall be considered unavailable and covered by the Availability Warranty set forth in the charts below when Participating Location is unable to:

(iii) process a point of sale transaction (e.g. open and close an order in-store), excluding any outages and downtime set forth in Section 4) b) below (“**Transaction Availability Warranty**”); or

(v) use the administrative portal to make and publish menu changes; or (iv) communicate with the Service through an application programming interface (“API”), excluding any outages and downtime set forth in Section b) below (“**General Availability Warranty**”).

- b. **Outages and Downtime.** The following outages and downtime shall be excluded from the Availability Warranty: (i) requested by Participating Location; (ii) caused by Participating Location or Participating Location’s contractors and agents; (iii) scheduled maintenance and upgrade purposes; (iv) caused by Participating Location’s computer system, web browser, hardware or software applications, including third party integrations, not provided by PAR; (v) power failures; (vi) service failures caused by a service provider other than PAR or PAR’s agents; (vii) damage to telecommunication facilities outside of PAR’s control, other than acts taken by or caused by PAR personnel; (viii) outages and downtime that arises as a result of Participating Location’s failure to upgrade or refresh required hardware and Equipment where such non-compliance was communicated by PAR to Participating Location with adequate advance notice and where compliance is consistent with good business practices; and (ix) outages and downtime that arise from excessive load (more than 20 requests per second on the API) by Participating Location or agents acting on Participating Location’s behalf or at Participating Location’s direction. PAR will provide Participating Location with one (1) week notice of any scheduled maintenance or upgrades, which shall occur after business hours local time. PAR shall only use occurrences exceeding 60 seconds to calculate downtime.
- c. **Service Level Credits.** PAR shall issue a credit equal to the pro-rated portion of the monthly SSS Service Fees for the downtime period attributable to PAR below the applicable threshold per month in accordance with the Availability Warranties as set forth in the charts below (“Availability Warranty Credit”):

<b>Transaction Availability</b>	<b>Service Level Credit/Refund</b>
Above 99.0% to 99.9%	10% of location’s monthly SSS Service Fee
Above 98.0% to 99.0%	20% of location’s monthly SSS Service Fee
Above 95.0% to 98.0%	30% of location’s monthly SSS Service Fee
Above 90.0% to 95.0%	60% of location’s monthly SSS Service Fee
90% or less	100% of location’s monthly SSS Service Fee

<b>General Availability</b>	<b>Service Level Credit/Refund</b>
Above 98 to 99.5%	10% of location’s monthly SSS Service Fee
Above 95 to 98%	25% of location’s monthly SSS Service Fee
Above 90% to 94.99%	50% of location’s monthly SSS Service Fee
90% or less	100% of location’s monthly SSS Service Fee

All Availability Warranties set forth in this Section will be measured on a monthly basis over a twenty-four (24) hour period for each day of the applicable month in the aggregate for the SSS provided to Participating Location.

- d. **Service Level Reporting and Service Level Credit Application.** PAR will provide monthly reporting to Dairy Queen of PAR's performance with respect to the Availability Warranties listed herein. Any Availability Warranty failures that result in Service Level Credits will be aggregated and cumulatively applied to the Participating Location(s) following month's SSS Service Fees.
- e. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE WARRANTIES SET FORTH ABOVE IN THIS SECTION 3, PAR MAKES NO WARRANTY AS TO THE SSS, THE LICENSED SOFTWARE OR THE RESULTS TO BE OBTAINED FROM PARTICIPATING LOCATION'S USE OF THE SSS OR THE LICENSED SOFTWARE. THE SSS AND THE USE OF THE LICENSED SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PARTICIPATING LOCATION ASSUMES FULL RESPONSIBILITY AND RISK FOR USE OF THE SSS, THE LICENSED SOFTWARE AND THE INTERNET. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PAR DOES NOT WARRANT THAT THE SSS WILL BE UNINTERRUPTED, ERROR-FREE OR THAT UNAUTHORIZED ACCESS TO THE SSS BY THIRD PARTIES ("HACKING") CAN BE PREVENTED. THE EXPRESS WARRANTIES SPECIFIED IN THESE SSS TERMS OR FURNISHED WITH THE SSS BY PAR ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PAR DISCLAIMS AND EXCLUDES ANY AND ALL OTHER WARRANTIES.
- f. **NOTIFICATION OF OUTAGE BY PARTICIPATING LOCATION.** PARTICIPATING LOCATION MUST NOTIFY PAR IF THE PARTICIPATING LOCATION IS UNABLE TO TRANSACT AN ORDER OR USE THE SSS BY CONTACTING THE PAR HELP DESK. IF PAR HAS NO RECORD OF THE PARTICIPATING LOCATION CONTACTING THE PAR HELP DESK REGARDING SUCH OUTAGE WITHIN 60 DAYS OF THE END OF THE MONTH IN WHICH THE PARTICIPATING LOCATION EXPERIENCED THE OUTAGE, THEN PARTICIPATING LOCATION WILL BE DEEMED TO HAVE WAIVED ANY CREDITS THAT MAY HAVE BEEN AVAILABLE FOR SUCH OUTAGE. NOTWITHSTANDING THE FOREGOING IF PAR BECOMES AWARE OF A SYSTEM WIDE OUTAGE, PAR AND/OR DAIRY QUEEN MAY NOTIFY PARTICIPATING LOCATIONS OF SUCH OUTAGE AND IN SUCH INSTANCE PARTICIPATING LOCATION WILL NOT BE REQUIRED TO NOTIFY PAR IN ORDER TO OBTAIN A CREDIT.
- g. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING WITHOUT LIMITATION TORT, CONTRACT, OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS, LOSS OF SERVICE, BUSINESS INTERRUPTION, LOSS OF OR INCORRECT BUSINESS INFORMATION/DATA AND THE

LIKE) SUFFERED OR INCURRED BY EITHER PARTY EVEN IF SUCH PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING, EITHER PARTY IS FOUND LIABLE TO THE OTHER PARTY FOR DAMAGES FROM ANY CAUSE WHATSOEVER, SUCH PARTY'S AGGREGATE ANNUAL CALENDAR YEAR (JANUARY 1 TO DECEMBER 31) LIABILITY TO THE OTHER PARTY IN CONNECTION WITH THIS PARTICIPATION AGREEMENT INCLUSIVE OF ALL SCHEDULES HERETO WILL BE LIMITED TO \$50,000 AND WITH RESPECT TO PAR'S LIABILITY TO PARTICIPATING LOCATION, LESS ANY AMOUNTS RECEIVED BY PARTICIPATING LOCATION AS SERVICE CREDITS FOR PAR'S FAILURE TO MEET ANY AVAILABILITY WARRANTY AS SET FORTH HEREIN. THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO EITHER PARTY'S LIABILITY FOR ITS (OR ITS RESPECTIVE AGENTS AND/OR SUBCONTRACTORS) GROSS NEGLIGENCE OR WILFULL MISCONDUCT, WILFUL FAILURE TO COMPLY WITH LAW, FRAUD, INTELLECTUAL PROPERTY INFRINGEMENT, BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO OR LOSS OF ANY TANGIBLE PROPERTY.

#### 4. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information means all confidential information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). PAR's Confidential Information includes without limitation PAR's pricing, the SSS, the Licensed Software, Documentation, and any part of the foregoing. Notwithstanding the foregoing, Recipient may disclose PAR's pricing to other franchisees within the Dairy Queen system.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information, but in no event less than reasonable care, or the level of care required by Law, not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these SSS Terms. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with these SSS Terms, and in the case of PAR, who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of these SSS Terms or who are directed to comply with the provisions of these SSS Terms.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information.
- d. **Disclosure Required by Law.** The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order. Recipient will only disclose the limited information required to be disclosed by law or the court order.

#### 5. PROPRIETARY RIGHTS.

- a. **Reservation of Rights by PAR.** The software, workflow processes, user interface, designs, know-how, Licensed Software and Documentation, and other technologies provided by PAR as part of the SSS are the proprietary property of PAR and its licensors, and all right, title and

interest in and to such items, including all associated intellectual property rights, remain only with PAR. PAR reserves all rights therein unless expressly granted in these SSS Terms. PAR shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the SSS any suggestions, enhancement requests, recommendations or other feedback provided by Participating Location or its users relating to the operation of the SSS.

- b. **Participating Location Restrictions.** Participating Location *may not*:
  - i. Use the SSS or the Licensed Software and Documentation beyond its internal operations;
  - ii. Reverse engineer the SSS or the Licensed Documentation;
  - iii. Remove or modify any proprietary marking or restrictive legends in the SSS or Licensed Software and Documentation; or
  - iv. Access the SSS or use the Licensed Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c. **Participating Location Owned Data.** All data uploaded by Participating Location remains the sole property of Participating Location, as between PAR and Participating Location ("**Participating Location Data**"), subject to the other terms of these SSS Terms. Participating Location grants PAR the right to use the Participating Location Data solely to the extent necessary to perform its obligations under these SSS Terms. Participating Location grants PAR the right to use non-identifiable aggregate Participating Location Data for purposes of reviewing and auditing performance of the SSS and improving the platform. Upon request, PAR will provide comma-separated files containing TLD (as defined below) data and Participating Location records.
- d. **Consent to Release Data to Dairy Queen.**
  - i. Participating Location hereby authorizes PAR to disclose, release and transmit any and all data collected by PAR from the point of sale (POS) systems in each of Participating Location's sites to Dairy Queen, its subsidiaries and affiliates, including without limitation sales, labor, inventory, product mix, and data compiled or derived from such data. This authorization does not extend to any data that constitutes personally identifiable information about franchisee's employees, customers, representatives, agents, suppliers or vendors.
  - ii. In addition, notwithstanding anything to the contrary in any agreement between Participating Location and PAR, Participating Location acknowledges that the disclosures and transmissions to Dairy Queen, its subsidiaries and affiliates authorized in the previous paragraph shall not constitute a breach of the confidentiality obligation, or any other obligation (whether express or implied) of PAR under any such agreement, whether such agreement was entered into before, on or after the Effective Date of this Participation Agreement. PAR may rely on this authorization in making such disclosures and transmissions to Dairy Queen, its subsidiaries and affiliates.

## 6. TERM, TERMINATION, SUSPENSION OF SSS AND RETURN OF DATA.

- a. **Term.** The Initial Term of these SSS Terms shall begin upon Activation of the SSS in such location, and unless earlier terminated by either Participating Location or PAR pursuant to the terms set forth in these SSS Terms or this Participation Agreement shall be for a period of five (5) years. These SSS Terms shall automatically renew at the end of the Initial Term for additional successive periods of one (1) year (the "Renewal Term(s)"). The Initial Term and the Renewal Term(s) shall be referred to herein collectively as the "Term".
- b. **Mutual Termination for Material Breach.** Except as otherwise provided herein, if either Participating Location or PAR is in breach of any material term of these SSS Terms, the other party may terminate these SSS Terms at the end of a written 30-day notice/cure period, if the breach has not been cured.

- i. Actions upon Termination for Material Breach.
  - (a) Upon any termination as provided in 6.b. above by Participating Location, PAR must refund any prepaid and unused SSS Service Fees under these SSS Terms through the date of termination.
  - (b) Upon any termination as provided in 6.b. above by PAR, Participating Location must pay any unpaid and owed SSS Service Fees under these SSS Terms through the date of termination. The SSS will also be terminated.
- c. **Termination for Convenience by Participating Location.** Participating Location may terminate these SSS Terms for convenience, at any time, for any reason upon thirty (30) days' notice to PAR.
  - i. Actions upon Termination for Convenience.
    - (a) Upon any termination as provided in 6.c. above by Participating Location, PAR must refund any prepaid and unused SSS Service Fees under these SSS Terms through the date of termination.
- d. **Termination by Dairy Queen of Master Agreement.** If Dairy Queen terminates the Master Agreement for convenience and Participating Location elects to continue this Participation Agreement until the end of its then current Term, then Participating Location will need to contract directly with PAR for the continuation of menu maintenance services at PAR's then current rate for such services.
- e. **Upon Termination or Expiration (for any reason).** Upon termination or expiration of these SSS Terms (for any reason), Participating Location must destroy the Licensed Software and return all Documentation and all other property of PAR. Participating Location will confirm its compliance with this requirement in writing upon request of PAR.
- f. **Return of Participating Location Data.**
  - i. *Within 90-days after termination*, upon request by Participating Location, PAR will make the Participating Location Data available for no charge, in the format specified in Section 5.c.
  - ii. *After such 90-day period*, PAR has no obligation to maintain the Participating Location Data and may destroy it.

## 7. FEES, INVOICES AND LATE PAYMENTS.

- a. **SSS Service Fees.** To subscribe to the SSS, Participating Location shall pay the software subscription fees on a monthly basis ("SSS Service Fees"). For any Participating Locations that operate their business on a "seasonal basis" they will pay SSS Service Fees for 8 months a year starting each calendar year on April 1 through November 30. The SSS Service Fees shall be non-refundable, except as otherwise provided herein. In addition, Participating Location shall pay any monthly fees for Support Services for each month Participating Location is open and conducting business ("Support Services Fees").
- b. **Payment.** Participating Location's account will be automatically debited monthly through ACH for the SSS Service Fees and the Support Service Fees, during the Term of these SSS Terms, which payment will commence upon installation of the Equipment and Activation of the SSS at Participating Location's participating location. If the Equipment and Activation of the SSS occurs before the 15<sup>th</sup> of the month, Participating Location will be charged SSS Service Fees for that entire calendar month. If the Equipment and Activation of the SSS occurs after the 15<sup>th</sup> of the month, Participating Location SSS Service Fees will not commence until the first day of the following calendar month. An interest charge of 1.5% per month, or the maximum applicable under State law, shall be paid on all overdue accounts to the extent permitted by law.

- 8. **Governing Law.** These SSS Terms shall be construed and interpreted in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles or rules. The English language

version of these SSS Terms shall govern and control any translation of these SSS Terms into any other language. The word “including” shall mean including without limitation.

## 9. Indemnity.

- a. **By PAR for Intellectual Property Infringement Claims.** If a third-party alleges that Participating Location’s use of the Licensed Software or the SSS (other than related to the Participating Location Data) infringes, misappropriates or otherwise violates that party's patent, copyright or other intellectual property or proprietary right, PAR shall defend and indemnify Participating Location against that claim at PAR’ expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by PAR, provided that Participating Location:
- i. promptly notifies PAR in writing of the claim; provided however, failure to provide prompt notice shall not relieve PAR of its indemnification obligations, unless such delay results in material prejudice to PAR; and
  - ii. allows PAR to control, and cooperates with PAR in, the defense and any related settlement.

If such a claim is made, PAR could continue to enable Participating Location to use the Licensed Software or SSS or to modify it. If PAR determines that these alternatives are not reasonably available, PAR may terminate the SSS (without any liability to Participating Location except with respect to PAR’s indemnification obligations herein) upon prior notice to Participating Location and with the return of any prepaid and unused SSS Service Fees. Notwithstanding the foregoing, PAR will not have any indemnification obligations hereunder to the extent such infringement is caused by: the modification of the SSS by Participating Location or a third party at Participating Location’s request; the use of the SSS in conjunction with equipment or software not provided or approved by PAR; or use of the SSS inconsistent with its intended purpose or which is not in conformance with PAR’s reasonable instructions. **THE FOREGOING STATES THE ENTIRE LIABILITY OF PAR TO PARTICIPATING LOCATION CONCERNING WARRANTIES OF INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION OF INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING, BUT NOT LIMITED TO, PATENT, COPYRIGHT, TRADEMARK, TRADE DRESS AND TRADE SECRETS.**

- b. **By PAR in General.** PAR will defend and indemnify Participating Location, its affiliates and their respective officers, directors, employees, agents, successors, and assigns from and against any and all damages, losses, fines, penalties, costs, expenses, liabilities and other amounts (including reasonable attorney fees and expenses) (“Losses”) suffered or otherwise incurred by any of them arising from or in connection with or otherwise relating to: (i) bodily injury (including death) or damage to or loss of any tangible property caused by the negligent acts or omissions of PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns in providing the SSS or Help Desk Support Services; (ii) gross negligence or willful misconduct of PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns in providing the SSS and/or Help Desk Support Services, and (iii) any violation of Law by PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns or any of their respective employees, officers, directors, agents or representatives in providing the SSS and/or Help Desk Support Services. Notwithstanding the foregoing, PAR is not liable to defend, indemnify or hold harmless Participating Location for any Losses directly arising from: (y) the negligent or willful misconduct of the Participating Location; or (z) any violation of Law by Participating Location or its sub-contractors and their respective officers, directors, employees, agents, suppliers,

successors and assigns or any of their respective employees, officers, directors, agents or representatives.

- c. **By Participating Location.** If a third-party alleges that the Participating Location Data infringes or violates a right of that third-party, Participating Location shall defend PAR against that claim at Participating Location's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Participating Location, provided that PAR:
  - i. promptly notifies Participating Location in writing of the claim; and
  - ii. allows Participating Location to control, and cooperates with Participating Location in, the defense and any related settlement.

## 10. MISCELLANEOUS OTHER TERMS.

- a. **Money Damages Insufficient.** Any breach by Participating Location or PAR of these SSS Terms or violation of the other party's Intellectual Property Rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- b. **Force Majeure.** PAR and Participating Location shall not be liable for any delay in performance under these SSS Terms resulting from any cause beyond PAR or Participating Location's reasonable control, including without limitation, any act of God, fires, storms, floods, explosions, strikes, work stoppages or slowdowns, or other industrial disputes, legal action, failure or delay of supplies from ordinary sources, accidents, riots, war or civil disturbances, or acts of civil or military authorities.
- c. **Entire Agreement and Changes.** These SSS Terms and the order constitute the entire agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. The sole terms and conditions governing the purchase of the SSS from PAR are contained in these SSS Terms and any terms or conditions contained on the face or back of any Participating Location purchase order or other document shall be without effect. No modification or waiver of any term of these SSS Terms is effective unless both parties sign it.
- d. **No Assignment.** Neither Participating Location or PAR may assign or transfer these SSS Terms or an order to a third party, without prior written consent of the other party, which shall not be unreasonably withheld; provided, however, these SSS Terms with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- e. **Independent Contractors.** The parties are independent contractors with respect to each other.
- f. **Enforceability.** If any term of these SSS Terms is invalid or unenforceable, the other terms remain in effect.
- g. **Survival.** Any terms that by their nature survive termination or expiration of these SSS Terms, will survive including but not limited to Sections 3, 4, 5, 6, 8, 9 and 10.
- h. **CISG Not Apply.** The Convention on Contracts for the International Sale of Goods does not apply.
- i. **Notices.** Notices shall be deemed given upon receipt. Any notices required to be given shall be in writing and in the case of notice to Participating Location, shall be sent to the billing address or fax number on the SSS order. In the case of notice to PAR, such notice shall be sent via postage prepaid certified mail or by overnight courier to: ParTech, Inc. (Attn: Legal Department); ParTech Technology Park; 8383 Seneca Turnpike; New Hartford, NY 13413-4991.
- j. **Consumer Mobile/On-line Ordering, Payment Processing & Restaurant Reservation.** (Applicable to use within the U.S. only). PAR currently has a license agreement with Ameranth, Inc. Participating Location's use of the Licensed Software or SSS to process mobile/on-line ordering for food/beverage orders, payment processing, restaurant reservations and the processing

of such transactions on a wireless handheld computing device and on internet web pages is covered by PAR's license agreement with Ameranth, as long as Participating Location is using the Licensed Software or SSS to process these transactions, and Participating Location is paying PAR a transaction processing fee. If Participating Location is using its own proprietary software or third-party software integrated to the Licensed Software or SSS to process these transactions, Participating Location's use is not covered by PAR's license agreement with Ameranth, and Participating Location would need a separate license agreement (or other authorization) from Ameranth to Participating Location or a third party that Participating Location licenses from to process such transactions. If Participating Location has questions about the application of the Ameranth patents to Participating Location's own proprietary software or any third-party software, Participating Location should obtain legal advice before Participating Location develops any integration.

- k. **Definitions.** All capitalized terms used in these Terms, to the extent not defined elsewhere in these Terms, shall have the following meanings: "**Participating Location**" means the location within the Dairy Queen or Orange Julius franchise systems which chooses to purchase Equipment and license and receive access to software through the PAR Solution by signing the Participation Agreement. "**Intellectual Property Rights**" are all patents, patent applications, trademarks, inventions (whether or not patentable), know-how, designs, mask works, processes, methodologies, service marks, copyrights and copyrightable works, trade secrets, data, designs, manuals, training materials and documentation, formulas, knowledge of processes, methods, products and product specifications and all other intellectual property rights as these terms are understood under Law, including any modifications, adaptations, adjustments, enhancements, updates, improvements, alterations and corrections thereto and other derivative works thereof. "**Law**" means any federal, state, county or local law, ordinance, statute, rule, or regulation to the extent it applies to either party, its property, or its obligations in connection with this Participation Agreement. "**PAR**" means ParTech, Inc., a New York corporation.

## EXHIBIT A TO SCHEDULE B

### LEVEL 1 & LEVEL 2 HELP DESK SUPPORT SERVICES

#### 1. DEFINITIONS

- a. **“Communication Cadence Time”** shall mean the periodic updates that shall be given to a Participating Location based on the severity of the Issue as set forth in Section 3.
- b. **“External Case Referral”** shall mean PAR’s referral of a Help Desk Case to Dairy Queen (EPOS) or to a third party, including, but not limited to NetSurion (firewall), Verifone (payment device), credit card processor/bank or back office provider after PAR has determined that the issue is not related to the PAR Solution.
- c. **“Issue”** shall mean an Urgent (P1), Medium (P2) or Low (P3) as defined in the chart below in Section 3 and excludes training on the PAR Solution that exceeds more than 15 minutes.
- d. **“Resolution Times”** shall mean the amount of time from which an Issue is reported by Dairy Queen or a Participating Location to PAR and PAR provides a fix, workaround, escalation to development or a referral of the Issue.
- e. **“Response Times”** shall mean the time by which the PAR Help Desk responds to an incoming Help Desk Support Case from a Participating Location for Help Desk Support Services.
- f. **“Help Desk Support Case”** shall mean a case from a Participating Location that relates to assistance with the use of, or an interruption in the operability of the Equipment, Licensed Software, PARPay Services or Subscription Software Services.

#### 2. HELP DESK SUPPORT SERVICES

- a. PAR will provide a toll-free number and trained technical staff, available 24 hours a day, 7 days a week, 365 days a year to respond to Participating Location’s requests for support.
- b. PAR will provide hardware diagnostic and operational/procedural support to assist Participating Locations with questions and in identifying and resolving problems with the Equipment, Licensed Software, PARPay Services Subscription Software Services
- c. Help Desk Support covers the following types of requests:
  - Resolution or explanation of Licensed Software or Subscription Software Services generated error messages.
  - Assistance with user or operational problems that occur during system operations.
  - Guidance with procedural and system functionality or capability questions.
  - Research, identification and escalation of defects in the Equipment, Licensed Software, PARPay Services and the Subscription Software Services.
  - Assistance with the identification of programming issues or changes necessary to correct functionality or reporting issues.
  - Recommendations for proper system maintenance.
  - Root cause analysis of crashes and/or problems of the Equipment, Licensed Software, PARPay Services and Subscription Software Services.
  - Resolution of supported printer or other peripheral problems directly related to Equipment, Licensed Software, PARPay Services or the Subscription Software Services.
  - Referral to third parties after the Equipment, Licensed Software, PARPay Services and the Subscription Software Services is ruled out as the possible cause of the problem.
  - General information concerning system requirements to the Licensed Software and capability.
- d. PAR will attempt to resolve all Help Desk Cases utilizing the appropriate resource for any given Issue.

### 3. HELP DESK SUPPORT SERVICES SERVICE LEVELS

Help Desk Support Cases will be held open and PAR will continue the Communication Cadence with the Participating Location until final resolution is confirmed by the Participating Location regardless of whether PAR has made an External Case Referral. If PAR follows up with the Participating Location more than three (3) times attempting to confirm resolution without a response, then PAR will close the case noting that PAR did not receive a response.

All Service Levels set forth in this Section will be measured on a monthly basis cumulative of all Help Desk Support Services provided to all Participating Locations in the Dairy Queen system.

PAR will use commercially reasonable efforts to respond to all Participating Location(s) requests for Help Desk Support Services within the (a) Response Times, (b) Resolution Times and (b) Communication Cadence Times set forth in the chart below.

<u>Severity of Issue</u>	<u>Description</u>	<u>Response Time</u>	<u>Resolution Time</u>	<u>Communication Cadence Times</u>
Urgent (P1)*	Issue with the Equipment, Licensed Software or Subscription Software Services that causes a loss of material functionality of any of the following: <ul style="list-style-type: none"> <li>• a terminal</li> <li>• one or more kitchen production area monitor</li> <li>• 50% or more of printers</li> <li>• payment processing and/or one or more payment processing devices</li> </ul>	90% responded to within 15 minutes of receipt of call by PAR's Help Desk	95% resolved within 60 minutes	Hourly
Medium (P2)	<ul style="list-style-type: none"> <li>• Issue with the Equipment, Licensed Software or Subscription Software Services that requires circumvention or workaround of documented functionality, but the overall material functionality of the affected item is still maintained.</li> <li>• Issue with the Equipment, Licensed Software or Subscription Software Services that impacts reporting accuracy.</li> </ul>	90% responded to within 30 minutes of receipt of call by PAR's Help Desk	90% resolved within 3 hours	Daily
Low (P3)	Issue is operational/procedural and can be readily worked around. For example, the issue occurs sporadically (equal to or less than 2 times per day) and does not impact the ability to process an order.	90% within 120 minutes of receipt of call by PAR's Help Desk  ----- Any e-support ticket is responded to by next	90% resolved within 5 business days	Weekly

<u>Severity of Issue</u>	<u>Description</u>	<u>Response Time</u>	<u>Resolution Time</u>	<u>Communication Cadence Times</u>
		business day, during business hours.		
After Hours support 8pm to 6 am Mountain Time	All P1 after hours support requests dispatched to Level 1 PAR Help Desk team ----- All P2 and P3 after hours support requests, dispatched to Level 1 PAR Help Desk team for next business day	90% responded to within 30 minutes of receipt of call by PAR's Help Desk. ----- Response within 120 minutes of business start at 6am Mountain Time	Same as above	Same as above

If a P1 call is placed to the Help Desk prior to 3 PM eastern time (Monday through Friday) or prior to 10 AM eastern time (Saturday), the progress of the Resolution Time will be closely tracked by the Help Desk with an awareness of the deadline to ship out replacement Equipment in accordance with Advance Exchange Services to ensure that if the issue is an Equipment issue and it cannot be resolved by the Help Desk, replacement Equipment can be delivered for next day arrival.

- 4. PARTICIPATING LOCATION RESPONSIBILITIES.** Participating Location agrees to:
- Designate a knowledgeable resource to accurately communicate and collaborate with the Help Desk.
  - Perform regularly scheduled system and database backups and ensure that they are available when required.
  - Maintain a working phone line or broadband connection and remote connection method that allows for remote diagnosis of the PAR Solution.
  - Maintain and manage adequate firewall and virus protection.
  - Maintain access to all required software, including operating system installation media, PAR application software and applicable service pack, system specific driver files and any applicable license or key codes.
  - Assist with the resolution of all system related problems. Participating Locations can expect to be required to dedicate some time to assist PAR in resolving problems.
  - Be prepared to provide all information needed including error codes, process or procedures leading up to the error and any other information that may be relevant and might help to expedite the resolution.

- 5. EXCLUSIONS FROM COVERAGE.** The following items are excluded from the Help Desk Support Services:
- In-depth training that requires more than 15 minutes of time.
  - Assistance with configuration, installation or addition of new hardware or peripherals, where the operation requires a certified PAR installation or professional services specialist, unless such assistance is in support of AE Equipment provided under the Advance Exchange Service pursuant to the Equipment Terms and Conditions of Sale.
  - Resolution of problems related to third party applications or equipment not sold by PAR.
  - Issues related to the installation, administration and use of technologies that may be connected to the PAR Solution but were not certified as PAR supported products.

- Resolution of problems or issues related to Participating Location's installed and maintained network, including any wireless network solution. External Case Referral will be made by PAR.
- Resolution of problems or issues related to virus or firewall management. External Case Referral will be made by PAR.
- Reinstallation of operating system from scratch, assisting with loading of operating system upgrades, patches or release supplements or restoration of files. This is handled as part of the Advance Exchange Service.
- Performing system administration tasks including but not limited to adding users, maintaining file system or database integrity, monitoring system resource, performing backup and storing software.
- Performing system configuration changes as a result of the Participating Location's decision to change internet or credit card processing providers.
- Performing system configuration changes as a result of the Participating Location's responsibilities to maintain compliance with PCI-DSS.
- Configuration or testing of third-party interfaces not approved by PAR. Help Desk Support will be limited to troubleshooting third-party interfaces approved by PAR (e.g. Restaurant Magic).
- Programming of new reports or reprinting of reports and journals from archive.
- Audit accounting or balancing of transactional detail. Issues related to cash or credit imbalances are not covered under any support agreement and are the responsibility of the customer. While technical advice regarding a specific report may be given, it is not the responsibility of PAR to determine whether a cash or credit imbalance exists or to determine the cause of the alleged imbalance. PAR agents will refrain from any manipulation of statistics or investigation of deposits or other financial transaction details, including reposting of any sales totals or transactions, including credit card sales or transactions, related to the Participating Location's request.
- Assistance with or correction of issues, including, rebuilding of database tables, totals files, reposting of totals or any manual manipulation of database files when the root cause of the issue is determined to be the Participating Location's user environment. If PAR personnel conclude that a problem being reported by a Participating Location is due to defects in the Participating Location's user environment, PAR will notify the Participating Location. Examples of defects in the user environment would include: electrical disturbance due to sub-standard electrical system installation or poor electrical supply, software failures that result from the installation of other third-party software, viruses contracted via the internet, incorrectly installed equipment which creates electrical disturbance, or natural disasters created by fire, flood or any other "acts of god".

## SCHEDULE C



### PARPay™ SERVICE TERMS & CONDITIONS

These PARPay™ Service Terms and Conditions for are only applicable if Participating Location is purchasing/licensing PARPay™ Service (“PARPay Services”), along with an approved Device (all as defined below).

**Terms and Conditions.** These Terms and Conditions (“PARPay Terms”) provides Participating Location with a license and right to use and access the PARPay Services. These PARPay Terms constitute the agreement between PAR and Participating Location with respect to Participating Location’s use of the PARPay Services and supersedes and cancels any prior discussions, understandings, or representations between PAR and Participating Location. No addition to or modification of these PARPay Terms shall be binding upon either party unless expressly agreed to by PAR and Participating Location in writing, and, if these PARPay Terms are deemed an offer, acceptance is expressly limited to these Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section A.1 below or elsewhere in the Participation Agreement.

#### SECTION A: PARPAY SERVICES

##### 1. DEFINITIONS APPLICABLE TO PARPAY SERVICES.

- a. **“Authorized Users”** means any of Participating Location’s employees or agents authorized by Participating Location to access and use the PARPay Services.
- b. **“Corporate Network”** this includes all the hardware and the software configuration on the network devices including switches and firewalls in Participating Location’s corporate datacenter, if applicable, or in the store and at Participating Location’s corporate office.
- c. **“Device”** means approved credit card terminals or pin-pads listed in Schedule C-1 loaded with approved software and security keys.
- d. **“Device Management Services”** means services provided to manage Participating Location’s inventory of devices, including tracking the number of Devices, location, serial number, features enabled on each Device and alerts set on each Device.
- e. **“Device Software”** means the software which resides on a Device, communicates with the PARPay Service and enables Participating Location’s access to the PARPay Service.
- f. **“Gift/Credit/Debit Card Masked Data”** means the last four (4) digits of the card number.
- g. **“Gift/Credit/Debit Card Number”** means the number encoded on the magnetic stripe, the Europay Mastercard and Visa (“EMV”) chip, or embossed/printed on the face of the Gift/Credit/Debit Card that identifies the Gift/Credit/Debit Card.
- h. **“Gift/Credit/Debit Card Unmasked Data”** means all data associated with a Gift/Credit/Debit Card necessary or appropriate to permit the Gift/Credit/Debit Cards to operate under the Services and in compliance with all applicable laws, including the cardholder name, primary account number, expiration date, card security code (CSC) or service code.

- i. **“Gift/Credit/Debit Card”** means a plastic card with encoded card number used as a token for the transaction.
- j. **“Gift/Credit/Debit Card Data”** means all the data derived from EMV chip on a Gift/Credit/Debit Card, Near Field Communication (“NFC”), Apple® Pay and magnetic stripe reader (“MSR”) technology that Participating Location’s customer may use to swipe/insert/tap on the Device.
- k. **“Participating Location PARPay Data”** means information derived from the Gift/Debit/Credit card and additional prompts enabled on the Device platform as part of a Gift/Credit/Debit Card transaction submitted by Participating Location electronically through the Service including Transaction Data and Settlement Data.
- l. **“Participating Location Tokens”** means a derived alphanumeric value that is linked with a Gift/Debit/Credit card. This token cannot be used to process a payment transaction but is only used within Participating Location’s database of Participating Location PARPay Data to uniquely identify a customer.
- m. **“PARPay Service”** means the PARPay services made available to Participating Location by PAR for the PARPay Service Fees (as defined herein) paid by Participating Location, which allow Participating Location to issue Gift Cards to customers and/or accept Credit and Debit Cards from customers using the platform to enable (i) Participating Location to register and monitor sales and usage of each Gift /Credit/Debit Card only via Participating Location Tokens, (ii) customers to use Gift/Credit/Debit Cards to purchase goods and services at Participating Location’s locations (iii) for Participating Location to access, read, and confirm all customer Gift/Credit/Debit Card Data only via Participating Location Tokens and to create reports in various formats regarding sale and related transactions.
- n. **“State Management Services”** means services provided to remotely diagnose and troubleshoot issues with the Devices, including providing bug fixes and Device Software updates in accordance with Section A.6. below.
- o. **“Store Network”** this includes the hardware and the software configuration on the network devices including switches and firewalls in Participating Location’s location.
- p. **“Store Place Portal”** means the web-based portal backend business intelligence reporting and analysis tool that can be accessed anywhere via the internet or wirelessly from a mobile phone or computer available to Participating Locations as part of the PARPay Service.
- q. **“Transaction Data”** means Gift/Credit/Debit Card Masked Data, sale amount, date, store number, transaction type, transaction status, transaction time, customer name and transaction amount.
- r. **“User Documentation”** means the technical information or materials developed by us and provided to Participating Location in connection with the use of the PARPay Service.

**2. PAYMENT PROCESSING SERVICE.** Payment processing enables Participating Location to provide credit, debit card processing and private card processing via the internet or wirelessly. The PARPay Service provides EMV, NFC, Apple® Pay and MSR compliant transaction management linking to international acquirers. The PARPay Service is subject to change or may be updated at any time at PAR’s discretion. We will notify Participating Location within fifteen (15) days of any changes. The PARPay Service includes point to point encryption (P2PE v2.0), transport layer security (TLS v.1.2) and tokenization technology to process payments. Certified and supported payment processors are set forth on Schedule C-2.

**3. DEVICE MANAGEMENT & STATE MANAGEMENT SERVICES.** Device Management and State Management Services are provided to Participating Location, at its option, as part of the PARPay Services at no additional charge.

**4. STOREPLACE PORTAL.** PAR will provide the StorePlace Portal which allows Participating Location to view credit card transactions and settlement details, analyze payment trends, reconcile payments and manage chargebacks across all Participating Location's locations. At a minimum, the StorePlace Portal shall include the following:

- Transaction Data.
- Settlement data which includes all Transaction Data plus the date and time of settlement and batch number from payment processor ("Settlement Data").
- Consolidated Transaction Data and charts by card type (Visa, MCI, Amex)
- Sort and filter Transaction Data fields
- Corporate administrator rights to perform settlement adjustments (refund\void\sale)
- Statistics and charts to determine for customer spend by transaction, average spend by customer visit, number of transactions
- Ability to export transaction and settlement reports into Microsoft® Excel.
- Automatic settlement on a nightly basis from the Store Place Portal. Settlement time is determined by Participating Location at time of set up of the PARPay Service.

**5. OPTIONAL PARPAY SERVICES.** The availability of these optional services is subject to the Device selected; point of sale integration; and/or payment processor integration. The optional PARPay Services are included in the monthly PARPay Service Fees. One-time set-up fees may apply. Participating Location can contact PAR for further information on these Optional PARPay Services.

**a. Media Content:** either static or video on the DEVICE (set up fees apply)

**b. Standard Reward Programs:**

Type of Rewards Program

- Cumulative spending
- Purchase frequency
- Peak/Non-Peak
- SKU level rewards

Reward Redemption Options

- \$\$ -Dollars
- % Percentage
- SKU

**c. CRM Surveys** provided on DEVICE (set up fees apply)

- d. Charity/Donations provided on DEVICE (set up fees apply)
- e. SKU displays on DEVICE
- f. Tip/Gratuuity entry on DEVICE
- g. AVS Security
- h. Paperless receipt - Text or Email
- i. Split Tender display on DEVICE
- j. Signature Capture
- k. Store and Forward
- l. ApplePay
- m. SamSung Pay
- n. Internationalization on DEVICE – (option to change DEVICE language: i.e. English to Spanish)

**6. UPDATES TO THE DEVICE SOFTWARE/PARPAY SERVICE.** Participating Location will receive updates and upgrades to the Device Software and PARPay Services generally made available to PAR’s other customers as part of Participating Location’s monthly PARPay Service Fees. Updates, fixes and minor enhancements will be made at PAR’s discretion to improve the performance and features of the Device Software and PARPay Service. Any updates will be made between 2:00 am and 5:00 am EST. Updates and fixes may need to be made to the Device Software and PARPay Service on an emergency basis during business hours. If such emergency updates are needed, PAR will coordinate with Participating Location to determine when such updates can be made.

**SECTION B: AVAILABILITY OF PARPAY SERVICE AND DATA.**

**1. Transaction Availability Warranty.** PAR warrants that the PARPay Service shall be capable of being accessed by Participating Location and by Participating Location’s Authorized Users at least 99.9% of the time measured on a monthly basis, excluding outages and downtime set forth in Section B.2. below (the “PARPay Transaction Availability Warranty”).

**2. Outages and Downtime.** The following outages and downtime shall be excluded from the Availability Warranty: (i) requested by Participating Location; (ii) caused by Participating Location or Participating Location’s contractors and agents; (iii) scheduled maintenance and upgrade purposes; (iv) caused by Participating Location’s computer system, web browser, hardware or software applications, including third party integrations, not authorized by PAR; (v) power failures; (vi) service failures caused by a service provider other than PAR or PAR’s agents; (vii) damage to telecommunication facilities outside of PAR’s control, other than acts taken by or caused by PAR personnel; (viii) outages and downtime that arises as a result of Participating Location’s failure to upgrade or refresh required software or hardware where such non-compliance was communicated by PAR to Participating Location with adequate advance notice and where compliance is consistent with good business practices. PAR will provide Participating Location with one (1) week notice of any scheduled maintenance or upgrades, which shall occur after business hours local time. PAR shall only use occurrences exceeding 60 seconds to calculate downtime.

**3. PARPay Service Level Credits.** PAR shall issue a credit equal to the pro-rated portion of the monthly PARPay Service Fees for the downtime period attributable to PAR below the applicable threshold per month

in accordance with the PARPay Transaction Availability Warranty set forth in the charts below (“Availability Warranty Credit”):

<b>PARPay Transaction Availability Warranty</b>	<b>Service Level Credit/Refund</b>
Above 99.0%-99.9%	30% of location’s monthly PARPay Service Fee
Above 98.0% to 99.0%	45% of location’s monthly PARPay Service Fee
Above 95.0% to 98.0%	60% of locations’ monthly PARPay Service Fee
Above 90.0% to 95.0%	80% of location’s monthly PARPay Service Fee
90% or less	100% of location’s monthly PARPay Service Fee

All Availability Warranties set forth in this Section will be measured on a monthly basis over a twenty-four (24) hour period for each day of the applicable month in the aggregate for the PARPay Service Fees provided to Participating Location.

**4. PARPay Service Level Reporting and PARPay Service Level Credit Application.** PAR will provide monthly reporting to Dairy Queen of PAR’s performance with respect to the PARPay Transaction Availability Warranty listed herein. Any PARPay Transaction Availability Warranty failures that result in PARPay Service Level Credits will be aggregated and cumulatively applied to the Participating Location(s) following month’s PARPay Service Fees.

**SECTION C: USE OF DEVICE SOFTWARE/PARPAY SERVICE.**

**1. LICENSE AND RIGHT TO USE THE DEVICE SOFTWARE AND PARPAY SERVICE.**

Subject to the terms and conditions of these PARPay Terms, PAR grants Participating Location and Participating Location hereby accepts: (a) a personal, non-transferable, and non-exclusive right and limited license to use the payment application software (“Device Software”) on an approved payment application device; and (b) a personal, non-transferable, and non-exclusive right and limited license to use the PARPay Service implemented by the Device Software, as well as technical information or materials developed by PAR and provided to Participating Location in connection with the use of the PARPay Service (“User Documentation”), all solely for the purpose of processing credit/debit/gift card transactions for Participating Location’s business (“Purpose”). The use of any third party software shall also be subject to the terms and conditions of any end user license agreement provided for such software.

**2. USAGE RESTRICTIONS -** Participating Location shall not directly or indirectly access or use the Device Software or the PARPay Service to process data or information for any person or entity other than Participating Location, and neither Participating Location nor Participating Location’s Authorized Users shall use or permit the Device Software or PARPay Service to be used as a service bureau. These PARPay Terms do not give Participating Location’s customers any right to use the Device Software or PARPay Service. Participating Location may not resell or transfer Participating Location’s right to use the Device Software or PARPay Service to any third party, including without limitation any resellers or distributors. Participating Location may not loan, lease, rent, disclose, sell, transfer, sublicense, or otherwise use, copy, or distribute copies of the Device Software or PARPay Service, in whole or in part, including without limitation any screens, content, graphics, or output of the Device Software or PARPay Service, except that Participating Location may

print out reports and comparisons in connection with the Purpose and not for any other use, except as expressly permitted by these PARPay Terms. Participating Location also may not use the Device Software or PARPay Service to create any tables, files, databases, derivative works, or other compendiums or works, except as expressly permitted by these PARPay Terms. The PARPay Service does not include an Internet access service; Participating Location must separately arrange for and pay for access to the Internet in order to access and use the Service.

**3. AUTHORIZATION** - As long as Participating Location remains in good standing, Participating Location and those of Participating Location's employees who have been duly registered as an Authorized User and whose registration is current are authorized to access the PARPay Service only through the use of both (1) the unique username issued to Participating Location for each Participating Location Authorized User enrolled in the PARPay Service, and (2) the corresponding unique password created by each of Participating Location's Authorized Users in connection with their username. PAR reserves the right to inactivate or "timeout" a session after a reasonable amount of time of inactivity by an Authorized User. Participating Location shall be solely responsible for the manner in which Participating Location and Participating Location's Authorized Users use the PARPay Services. Participating Location shall ensure that only Authorized Users have access to any user identifications or passwords for use in connection with the PARPay Services and shall not disclose such identifications or passwords to any other individual. Participating Location acknowledges and agrees that Participating Location is solely responsible for strictly maintaining the confidentiality and integrity of such identifications and passwords and Participating Location shall indemnify and hold PAR harmless from and against any liability, damages, or costs arising from Participating Location's failure to comply with this obligation including, but not limited to, improper or unauthorized account access using Participating Location's user identifications or passwords, provided such identifications or passwords were not improperly disseminated by PAR, its third party provider or any of their representatives. Participating Location shall notify PAR immediately in writing if the security or integrity of an identification or password has been compromised.

#### **SECTION D: PARPAY SERVICE TERM, SERVICE FEES AND TERMINATION.**

**1. TERM** – The Initial Term of these PARPay Terms shall begin upon the date the PARPay Services are first used to process a transaction in Participating Location, and unless earlier terminated by either Participating Location or PAR pursuant to the terms set forth in these PARPay Terms or this Participation Agreement shall be for a period of five (5) years. These PARPay Terms shall automatically renew at the end of the Initial Term for additional successive periods of one (1) year (the "Renewal Term(s)"). The Initial Term and the Renewal Term(s) shall be referred to herein collectively as the "Term".

**2. MUTUAL TERMINATION FOR MATERIAL BREACH.** Except as otherwise provided herein, if either Participating Location or PAR is in breach of any material term of these PARPay Terms, the other party may terminate these PARPay Terms at the end of a written 30-day notice/cure period, if the breach has not been cured.

i. Actions upon Termination for Material Breach.

- a. *Upon any termination as provided in D.2. above by Participating Location, PAR must refund any prepaid and unused PARPay Service Fees under these PARPay Terms through the date of termination.*
- b. *Upon any termination as provided in D.2 above by PAR, Participating Location must pay any unpaid and owed PARPay Service Fees under these PARPay Terms through the date of termination. The PARPay Services will also be terminated.*

**3. TERMINATION FOR CONVENIENCE BY PARTICIPATING LOCATION.** Participating Location may terminate these PARPay Terms for convenience, at any time, for any reason upon thirty (30) days' notice to PAR.

i. Actions upon Termination for Convenience.

- a. *Upon any termination as provided in D.3 above by Participating Location, PAR must refund any prepaid and unused PARPay Service Fees under these PARPay Terms through the date of termination.*

**4. UPON TERMINATION OR EXPIRATION (FOR ANY REASON).** Upon termination or expiration of these PARPay Terms (for any reason), Participating Location must no longer use the Device Software and return all User Documentation and all other property of PAR. Participating Location will confirm its compliance with this requirement in writing upon request of PAR.

**5. SERVICE FEES AND PAYMENT -** To subscribe to the PARPay Service, Participating Location shall pay a one-time set-up/activation fee and the monthly subscription fees as set forth on the PAR Sales Order submitted by Participating Location (collectively, "PARPay Service Fees"). The PARPay Service Fees shall be paid monthly via automatic debit from Participating Location's checking account and are non-refundable, except as otherwise provided herein. For any Participating Locations that operate their business on a "seasonal basis" they will pay PARPay Service Fees for 8 months a year starting each calendar year on April 1 through November 30. If the date Participating Location first uses the PARPay Services to process a transaction in Participating Location occurs before the 15<sup>th</sup> of the month, Participating Location will be charged Service Fees for that entire calendar month. If the date Participating Location first uses the PARPay Services to process a transaction in Participating Location of the PARPay Services occurs after the 15<sup>th</sup> of the month, Participating Location Service Fees will not commence until the first day of the following calendar month.

**6. RETURN OF DATA.** Upon any termination, and upon Participating Location's written request, PAR will make available to Participating Location, electronic copies of Participating Location PARPay Data then available on the PARPay Services, provided Participating Location is current on any PARPay Service Fees then owing. Participating Location PARPay Data shall be provided in Delimited File or XML only at no charge. PAR reserves the right (but are not obligated to) destroy or discard any Participating Location Data after ninety (90) days following termination. Upon written request by Participating Location, PAR will discard all Participating Location PARPay Data, provided PAR shall not be required to destroy or alter any computer archival and backup media or archival and backup files, but such archival and backup materials shall be kept confidential in accordance with the terms of these PARPay Terms.

**SECTION E: TRANSACTION DATA AND PARTICIPATING LOCATION DATA.**

1. Participating Location will at all times own all right, title and interest in and to the Participating Location PARPay Data, including but not limited to "Gift/Credit/Debit Card Masked and Unmasked Data" generated through the Service. By submitting Participating Location PARPay Data to us for use on the Service, Participating Location grants PAR a worldwide, royalty-free, and non-exclusive license to use, reproduce, modify and publish on the PARPay Service. Participating Location represents and warrants to PAR that Participating Location has the right to use, and to permit PAR to use Participating Location PARPay Data in order to provide the PARPay Services. Participating Location acknowledges that PAR shall have the right as the PARPay Service provider to take such commercially reasonable actions to preserve or enhance the operation of the PARPay Service which may include, without limitation, reducing fragmentation of Participating Location PARPay Data and routine maintenance and upgrading of the PARPay Service. PAR will use best efforts to conduct such

activity at such times so as to minimize any interference with Participating Location's use of the PARPay Service or limitation of Participating Location's access to Participating Location PARPay Data.

2. PAR agrees to maintain Participating Location PARPay Data extracted to the data center for a period of twenty-four (24) months and PAR will back up Participating Location's consolidated Participating Location PARPay Data at regular nightly intervals. Weekly backups of Participating Location's consolidated Participating Location PARPay Data will be stored off site. If Participating Location wants PAR to maintain Participating Location's consolidated Participating Location PARPay Data for a longer period of time, this is considered a customization of the PARPay Service and shall be subject to a separate addendum or statement of work mutually agreed upon by the parties outlining the work to be performed, the applicable fees, and the payment terms.

#### **SECTION F: PARTICIPATING LOCATION RESPONSIBILITIES.**

1. In connection with Participating Location's use of the PARPay Services, Participating Location will be responsible for the following:
  - b. all Participating Location PARPay Data that is "Gift Credit/Debit Card Masked data";
  - c. implementing, monitoring, and managing Participating Location's Store Network and Participating Location's Corporate Network, including all Payment Card Industry Data Security Standards (PCI-DSS) related controls and activities for these networks;
  - d. not storing/recording "Gift/Credit/Debit Card Unmasked Data;"
  - e. bearing all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift/Credit/Debit Card, Gift/Credit/Debit Card Number or personal identification number in the case of Gift/Credit/Debit Cards by an employee, agent or sub-contractor of Participating Location;
  - f. maintain Participating Location's own equipment, managed networks, and managed systems and systems interfaces to appropriate minimum standards;
  - g. within ten (10) days of activation of the PARPay Services, access the PARPay Services using Participating Location's office computer with Participating Location's typical network configuration in order to review the PARPay Services; confirm that Participating Location PARPay Data was satisfactorily delivered via the internet, Participating Location's firewall, routing system and office network;
  - h. abide by the security procedures specified by PAR and perform reasonable and customary security practices to preclude attempts to circumvent any security procedures or utilize any unauthorized systems in an attempt to access data other than Participating Location's own data;
  - i. make all reasonable efforts to assist us in identifying, isolating and replicating issues found in the PARPay Services; and
  - j. using the PARPay Services and the Device Software in a manner consistent with these PARPay Terms and with all applicable laws and regulations, including without limitation, copyright, trademark, and export control laws, and laws prohibiting the use of telecommunications facilities to transmit illegal, obscene, harmful to minors, threatening, harassing, or other offensive information or messages. PAR reserves the right to implement and require Participating Location's compliance with a commercially

reasonable user conduct policy which may be updated from time to time, upon at least fifteen (15) days advance written notice to Participating Location.

#### **SECTION G: CONFIDENTIALITY**

PAR will protect and keep confidential Participating Location PARPay Data. Participating Location acknowledges that no violation of the provisions of this paragraph shall result from the allowing of access to or copying of Participating Location PARPay Data, or any part thereof, to Participating Location's payment provider or in compliance with an order or subpoena from any court or governmental or law enforcement agency. Participating Location agrees to permit only Participating Location's duly registered Authorized Users to use the PARPay Services, or to view any related materials. Except as otherwise provided in these PARPay Terms, Participating Location shall not sell, transfer, publish, disclose, display, or otherwise make available any portion of the PARPay Services or the Device Software to others. Participating Location agrees to provide reasonable cooperation to PAR and reasonable assistance to PAR in identifying and preventing any unauthorized use, copying, or disclosure of the PARPay Services, and/or the Device Software, in whole or in part. The foregoing confidentiality obligations shall not apply to any information generally available to the public, independently developed or obtained without reliance on the other party's information or approved for release by the other party without restriction.

#### **SECTION H: OWNERSHIP**

- 1. DEVICE SOFTWARE** - PAR, or the third party licensor where applicable, retain title to the Device Software and the PARPay Service, including, without limitation, all copies and audiovisual aspects of the PARPay Service, and all rights to patents, copyrights, trademarks, trade secrets, and other intellectual property rights inherent in and appurtenant to the Device Software and the PARPay Service, including any derivative works developed by Participating Location or PAR either jointly or individually. Participating Location shall not, by virtue of these PARPay Terms or otherwise, acquire any proprietary rights whatsoever in the Device Software or the PARPay Service, which shall be PAR's confidential information and the sole and exclusive property of PAR, or the third party licensor where applicable. Any right not expressly granted to Participating Location by these PARPay Terms is expressly reserved by PAR. To the fullest extent permissible under applicable law Participating Location may not (and may not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in the Device Software or the PARPay Service. Participating Location may not modify, rent, lease, loan, sell, distribute or create derivative works based on the PARPay Service or the Device Software.
- 2. TRADEMARKS AND TRADE NAMES** - Any and all trademarks, service marks, and trade names that PAR uses in connection with the Device Software or the PARPay Services are and shall remain PAR's exclusive property. Nothing contained in these PARPay Terms shall be deemed to give Participating Location any right, title, or interest in any of PAR's trademarks, service marks, or trade names, including, but not limited to, any right to use any of PAR's trademarks, service marks, or trade names.

#### **SECTION I: DISCLAIMER OF WARRANTY AND LIMITATION OF REMEDIES.**

Participating Location understands and agree as follows:

- a. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE WARRANTIES SET FORTH ABOVE IN SECTION B.1., PAR MAKES NO WARRANTY AS TO THE PARPAY SERVICE, THE DEVICE SOFTWARE OR THE RESULTS TO BE OBTAINED FROM PARTICIPATING LOCATION'S USE OF THE PARPAY SERVICES OR THE DEVICE SOFTWARE. THE PARPAY SERVICES AND THE USE OF THE DEVICE SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED INCLUDING BUT NOT LIMITED TO

WARRANTIES OF TITLE, NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PARTICIPATING LOCATION ASSUMES FULL RESPONSIBILITY AND RISK FOR USE OF THE PARPAY SERVICE, THE DEVICE SOFTWARE AND THE INTERNET. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PAR DOES NOT WARRANT THAT THE PARPAY SERVICES OR THE DEVICE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE OR THAT UNAUTHORIZED ACCESS TO THE PARPAY SERVICES BY THIRD PARTIES (“HACKING”) CAN BE PREVENTED. THE EXPRESS WARRANTIES SPECIFIED IN THESE PARPAY TERMS OR FURNISHED WITH THE PARPAY SERVICES BY PAR ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PAR DISCLAIMS AND EXCLUDES ANY AND ALL OTHER WARRANTIES.

- b. NOTIFICATION OF OUTAGE BY PARTICIPATING LOCATION.** PARTICIPATING LOCATION MUST NOTIFY PAR IF THE PARTICIPATING LOCATION IS UNABLE TO TRANSACT AN ORDER OR USE THE PARPAY SERVICES BY CONTACTING THE PAR HELP DESK. IF PAR HAS NO RECORD OF THE PARTICIPATING LOCATION CONTACTING THE PAR HELP DESK REGARDING SUCH OUTAGE WITHIN 60 DAYS OF THE END OF THE MONTH IN WHICH THE PARTICIPATING LOCATION EXPERIENCED THE OUTAGE, THEN PARTICIPATING LOCATION WILL BE DEEMED TO HAVE WAIVED ANY CREDITS THAT MAY HAVE BEEN AVAILABLE FOR SUCH OUTAGE. NOTWITHSTANDING THE FOREGOING IF PAR BECOMES AWARE OF A SYSTEM WIDE OUTAGE, PAR AND/OR DAIRY QUEEN MAY NOTIFY PARTICIPATING LOCATIONS OF SUCH OUTAGE AND IN SUCH INSTANCE PARTICIPATING LOCATION WILL NOT BE REQUIRED TO NOTIFY PAR IN ORDER TO OBTAIN A CREDIT.
- c. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING WITHOUT LIMITATION TORT, CONTRACT, OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS, LOSS OF SERVICE, BUSINESS INTERRUPTION, LOSS OF OR INCORRECT BUSINESS INFORMATION/DATA AND THE LIKE) SUFFERED OR INCURRED BY EITHER PARTY EVEN IF SUCH PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING, EITHER PARTY IS FOUND LIABLE TO THE OTHER PARTY FOR DAMAGES FROM ANY CAUSE WHATSOEVER, SUCH PARTY’S AGGREGATE ANNUAL CALENDAR YEAR (JANUARY 1 TO DECEMBER 31) LIABILITY TO THE OTHER PARTY UNDER THIS PARTICIPATION AGREEMENT INCLUSIVE OF ALL SCHEDULES HERETO WILL BE \$50,000 AND WITH RESPECT TO PAR’S LIABILITY TO PARTICIPATING LOCATION, LESS ANY AMOUNTS RECEIVED BY PARTICIPATING LOCATION AS SERVICE CREDITS FOR PAR’S FAILURE TO MEET ANY AVAILABILITY WARRANTY AS SET FORTH HEREIN. THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO EITHER PARTY’S LIABILITY FOR ITS (OR ITS RESPECTIVE AGENTS AND/OR SUBCONTRACTORS) GROSS NEGLIGENCE OR WILFULL MISCONDUCT, WILFUL FAILURE TO COMPLY WITH LAW, FRAUD, INTELLECTUAL PROPERTY INFRINGEMENT, BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO OR LOSS OF ANY TANGIBLE PROPERTY.

## **SECTION J: INDEMNIFICATION.**

**1. BY PARTICIPATING LOCATION.** Participating Location agrees to indemnify, defend, and hold PAR, and PAR’s parent companies, subsidiaries, and affiliates, and their respective directors, officers, agents, co-

branders or other partners, representatives, contractors, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Participating Location PARPay Data being illegal or infringing on a third party's Intellectual Property Rights, Participating Location's use or Participating Location's Authorized Users' use of the PARPay Service, Participating Location's connection to the PARPay Service, Participating Location's violation or the violation by any of Participating Location's Authorized Users of the PARPay Terms, the violation of any rights of another by Participating Location or any of Participating Location's Authorized Users, or any act or omission of Participating Location or Participating Location's directors, officers, agents, representatives, contractors, Authorized Users, or employees.

**2. BY PAR FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.** PAR agrees to defend any action brought against Participating Location based on a claim that the Device Software, State Management Services, Device Management Service and/or the PARPay Service infringes upon a United States copyright, trademark or patent, and/or violates the trade secret rights of a third party and we will pay those costs and damages finally awarded against Participating Location on the condition that (i) Participating Location notify PAR promptly in writing of any such claim or action; (ii) PAR shall have the sole control of the defense and final settlement thereof; and (iii) if the Device Software or the PARPay Service, or any part thereof, in PAR's sole opinion is likely to become the subject of a claim of infringement, then Participating Location shall permit PAR, at PAR's sole option and expense (a) to replace or modify the Device Software or the PARPay Service to become non-infringing, or (b) if (a) is not reasonably available as an option, then Participating Location's sole and exclusive remedy shall be a refund of the PARPay Service Fees for the then current month's PARPay Service or any PARPay Service Fees for the remainder of the Term if such PARPay Service Fees were paid in advance. We shall have no liability to Participating Location for any such claim of infringement of a third party's proprietary rights that are caused by use of the Device Software or PARPay Service in a manner that is in violation of these PARPay Terms.

**3. BY PAR IN GENERAL.** PAR will defend and indemnify Participating Location, its affiliates and their respective officers, directors, employees, agents, successors, and assigns from and against any and all damages, losses, fines, penalties, costs, expenses, liabilities and other amounts (including reasonable attorney fees and expenses) ("Losses") suffered or otherwise incurred by any of them arising from or in connection with or otherwise relating to: (i) bodily injury (including death) or damage to or loss of any tangible property caused by the PARPay Services or the negligent acts or omissions of PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns; (ii) (i) bodily injury (including death) or damage to or loss of any tangible property caused by the negligent acts or omissions of PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns in providing the PARPay Services, State Management Services, Device Management Service and/or Device Software; (ii) gross negligence or willful misconduct of PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns in providing the PARPay Services, State Management Services, Device Management Service and/or Device Software, and (iii) any violation of Law by PAR or its sub-contractors and their respective officers, directors, employees, agents, suppliers, sub-suppliers, successors and assigns or any of their respective employees, officers, directors, agents or representatives in providing the PARPay Services, State Management Services, Device Management Service, and/or Device Software. Notwithstanding the foregoing, PAR is not liable to defend, indemnify or hold harmless Participating Location for any Losses directly arising from: (y) the negligent or willful misconduct of the Participating Location; or (z) any violation of Law by Participating Location or its sub-contractors and their respective officers, directors, employees, agents, suppliers, successors and assigns or any of their respective employees, officers, directors, agents or representatives.

## **SECTION K: GENERAL TERMS AND CONDITIONS**

- a. **Money Damages Insufficient.** Any breach by Participating Location or PAR of these PARPay Terms or violation of the other party's Intellectual Property Rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- b. **Governing Law.** These PARPay Terms shall be construed and interpreted in accordance with the laws of the State of Delaware.
- c. **Force Majeure.** PAR and Participating Location shall not be liable for any delay in performance under these PARPay Terms resulting from any cause beyond PAR or Participating Location's reasonable control, including without limitation, any act of God, fires, storms, floods, explosions, strikes, work stoppages or slowdowns, or other industrial disputes, legal action, failure or delay of supplies from ordinary sources, accidents, riots, war or civil disturbances, or acts of civil or military authorities.
- d. **Entire Agreement and Changes.** These PARPay Terms and the Sales Order constitute the entire agreement between the parties with respect to PARPay Services and Device Software, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. The sole terms and conditions governing the purchase of the PARPay Services from PAR are contained in these PARPay Terms and any terms or conditions contained on the face or back of any Participating Location purchase order or other document shall be without effect. No modification or waiver of any term of these PARPay Terms is effective unless both parties sign it.
- e. **No Assignment.** Neither Participating Location or PAR may assign or transfer these PARPay Terms or an order to a third party, without prior written consent of the other party, which shall not be unreasonably withheld; provided, however, these PARPay Terms with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party and PAR may use a subcontractor to perform all or part of the PARPay Services provided hereunder. PAR shall remain responsible for the performance of each subcontractor and its employees and for their compliance with these PARPay Terms.
- f. **Independent Contractors.** The parties are independent contractors with respect to each other.
- g. **Enforceability.** If any term of these PARPay Terms is invalid or unenforceable, the other terms remain in effect.
- h. **Survival.** Any terms that by their nature survive termination or expiration of these PARPay Terms, will survive including but not limited to indemnification, choice of law, and confidentiality.
- i. **CISG Not Apply.** The Convention on Contracts for the International Sale of Goods does not apply.
- j. **Notices.** Notices shall be deemed given upon receipt. Any notices required to be given shall be in writing and in the case of notice to Participating Location, shall be sent to the billing address or fax number on the Sales Order. In the case of notice to PAR, such notice shall be sent via postage prepaid certified mail or by overnight courier to: ParTech, Inc. (Attn: Legal Department); ParTech Technology Park; 8383 Seneca Turnpike; New Hartford, NY 13413-4991.

## SCHEDULE C-1

### APPROVED DEVICES

The Devices below are approved for use with the Device Platform. The list of Devices is subject to change. Devices will eventually become obsolete and require replacement. The selection of Devices may also impact the ability to utilize features and functionality of the PARPay Service as described above. Participating Location should verify with us in advance of placing an order directly from a Device supplier or manufacturer if such Device is still approved for use with the PARPay Service.

EMV Payment Devices Supported by PAR Pay
Verifone Mx915, Mx925, Vx805, Vx820, Vx520, Coming Soon – M400
Ingenico IPP-350, ISC-250, ISC-480, Coming Soon - Move 5000
<i>Devices not listed will require certification testing and additional fees prior to implementation</i>

## SCHEDULE C-2

### CERTIFIED AND SUPPORTED PAYMENT PROCESSORS

Credit and Debit Processors
First Data
WorldPay
Vantiv
Worldpay
Mercury
Chase Paymentech
Tsys
Global Payments Heartland
Elavon
Moneris
<i>Other processors may be available but would need to be certified and tested prior to deployment. Please contact Customer Sales or a Customer Support Representative to inquire about other processors.</i>

Gift Card Processors
Valuelink
Vantiv
SVS
Valuetec
Heartland Gift
Mercury
Worldpay
Aurus Gift
Chase - Givex
Coming Soon – GiftePay
Coming Soon – Synergy Gift

**SCHEDULE D**

**SALES ORDER FOR EQUIPMENT, SUBSCRIPTION SOFTWARE SERVICES  
AND SERVICES**



**Sample Sales Order**

**Prepared for:** Participating Location Name and Address      **Ship to:** Participating Location Name and Address

**Bill to:** Participating Location Name and Address

**Hardware**

Qty	Part Number	Description	Unit Price	Sales Price
-----	-------------	-------------	------------	-------------

**Software and Support**

Qty	Part Number	Description	Unit Price	Sales Price
-----	-------------	-------------	------------	-------------

**Installation Services**

Qty	Part Number	Description	Unit Price	Sales Price
-----	-------------	-------------	------------	-------------

**Hardware Maintenance Services**

Qty	Part Number	Description	Unit Price	Sales Price
-----	-------------	-------------	------------	-------------

**Grand Total (Does not include Tax and Shipping)**      **\$\$**

**Down Payment**

**Balance Due**

**Special Instructions:**

---

This Sales Order is made and entered into by and between ParTech, Inc., ("PAR") and the Participating Location executing this Sales Order. Participating Location hereby agrees to purchase from PAR, and PAR by its acceptance of this Sales Order agrees to sell to Participating Location, the Equipment, Installation Services, Subscription Software Services, PARPay Services, Advance Exchange Services, and On-Site Remedial Maintenance Service, as applicable, as listed above in accordance with the terms and conditions of this Sales Order and the Participation Agreement executed by Participating Location and PAR.

**Price Increases:** Beginning on the calendar year starting January 1, 2021 pricing is subject to an annual increase based on an amount equal to the lesser of 2% or the amount of Consumer Price Index ("CPI") increase calculated based on the immediately preceding unadjusted 12 months (10/01 through 9/30), derived from the U.S. Department of Labor, Bureau of Labor Statistics web site, <https://www.bls.gov/news.release/cpi.nr0.htm>. Price increases will take effect February 1 of the then current calendar year. PAR will communicate price increases to Participating Location in writing via email by January 15th.

**Exchange Rate for Participating Locations in Canada.** Participating Locations in Canada who are purchasing Equipment and Installation Services via an upfront payment may elect to pay for all Equipment and Services in USD or CAD. Participating Locations in Canada who are financing Equipment and Installation Services must pay in CAD for all Equipment and Services subject to the following. The exchange rate for Participating Locations in Canada whom elect to pay in CAD will be set for the spot rate of USD/CAD by the Wall Street Journal as reported by <http://www.wsj.com/public/page/news-currency-currencies-trading.html> on the Effective Date of the Master Hardware and Software Agreement between ParTech, Inc. and American Dairy Queen Corporation. The exchange rate will be maintained by PAR for a period of one (1) year from February 1, 2019 and then revised annually thereafter. On January 1 (or the next business day) of each year thereafter, the new exchange rate shall be determined based on an average of the spot rate over the prior calendar year (January 1 – December 31) of USD/CAD by the Wall Street Journal as reported by on <http://www.wsj.com/public/page/news-currency-currencies-trading.html> and communicated to Participating Location in writing via email within five (5) days of such determination. The new exchange rate will be

calculated on an annual basis for the remainder of the Term of your Participation Agreement. The annually calculated new exchange rate will take effect February 1 of the then current calendar year, and will apply to purchases of Equipment, Installation Services, existing and new purchases of Subscription Software Services, existing and new purchases of PARPay Services, existing and new purchases of Advance Exchange Services, and existing and new purchases of On-Site Remedial Maintenance Services.

The Equipment sold under this Sales Order has a limited useful life. As Subscription Software Services advance, improve, and change, Equipment sold under this Sales Order may no longer be able to meet the minimum operating requirements required to run the Subscription Software Services. In the future it will be necessary to purchase new Equipment as the PAR Solution evolves. The exact timing as to when the Equipment sold under this Sales Order will no longer effectively operate the Subscription Software Services and will therefore need to be replaced has not yet been determined. The average life cycle of today's typical Equipment configurations sold by PAR is 5-7 years.

See below for additional fees that may be incurred by Participating Location in connection with the Installation Services with regards to permits, installation delays, rescheduling, aborts, revisits, or out of scope activities and may be separately invoiced by PAR to Participating Location.

PERMIT RESEARCH FEE:	\$40 per Permit
COST OF PERMIT +COST TO OBTAIN PERMIT:	Actual
RESCHEDULE FEE:	\$135 per Participating Location
ABORT FEE:	\$750 per Participating Location
INSTALLATION DELAY FEE:	\$175 per hour (billed in 30-minute increments)
REVISIT FEES:	\$175 per hour (billed in 30-minute increments)
OUT OF SCOPE HOURLY RATE:	\$175 per hour (billed in 30-minute increments)

**RESCHEDULE FEE:** If a Participating Location is scheduled for Service and the Participating Location reschedules the Service within 48 hours of the scheduled installation date, PAR will invoice the Participating Location for Reschedule Fee as set forth above. If a Participating Location is scheduled for Service and PAR reschedules the Service within 48 hours of the scheduled Service date, PAR will provide the Participating Location with a refund to their Installation Services costs in the amount of a Reschedule Fee.

**ABORT FEE:** If a Participating Location is scheduled for Service and the Participating Location cancels the installation within 24 hours or the PAR technician arrives at the Participating Location to perform Services, and Services cannot be performed on the scheduled installation date for reasons not attributable to PAR, then PAR will invoice the Participating Location an Abort Fee as set forth above. If a Participating Location is scheduled for Service and PAR reschedules the Service within 24 hours of the scheduled Service date, PAR will provide the Participating Location with a refund to their Installation Services costs in the amount of an Abort Fee.

**INSTALLATION DELAY FEES:** If an issue within the control of the Participating Location related issue causes: (a) the PAR technician to delay the installation for 30 minutes or more at any time during the performance of the Services, PAR may invoice the Participating Location at PAR's standard hourly rate of \$175.00/hour in 30-minute increments. If an issue within PAR's or the PAR technician's control causes the PAR technician to delay the installation for 30 minutes or more at any time during the performance of the Services, PAR will credit the Participating Location at PAR's standard hourly rate of \$175.00/hour in 30-minute increments.

**REVISIT FEE:** The Participating Location is responsible for revisits to a Participating Location after completion of the Installation Services due to issues outside of PAR's control and attributable to the Participating Location's acts or omissions. Such revisits will be invoiced at PAR's standard hourly rate of \$175.00/hour in 30-minute increments. The Participating Location will not be invoiced for revisits due to issues within PAR's control.

**OUT OF SCOPE SERVICE FEES:** PAR Approved out of scope services will be invoiced at \$175 per hour in 30-minute increments.

**INSTALLATION DELAY AND ABORT SCENARIOS:** Refer to the Installation and Abort Scenarios as set forth in the Dairy Queen Installation Guide.

**Hardware Maintenance Services.** Participating Location may elect from two (2) different Equipment coverage options (Tier A or Tier B) based on the type of Equipment that the Participating Location wants to cover under the hardware maintenance services. The options are:

**Tier A:** As defined in Schedule D-1 of the Participation Agreement

**Tier B:** As defined in Schedule D-1 of the Participation Agreement

Once Participating Location elects either Tier A or Tier B, then the Participating Location must choose either Advance Exchange Services or On-Site Remedial Maintenance Services for such Equipment.

Participating Location may later elect to switch from Tier A to Tier B, or Tier B to Tier A. Participating Location may also later elect to switch from Advance Exchange Services to On-Site Remedial Maintenance Services, or from On-Site Remedial Maintenance Services to Advance Exchange Services. If Participating Location wants to make any such change, they must notify PAR via email at [contractadmin@partech.com](mailto:contractadmin@partech.com) or via telephone at 1-800-448-6505, extension 6274. If a Participating Location elects to switch from Tier A to Tier B, then the Equipment not covered under Tier A must be certified by PAR to be in proper operating condition prior to becoming eligible for Tier B. Such certification and any resulting repairs or adjustments to bring the Equipment not covered under Tier A into proper operating condition shall be at a rate of \$300 plus the agreed upon time and material rates for any necessary repairs. If the Equipment not covered under Tier A needs repair, at Participating Location's option, Participating Location may either have the Equipment repaired or purchase new Equipment. Once the Equipment is accepted by PAR and becomes eligible for hardware maintenance services, the Equipment will be covered under Tier B Advance Exchange and/or On-Site Remedial Maintenance Services as selected by the Participating Location. Additionally, if a Participating Location's hardware maintenance services have lapsed for more than three (3) months, then Participating Location's Equipment must be certified by PAR as set forth herein before becoming eligible for hardware maintenance services. If Participating Location elects to change hardware maintenance service Tiers and/or switch from Advance Exchange Services to On-Site Remedial Maintenance Services such election will become effective on the first day of the calendar month after 60 days from its notification to PAR of such election (so long as in the case of switching from Tier A to Tier B, all Equipment which was not previously covered by hardware maintenance services has been certified as eligible for hardware maintenance services by PAR).

\_\_\_\_\_  
Participating Location

\_\_\_\_\_  
Authorized Signature of Participating Location

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

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Primary Contact Telephone  
(May be used for order or payment inquiries)

\_\_\_\_\_  
Quote #

\_\_\_\_\_  
Primary Contact Email Address:  
(May be used for order or payment inquiries)

## SCHEDULE D-1

### STANDARD DAIRY QUEEN CONFIGURATIONS

#### Standard Dairy Queen Configurations

Participating Location will sign a separate Sales Order specific to Participating Location's store configuration and Equipment needs based upon the results of a Site Survey.\* Participating Location will have the option to upgrade the KVS to 27" monitors if requested (will increase cost). Listed below are standard configurations for an existing Grill and Chill, an existing Treat Store, and a new Grill and Chill. Participating Location acknowledges that it will sign a Sales Order which will include similar hardware, software, and services based on the standard configurations below. (Depending upon the site survey, additional items may be required that are not listed below. (e.g. USB Extenders, ceiling mounts, etc.)

\* New construction stores will follow the "New Store Grill and Chill" standard below and will not typically have a Site Survey.

Hardware and Installation price ranges reflect variation in cabling cost. These prices have been rounded.

#### **Standard Grill and Chill Location**

##### **Hardware Configuration:**

2 Front Counter Terminals, 2 Drive Thru Terminals, 4 Fingerprint Readers, 2 Mobile Printers, 3 Receipt Printers, 3 Cash Drawers, 3 Additional Cash Drawer Inserts, 3 Scanners (for Mobile) 6 KVS systems (20" Monitor, KVS Controller, KVS Bump Bar), 4 UPS Units, 1 24 Port Switch, Network Rack and Patch Panel, 3 Verifone MX915 Units w/stands, 3 KVS Surge Protectors, 6 USB Sound Bars,

##### **Monthly Finance Option**

- Hardware \$291 to \$300
- Install \$99 to \$132
- Software \$278
- AE (Tier B) \$96

##### **Purchase Option**

- Hardware \$14,891 to \$15,335
- Install \$5,055
- Average Cabling Cost \$1,695
- Software \$278 per month
- AE (Tier B) \$96 per month

**Small Format Treat Centric Location**

**Hardware Configuration:**

2 Front Counter Terminals, , 2 Fingerprint Readers, 1 Mobile Printers, 1 Receipt Printers, 2 Cash Drawers, 2 Additional Cash Drawer Inserts, 2 Scanners (for Mobile) 2 KVS systems (20” Monitor, KVS Controller, KVS Bump Bar), 2 UPS Units, 1 24 Port Switch, Network Rack and Patch Panel, 2 Verifone MX915 Units w/stands, 1 KVS Surge Protectors, 2 USB Sound Bars,

**Monthly Finance Option**

- Hardware \$150 to \$153
- Install \$74 to \$88
- Software \$215
- AE (Tier B) \$45

**Purchase Option**

- Hardware \$7,644 to \$7,843
- Install \$3,760
- Average Cabling Cost \$725
- Software \$215 per month
- AE (Tier B) \$45 per month

**Typical Treat Centric Location**

**Hardware Configuration:**

2 Front Counter Terminals, 1 Drive Thru Terminals, 3 Fingerprint Readers, 2 Mobile Printers, 3 Receipt Printers, 3 Cash Drawers, 3 Additional Cash Drawer Inserts, 3 Scanners (for Mobile) 3 KVS systems (20” Monitor, KVS Controller, KVS Bump Bar), 3 UPS Units, 1 24 Port Switch, Network Rack and Patch Panel, 3 Verifone MX915 Units w/stands, 3 KVS Surge Protectors, 3 USB Sound Bars,

**Monthly Finance Option**

- Hardware \$225 to \$230
- Install \$74 to \$88
- Software \$250
- AE (Tier B) \$71

**Purchase Option**

- Hardware \$11,380 to \$11,647
- Install \$3,800
- Average Cabling Cost \$725
- Software \$250 per month
- AE (Tier B) \$71 per month

**New Construction Standard Grill and Chill**

**Hardware Configuration:**

2 Front Counter Terminals, 2 Drive Thru Terminals, 4 Fingerprint Readers, 2 Mobile Printers, 3 Receipt Printers, 3 Cash Drawers, 3 Additional Cash Drawer Inserts, 3 Scanners (for Mobile) 6 KVS systems (20” Monitor, KVS Controller, KVS Bump Bar), 4 UPS Units, 1 24 Port Switch, Network Rack and Patch Panel, 3 Verifone MX915 Units w/stands, 4 KVS Surge Protectors, 6 USB Sound Bars, 3 Cash Drawer Mounting Brackets, 6 KVS Wall Mount Brackets, 9 Power Supply Brackets Network Cabling and Cabling Installation.

**Monthly Finance Option**

- Hardware \$313
- Install \$170
- Software \$278
- AE (Tier B) \$96

**Purchase Option**

- Hardware \$15,910
- Install \$6,750
- Software \$278 per month
- AE (Tier B) \$96 per month

Additionally, Participating Location will select a hardware maintenance services option. Listed below are the two tiers from which Participating Location will elect the type of coverage.

<b>HARDWARE MAINTENANCE SERVICES</b>				
<b>Tier A</b>	<b>Equipment to be covered</b>		<b>Monthly Price Per Unit</b>	
	<b>Product ID</b>	<b>Description</b>	<b>Advance Exchange (AE) Service</b>	<b>On-Site Remedial Maintenance Service (RMS Service)</b>
	T8120-4N8SN00N	POS Workstation 7" Display (Front Counter Terminals)	\$5.60	\$7.97
	T8120-4N0SN00N	POS Workstation No Display (Drive Thru Terminals)	\$5.45	\$7.90
	K4709-4550	KVS Controller	\$2.33	\$3.21
<b>Tier B</b>	<b>Equipment to be covered</b>		<b>Monthly Price Per Unit</b>	
	<b>Product ID</b>	<b>Description</b>	<b>Advance Exchange (AE) Service</b>	<b>On-Site Remedial Maintenance Service (RMS Service)</b>
	T8120-4N8SN00N	POS Workstation 7" Display (Front Counter Terminals)	\$5.60	\$7.97
	T8120-4N0SN00N	POS Workstation No Display (Drive Thru Terminals)	\$5.45	\$7.90
	K4709-4550	KVS Controller	\$2.33	\$3.21
	K8963R	Fingerprint Reader	\$3.82	NA
	M8890V-4550	Epson TM-T88V Ethernet Printer (Expediter Printers)	\$2.25	NA
	M3873V-3861	Epson TM-T88V Serial Printer (Receipt Printers)	\$2.25	NA
	M2352A-15	APG Cash Drawer Kit includes Dual Media Slot, Drawer, Cable and Insert	\$2.29	NA
	M2354-0001	APG Cash Drawer 16" with Cable and Insert	\$2.89	NA
	M8134	Motorola DS9208 SR USB Bar Code Reader	\$2.09	NA
	K4740A	KVS Bump bar	\$1.01	NA
	M3709	20" Monitor	\$2.23	NA
	M3710	27" Monitor	\$2.89	NA
	M4010A	Monoprice 24-Port Switch 10/100/1000 – Rack Mountable, with 5' Network Cable (One per Store)	\$1.51	NA



EXECUTION

# UNITED STATES GIFT CARD ENROLLMENT PACKET

Please use the overview and instructions on the following pages as a reference in completing the Gift Card enrollment packet. If you have any questions in completing these forms please contact the Gift Card Franchisee Support Help Desk at 1(866) 874-7901.

**\*\*\*Missing information will result in application rejection, required resubmission and set up delays.**

### Enrollment Packet Contents:

- Enrollment Cover Sheet
- Participation Agreement
- Credit Application
- Prepaid Implementations and Boarding Form

### Section A: Participation Agreement

Instructions.....	Section A- Page 1-2
Participation Agreement.....	1-8
Exhibit A (ACH Authorization).....	A
Exhibit B (Schedule of Designated Locations).....	B
Exhibit C (Program Fees).....	C
Addendum #1 (Addendum for FD-150 Terminals).....	1-3

### Section B: Credit Application

Instructions.....	Section B- Page 1
Credit Application .....	2
Prepaid Implementations and Boarding Form.....	3



# COVER SHEET GIFT CARD ENROLLMENT

***Please include this cover sheet with your enrollment paperwork.***

**1. Select one *then* fill in date:**

I am enrolling a NEW location (has never accepted Gift Cards before)

*If so, anticipated date of opening is \_\_\_\_\_.*

I am enrolling an existing location.

*If so, what was the date of sale/change in ownership \_\_\_\_\_,  
or the anticipated date of sale/change in ownership \_\_\_\_\_?*

**2. What is the Dairy Queen Store Number?**

Store No. \_\_\_\_\_

**3. Where should we send your initial inventory of DQ/OJ Gift Cards?**

Use store location address

Other Address

Business Name: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City/St/Zip: \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_

## SECTION A: PARTICIPATION AGREEMENT

### INSTRUCTIONS:

Step 1. **Print 2 copies** of the attached Participation Agreement.

#### **Participation Agreement - Page 1**

Step 2. On the first line, enter today's date.

Step 3. On the third line, enter the legal entity name of the Operated Location, Participating Franchisee or Sub-Franchisee.

#### **Participation Agreement - Page 10**

Step 4. On the first line, enter the legal entity name of the Operated Location, Participating Franchisee or Sub-Franchisee.

Step 5. On the remaining lines, sign and enter your name, title, street address, city, state and zip code of the legal entity name, telephone number, fax, email and today's date.

#### **Participation Agreement, Exhibit A**

Step 6. In **Section 4 of Exhibit A**, enter the bank name, account number, account title (example: legal entity name of Operated Location, Participating Franchisee or Sub-Franchisee) that account is under and account ABA routing number. Attach a voided check for the account.

Step 7. On the second page of **Exhibit A**, enter the legal entity name of the Operated Location, Participating Franchisee or Sub-Franchisee on the first line. On the remaining lines, sign and enter your name, title, street address, city, state and zip code of the legal entity name, telephone number, fax and email. Also, please enter your Tax ID number.

#### **Participation Agreement, Exhibit B**

Step 8. List each Dairy Queen or Orange Julius Store Number and address information for each Designated Location that you are signing up for the Program.

#### **Participation Agreement, Addendum #1 (Addendum for FD-150 Terminals)**

**NOTE: Only use/complete the Addendum #1 if Operated Location, Participating Franchisee, or Sub-Franchisee chooses to rent or purchase a FD-150 terminal for use as a "Gift Card only" terminal (no processing).**

Step 9. On the first line, enter today's date. On the third line, enter date Participation Agreement was signed (see step #2). These two dates do not need to be the same.

- Step 10. On page 2, **Section 2**, Election, mark your choice (Purchase or Rental). If you select Purchase, we suggest you also select the Equipment Replacement Program to cover your Terminals in case of malfunction.
- Step 11. On page 3, enter the legal entity name of the Operated Location, Participating Franchisee or Sub-Franchisee on the first line. On the remaining lines, sign and enter your name, title, street address, city, state and zip code of the legal entity along with the date Addendum #1 is signed.
- Step 12. Following page 3, complete and sign the **FD Prepaid Implementation and Boarding Form Version Dq**.
- Step 13. Return both completed and signed originals of the Participation Agreement and Credit Application to the following fax number:

**FAX: 1- 402- 916- 8946**

After processing your Participation Agreement, GIFT will return 1 fully executed copy of the Participation Agreement to you. Accompanying your copy of the Agreement will be a cover letter containing your GIFT Merchant ID Number and First Data Net log-on information with password to access your gift card reconciliation reports via the Internet.

## Participation Agreement for U.S. Franchisees and Sub-Franchisees of DQ GC Inc.

This "**Participation Agreement**" is between **First Data Resources, LLC**, successor in interest to Gift Solutions LLC, f/k/a ValueLink, LLC ("**GIFT**") and \_\_\_\_\_ [insert full legal name] ("**Operated Location**," "**Participating Franchisee**" or "**Sub-Franchisee**"), and shall be effective on the latest date that appears in the signature block. Unless otherwise indicated herein, "**party**" or "**parties**" refer to GIFT and/or Participating Franchisee or Sub-Franchisee. "**Processor**" refers to GIFT and its agents. A "**Designated Location**" is a Dairy Queen Restaurant and/or Orange Julius Store owned and operated by Participating Franchisee or Sub-Franchisee.

### Background

- **DQ GC Inc.** ("**Client**") and GIFT entered into that certain Agreement, dated JUNE 14, 2006 (the "**Agreement**"), pursuant to which Client operates a stored value card program ("**Client's Program**" or the "**Program**") and GIFT provides to Client data processing and related services for the Program;
- Operated Location (which are Designated Locations operated by Client), Participating Franchisee or Sub-Franchisee (which collectively are franchisees of Client) desire to participate in the Program and Client has approved Operated Location, Participating Franchisee or Sub-Franchisee to participate in the Program; and
- Operated Location, Participating Franchisee or Sub-Franchisee will engage GIFT to provide, and GIFT has agreed to provide to Operated Locations, Participating Franchisee or Sub-Franchisee, the Services, as defined below, for the Program in accordance with the terms of this Participation Agreement.

The parties agree as follows:

- 1 **GIFT Responsibilities.** GIFT will provide these services (the "Services"):
  - 1.1 **Database; Reports.** GIFT will maintain a Database of Card Data. "**Card Data**" is the transaction record and current value of each Card recorded in the Database. The "**Database**" is the information repository software owned and operated by GIFT or its suppliers.
  - 1.2 **Authorization.** GIFT will respond to authorization requests and process Card transactions received at GIFT's data processing center in GIFT's designated format ("**Authorization**"). GIFT will reduce the Card balance by the amount authorized. Operated Locations, Participating Franchisee or Sub-Franchisee will obtain payment from the Cardholder for any deficiency between the purchase price and the amount authorized. "**Cardholder**" means any person possessing or using a Card or Card number. Authorizations will be provided in a real time or batch environment, as mutually agreed. Authorizations will be based on the available balance recorded in the Database. GIFT is not responsible for determining whether transactions are fraudulent, improper or otherwise unauthorized.
  - 1.3 **IVR; Help Desk.** GIFT will operate an IVR, 24 hours per day, 7 days per week for the processing of mutually agreed transactions. "**IVR**" means an automated interactive voice response system accessible from the U.S. and Canada through a toll free telephone number. GIFT shall provide the following help desks during the term of this Agreement: (i) a Level I help desk that will be available twenty-four (24) hours per day, seven (7) days per week (Christmas Day excluded), for the processing of transactions pursuant to this Agreement, which shall provide Cardholder and restaurant support from a toll free telephone number; and (ii) a Level II help desk that will be available Monday through Friday, 8:00 am to 8:00 pm ET, which shall provide restaurant support from a toll free telephone number that will be provided to Client.
  - 1.4 **Settlement.** GIFT will, through its Agents, and as Processor, provide certain settlement services to Client and Operated Locations, Participating Franchisee or Sub-Franchisee (the "**ACH Settlement Services**") through debits and credits to the Operated Locations, Participating Franchisee or Sub-Franchisee Account (as defined below) and the designated accounts of Client (the "**Merchant Account**") for the net value of Card Transactions. Operated Locations, Participating Franchisee or Sub-Franchisee must provide Client

## EXECUTION

with an ACH Authorization in the form of **Exhibit A** hereto, and by executing this Participation Agreement, hereby confirms its authorization of Client and its service providers (including GIFT and Affiliated Processor, acting on behalf of Client) to initiate debit and credit entries to the Operated Locations, Participating Franchisee or Sub-Franchisee Account as necessary or appropriate to effect any Card transaction and all adjustments and corrections thereto, and as necessary or appropriate to effect any other transfer contemplated by this Participation Agreement. Operated Locations, Participating Franchisee or Sub-Franchisee shall comply with and be bound by any applicable law and the rules and regulations of the National Automated ClearingHouse Association as in effect from time to time.

- 1.5 **Returned Items.** In the event that any debit to Participating Franchisee or Sub-Franchisee Account is returned for any reason, including but not limited to, insufficient funds, Participating Franchisee or Sub-Franchisee authorizes Client and its service providers, acting on behalf of Client, to initiate a debit to the Participating Franchisee or Sub-Franchisee Account as set forth in the form of **Exhibit A** for the original debit amount plus any associated returned item fees (including, but not limited to the "**Returned Item Fee**" set forth on **Exhibit C** hereto). Nothing herein shall be construed to limit Client (as third party beneficiaries under this Participation Agreement) or GIFT's ability to collect any amounts owed under this Participation Agreement, and Client (as third party beneficiaries under this Participation Agreement) and GIFT expressly reserve the right to exercise any and all rights and remedies available under applicable law.
- 1.6 **License.** GIFT may provide or permit Operated Locations, Participating Franchisee or Sub-Franchisee to access computer software, enhancements thereto and updates, new releases, and copies thereof ("**Software**"). All right, title and interest in and to all Software will remain in GIFT or its suppliers and no title is transferred to Operated Locations, Participating Franchisee or Sub-Franchisee. GIFT grants to Operated Locations, Participating Franchisee or Sub-Franchisee, and Operated Locations, Participating Franchisee or Sub-Franchisee accepts, the nonexclusive, nontransferable right during the term of this Participation Agreement to use the Software solely to perform its obligations. Operated Locations, Participating Franchisee or Sub-Franchisee will not copy, modify, distribute, display, sublicense, rent, reverse engineer, decompile, create derivative works of, or disassemble the Software, nor will Operated Locations, Participating Franchisee or Sub-Franchisee allow anyone else to do so, except to the extent permitted by applicable law. Operated Locations, Participating Franchisee or Sub-Franchisee acknowledges that the Software is proprietary and Confidential Information of GIFT. Operated Locations, Participating Franchisee or Sub-Franchisee will not alter, remove, modify or suppress any notices in the Software.

## 2 Operated Location, Participating Franchisee or Sub-Franchisee Responsibilities.

- 2.1 **Card Production.** Operated Locations, Participating Franchisee or Sub-Franchisee will obtain all Cards for the Program from Client. A "**Card**" is a Client-issued plastic card with a magnetic stripe that accesses Card Data. Operated Locations, Participating Franchisee or Sub-Franchisee acknowledges that Client is responsible for the control and distribution of Cards to Operated Locations, Participating Franchisee or Sub-Franchisee under the Program.
- 2.2 **Operated Locations, Franchisee or Sub-Franchisee Account.** Operated Locations, Participating Franchisee or Sub-Franchisee shall establish and maintain a deposit account(s) (the "**Operated Locations, Franchisee or Sub-Franchisee Account**") at an insured depository institution (the "**Depository**") for the settlement of Card transactions and other transactions as authorized from time to time in the Program Procedures (as defined below, and collectively referred to as "**Card Transactions**").
- 2.3 **Distribution; Card Authorization Equipment.** Operated Locations, Participating Franchisee or Sub-Franchisee will actively promote the Program. Operated Locations, Participating Franchisee or Sub-Franchisee will request an Authorization in advance of each transaction. Operated Locations, Participating Franchisee or Sub-Franchisee will provide and maintain (i) all POS devices, telecommunications facilities and other equipment (collectively, "**Card Authorization Equipment**") required for Operated Locations, Participating Franchisee or Sub-Franchisee to electronically transmit Card transaction data from Designated Locations to GIFT; and (ii) any development, programming or other modifications to the Card Authorization Equipment as necessary to access and use Services and Service modifications. A "**POS**" is a

## EXECUTION

point of sale terminal, device or system certified to GIFT specifications. The parties will test the Card Authorization Equipment for functionality prior to Program launch.

- 2.4 **Designated Locations.** Operated Locations, Participating Franchisee or Sub-Franchisee shall participate in the Program in each of its Designated Locations. Information regarding Operated Locations, Participating Franchisee or Sub-Franchisee's Designated Locations is set forth in the Schedule of Designated Locations, attached hereto as **Exhibit B**. During the Term, Operated Locations, Participating Franchisee or Sub-Franchisee shall notify GIFT of any changes necessary to keep **Exhibit B** updated, including, without limitation, any restaurant transfers or closures, and this Participation Agreement shall no longer apply with respect to such Designated Locations and, to the extent that Operated Locations, Participating Franchisee or Sub-Franchisee acquires an additional Designated Location, this Participation Agreement shall apply with respect to such new Designated Location. Each time Card Transactions are authorized at a Designated Location of Operated Locations, Participating Franchisee or Sub-Franchisee, Operated Locations, Participating Franchisee or Sub-Franchisee represents and warrants that **Exhibit B** is a complete list of its Designated Locations, and that the information contained therein is true and correct.
- 2.5 **Program Procedures.** The processes and procedures by which Operated Locations, Participating Franchisee or Sub-Franchisee sells Cards and enables use of Cards at Designated Locations are also part of the Program, and Operated Locations, Participating Franchisee or Sub-Franchisee shall be solely responsible that such processes and procedures comply with the Program Procedures, as defined below. Client is solely responsible for defining and implementing those processes and procedures, including those relating to the sale of Cards, service fees (if any), Card redemption, merchandise returns or refunds and Cardholder dispute resolution (collectively, "**Program Procedures**"). Operated Locations, Participating Franchisee or Sub-Franchisee understands that GIFT has no obligation to process any transaction for any card other than Cards supported under the Program.
- 2.6 **Cardholder Fees.** Fees assessed to Cardholders in connection with Cards, including any transaction, maintenance or inactivity fees, shall be as established by Client. Operated Locations, Participating Franchisee or Sub-Franchisee shall not assess any fee or surcharge for purchase, use, activation or any other transaction in respect of a Card unless otherwise defined in the Program Procedures.
- 2.7 **Terminals.** Each Operated Location's, Participating Franchisee's and Sub-Franchisee's Designated Locations must use a terminal certified to GIFT's specifications (the "**Terminal**") for Card Transactions. In the event an Operated Locations, Participating Franchisee or Sub-Franchisee does not currently own, rent or lease the Terminals, it will need to acquire Terminals in accordance with the pricing indicated on **Addendum #1**, attached hereto. Should an Operated Location's, Participating Franchisee's or Sub-Franchisee's Designated Location currently operate one or more point of sale terminals that support Card Transactions and are certified to GIFT's specifications and Client's Program Procedures, such Designated Location may use such certified terminals for Card Transactions.

### 3 Fees and Charges.

- 3.1 **Fees.** Participating Franchisee or Sub-Franchisee shall pay, in accordance with **Exhibit C**, the Program fees set forth on **Exhibit C** to this Participation Agreement ("**Program Fees**"). Participating Franchisee or Sub-Franchisee agrees that all Program Fees shall be paid by an ACH debit from the Participating Franchisee or Sub-Franchisee Account as set forth in the form of **Exhibit A**, and Participating Franchisee or Sub-Franchisee authorizes Client and its service providers, including GIFT, to debit and/or credit funds from or to the Participating Franchisee or Sub-Franchisee Account for such purpose, on or about the 15th calendar day of each month, for so long as this Participation Agreement is in effect.
- 3.2 **Fee Adjustments.** Program Fees are subject to adjustment if necessary to pass through any increases or decreases in costs associated with the Program. Any such adjustment resulting in an increase in cost associated with Program Fees shall become effective upon thirty (30) days notice to Participating Franchisee or Sub-Franchisee.

4 **Term.** The "**Term**" begins when the Participation Agreement is signed by the parties and continues for so long as the Agreement is in effect, provided, however, that to the extent GIFT is required to provide commercially reasonable

## EXECUTION

support services following a termination of the Agreement, the provisions of this Participation Agreement shall remain in effect, but only to the extent necessary for GIFT to perform such services and for Operated Locations, Participating Franchisee or Sub-Franchisee to fulfill its obligations in connection with such services. Notwithstanding anything herein to the contrary, Participating Franchisee or Sub-Franchisee has the right to terminate this Participation Agreement, without cause and without any penalty fee, upon no less than sixty (60) days' prior written notice to GIFT, with a copy of such notice to Client.

### 5 Termination for Cause.

- 5.1 Either party has the right to terminate this Participation Agreement immediately in the event that the other party is guilty of a material breach of this Participation Agreement, and such breach remains uncured thirty (30) days following receipt of notice thereof. GIFT will provide a copy of such notice of termination to Client.
- 5.2 GIFT may terminate this Participation Agreement upon notice to Operated Locations, Participating Franchisee or Sub-Franchisee: (i) if Operated Locations, Participating Franchisee or Sub-Franchisee or the Program causes GIFT to violate any law or regulation and Operated Locations, Participating Franchisee or Sub-Franchisee or Client fails to cure the condition causing such violation within ten (10) business days after notice; (ii) if Operated Locations, Participating Franchisee or Sub-Franchisee fails to pay any amount due within ten (10) days after receipt of notice; (iii) if GIFT determines, in its sole discretion, that a material adverse change has occurred in the financial condition of Operated Locations, Participating Franchisee or Sub-Franchisee; (iv) in whole or in part, in one or more jurisdictions, if the ACH Settlement Services cause GIFT or its Affiliated Processor to violate any law or regulation and Operated Locations, Participating Franchisee or Sub-Franchisee or Client fails to cure the condition causing such violation within ten (10) business days after notice; (v) if GIFT is informed that Operated Locations, Participating Franchisee or Sub-Franchisee no longer operates as a franchisee of Client; or (vi) if Client instructs GIFT in writing to immediately terminate the Participation Agreement. GIFT will provide a copy of such notice of termination to Client. GIFT's obligation to provide the Services will be suspended during the cure periods referenced in clauses (i) and (iv).
- 5.3 Either party may also terminate this Participation Agreement immediately in the event that the other party shall go into liquidation, suffer the appointment of a receivership of its assets, go into bankruptcy, voluntarily or involuntarily, or otherwise take advantage of any insolvency laws, or upon any voluntary or involuntary sale, transfer, or other disposition of substantially all of the assets of the other party. GIFT will provide a copy of such notice of termination to Client.

**6 Termination of Agreement.** Termination or expiration of the Agreement results in immediate termination of this Participation Agreement with no notice required.

**7 Termination of Franchise Agreement(s).** Termination or expiration of Operated Location's, Participating Franchisee's or Sub-Franchisee's franchise agreement(s) with Client ("**Franchise Agreement**") results in immediate termination of this Participation Agreement with respect to the Designated Locations covered by the terminated or expired Franchise Agreement, with no notice required.

**8 Exclusivity.** During the Agreement term: (i) GIFT will be the sole and exclusive provider of the Services to Operated Locations, Participating Franchisee or Sub-Franchisee; and (ii) Operated Locations, Participating Franchisee or Sub-Franchisee will not, directly or indirectly, offer or promote any other proprietary, closed network, online gift card program. Nothing in the foregoing shall restrict or prohibit Operated Locations, Participating Franchisee or Sub-Franchisee from accepting any Visa, MasterCard, American Express, Discover or other universally accepted credit or debit card or from participating in any "open network" gift card program with other merchants. For purposes of clarification, a "closed network" program refers to a program in which a gift card is accepted only by the issuing merchant, and an "open network" program refers to a program in which a single gift card is accepted by more than one unaffiliated merchants. During the Term of this Agreement, Operated Locations, Participating Franchisee or Sub Franchisee shall have the right to accept a mail issued gift card.

**9 Confidentiality.** "**Confidential Information**" includes this Participation Agreement and any information obtained by one party ("**Recipient**") regarding the other party ("**Discloser**") or their respective businesses, including all

## EXECUTION

confidential or proprietary concepts, Software, documentation, reports, data, specifications, Card Data, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable. Confidential Information will not include information that: (i) is or becomes in the public domain through no fault of Recipient; (ii) was received from a third party free of any obligation of confidence to Recipient's knowledge; (iii) was in Recipient's possession prior to receipt from Discloser;

(iv) is required to be disclosed by law, regulation or court order after giving Discloser as much advance notice as practical; or (v) is independently developed by Recipient's employees, consultants or agents without use of or reference to the Discloser's Confidential Information. Participation Agreement will be used by Recipient only to exercise its rights and to perform its obligations under this Participation Agreement. Recipient will use reasonable care to safeguard Confidential Information. Recipient will return or destroy Confidential Information within a reasonable period after request, except that GIFT may retain Card Data, subject to this **Section 9**, to comply with any legal or regulatory requirements or any potential audit requests or requirements. Breach of the restrictions on use or disclosure of Confidential Information will result in immediate and irreparable harm to Discloser and money damages will be inadequate to compensate for that harm. Discloser will be entitled to equitable relief in addition to all other available remedies to redress any breach. Except as expressly provided herein, no license is granted to Recipient under any Discloser patent, trademark, copyright, trade secret or other proprietary right.

### 10 Indemnification.

- 10.1 **General.** Subject to the limitations set forth in **Sections 11**, each party will indemnify the other, its Affiliates, and their respective directors, officers, employees, and agents from and against any and all third party claims, losses, liabilities and damages (including reasonable attorneys' fees and costs of settlement) resulting from or arising out of its failure to comply with this Participation Agreement. Operated Locations, Participating Franchisee or Sub-Franchisee further agrees to indemnify GIFT, its directors, officers, employees, and agents from and against any and all third party claims, losses, liabilities and damages (including reasonable attorneys' fees and costs of settlement) resulting from or arising out of GIFT's compliance with Operated Locations, Participating Franchisee or Sub-Franchisee's instructions, orders or specifications. "**Affiliate**" means, with respect to either party, any entity controlling, controlled by or under common control with such party.
- 10.2 **Intellectual Property.** GIFT agrees to indemnify Operated Locations, Participating Franchisee or Sub-Franchisee, its directors, officers, employees and agents from and against all third party claims, losses, liabilities and damages (including reasonable attorneys' fees and costs of settlement) resulting from or arising out of any allegation that GIFT's Software misappropriate or infringe such third party's U.S. copyright, trademark, patent or other intellectual property right, except to the extent that such allegation arises from (i) Operated Locations, Participating Franchisee or Sub-Franchisee's use of Software other than in compliance with this Agreement and any documentation supplied by GIFT, (ii) Operated Locations, Participating Franchisee or Sub-Franchisee's use of Software in combination with other software, equipment, systems, services, processes, components or elements not provided by GIFT, if the infringement or misappropriation would not have occurred but for such use or combination, or (iii) modifications or development requested by Client or Operated Locations, Participating Franchisee or Sub-Franchisee, using designs, instructions or specifications provided or approved by Client or Operated Locations, Participating Franchisee or Sub-Franchisee. Operated Locations, Participating Franchisee or Sub-Franchisee agrees to indemnify GIFT, its directors, officers, employees and agents from and against all third party claims, losses, liabilities and damages (including reasonable attorneys' fees and costs of settlement) resulting from or arising out of any allegation that materials supplied by Client or Operated Locations, Participating Franchisee or Sub-Franchisee (including trademarks, artwork, designs and specifications) misappropriate or infringe such third party's U.S. copyright, trademark, patent or other intellectual property right, except to the extent that such allegation arises from GIFT's use of such materials other than in compliance with (a) this Agreement or (b) any relevant instructions supplied by Client or Operated Locations, Participating Franchisee or Sub-Franchisee.

## 11 Limitation of Liability; Disclaimer of Warranties.

- 11.1 **Limitation.** Except for **Section 10.2**. Above, GIFT'S, and its suppliers' and processor's, cumulative aggregate liability to Client and Operated Locations, Participating Franchisee and Sub-Franchisees and all other operated locations, participating franchisee and sub-franchisees under the Agreement this Participation Agreement and all participation agreements will be limited to actual direct damages and, in any event, will not: (i) exceed \$3,000,000; or (ii) include any liability for claims arising out of or relating to the cards issued to Participating Franchisees from Client. For example, if Client and two additional Operated Locations, Participating Franchisee and Sub-Franchisees participate in the Program, GIFT'S cumulative aggregate liability to Client and such Operated Locations, Participating Franchisee and Sub-Franchisees for actual direct damages will not exceed \$3,000,000 and will not include any liability for claims arising out of or relating to services and/or items supplied by Client or third parties.
- 11.2 **Exclusion.** In no event will any party to this Participation Agreement, their affiliates, or any of their respective officers, directors, employees, or agents be liable for lost profits, lost business opportunities, lost revenues, exemplary, punitive, special, incidental, indirect or consequential damages or the like, each of which is excluded by agreement of the parties regardless of whether such damages were foreseeable or whether a party has been advised of the possibility thereof.
- 11.3 **Disclaimer.** This is a service agreement. Except as expressly provided in this Participation Agreement, GIFT disclaims all representations and warranties, express or implied, including any warranties of quality, suitability, merchantability, fitness for a particular purpose or noninfringement.
- 11.4 **Time Limitation.** Operated Locations, Participating Franchisee or Sub-Franchisee may not assert any cause of action against GIFT under this Participation Agreement that was or reasonably should have been discovered by Operated Locations, Participating Franchisee or Sub-Franchisee more than one year prior to the filing of a suit or the commencement of arbitration proceedings alleging such cause of action.
- 11.5 **Compliance with Law.** Operated Locations, Participating Franchisee or Sub-Franchisee will comply with all laws and regulations applicable to its business.

**12 Pre-condition to Liability.** Prior to bringing any claim against GIFT under this Participation Agreement, Participating Franchisee or Sub-Franchisee shall provide Client with written notice detailing the claim ("**Notice of Claim**"), and Client shall have the right to pursue such claim on Operated Location's, Participating Franchisee's or Sub-Franchisee's behalf by providing Operated Location, Participating Franchisee or Sub-Franchisee with written notice of the same within ten (10) business days after receiving the Notice of Claim. If Client elects to pursue such claim on Operated Location's, Participating Franchisee's or Sub-Franchisee's behalf, Operated Location, Participating Franchisee or Sub-Franchisee may participate in the claim with Client at Operated Location's, Participating Franchisee's or Sub-Franchisee's election. Any resolution of a claim brought by Client on Operated Location's, Participating Franchisee's or Sub-Franchisee's behalf shall be binding on Operated Location, Participating Franchisee or Sub-Franchisee. If Client elects not to pursue such claim on Operated Location's, Participating Franchisee's or Sub-Franchisee's behalf, Operated Location, Participating Franchisee or Sub-Franchisee may pursue such claim on its own behalf.

## 13 Miscellaneous.

- 13.1 **Notices.** Notices will be effective upon receipt if they are received in writing, by registered or certified mail, postage prepaid, return receipt requested or by overnight delivery to the President of the other party at its address on the signature page.
- 13.2 **Independent Contractor; Third Party Beneficiaries.** The parties are independent contractors. Neither party shall have any authority to bind the other. This Participation Agreement is entered into solely for the benefit of GIFT and Operated Locations, Participating Franchisee or Sub-Franchisee, and will not confer any rights upon any person not expressly a party to this Participation Agreement, including Cardholders. GIFT may subcontract with others to provide Services provided that no such use of subcontractors will relieve GIFT of its obligations under this Agreement.
- 13.3 **Complete Agreement.** This Participation Agreement is the complete and exclusive understanding of the

## EXECUTION

parties with respect to its subject matter. Except as expressly provided herein, no modification or waiver of this Participation Agreement will be valid unless in writing signed by each party. A party's waiver of a breach of any term will not be a waiver of any subsequent breach of the same or another term.

- 13.4 **Assignment.** Operated Locations, Participating Franchisee or Sub-Franchisee may not assign its rights or delegate its obligations under this Participation Agreement without GIFT's prior written consent.

**14 Governing Law; Arbitration.** The laws of the State of Delaware, excluding its rules on conflicts of laws, will govern this Participation Agreement. Subject to **Section 12**, all disputes will be submitted to the American Arbitration Association (the "AAA") for resolution before a panel consisting of three arbitrators, one of which will be selected by Participating Franchisee or Sub-Franchisee, one by GIFT and the third selected by mutual agreement of the first two. Arbitration will be conducted in accordance with the Commercial Arbitration Rules of the AAA then in effect. The decision of the arbitrators will be binding upon the parties; except that disputes arising out of **Section 9** will not be subject to arbitration, and may be brought to a court for judicial resolution. Judgment upon any arbitration award or decision may be entered in any court having jurisdiction. Arbitration will be held in Denver, Colorado. Each party will pay its own arbitration expenses and one-half of the fee of the arbitrators and the administrative fee of the AAA. The Colorado Rules of Evidence will apply to such arbitration. The arbitrators will be required to render a decision based on the terms of this Participation Agreement and applicable law.

**[Signatures on next page.]**

**EXECUTION**

**Authorized Signatures:**

\_\_\_\_\_

State of Formation: \_\_\_\_\_

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

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

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

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

Address for Notices:

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

and copy to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

**First Data Resources, LLC**

\_\_\_\_\_

:

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

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

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

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

Address for Notices:

**First Data Resources, LLC**

2900 Westside Parkway

Alpharetta, GA 30004

Attention: Vice President Operations

and copy to:

**First Data Resources, LLC**

6855 Pacific Street

Omaha, Nebraska 68106

Attention: Legal Department

EXHIBIT A

**ACH (Debit and Credit) Authorization**

By providing the information requested below and signing this ACH Authorization, the undersigned Operated Locations, Participating Franchisee or Sub-Franchisee hereby:

1. Authorizes Client and its service providers, acting on behalf of Client, to initiate ACH debit and credit entries to the deposit account indicated below, and to debit and credit the same to such account, as necessary or appropriate to effect any Card transaction and all adjustments and corrections thereto, and as necessary or appropriate to effect any other transfer contemplated by the Participation Agreement, including, without limitation, any Program fees, (including, but not limited to shipping fees, fulfillment fees, merchandising materials and card fees, etc.);
2. In the event that any debit to the deposit account is returned for any reason, Operated Locations, Participating Franchisee or Sub-Franchisee authorizes Client and its service providers, acting on behalf of Client, to initiate a debit to the account for the original debit amount plus any associated returned item fees;
3. Agrees that Operated Locations, Participating Franchisee or Sub-Franchisee will comply with any applicable law and the rules and regulations of the National Automated Clearing House Association as in effect from time to time; and
4. Certifies that the authorized officer indicated below has the authority to bind Operated Locations, Participating Franchisee or Sub-Franchisee, and that this ACH Authorization constitutes a writing signed by Participating Franchisee or Sub-Franchisee.

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

Account No.: \_\_\_\_\_

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

ABA Routing No.: \_\_\_\_\_

**PLEASE ATTACH VOIDED CHECK**

**\*\*\*NO STARTER CHECKS\*\*\* If you only have starter checks, instead please provide a short bank letter instead validating the Business checking account name, account number and routing number.**

**EXECUTION**

Capitalized terms used herein without definition shall have the meaning provided to such terms in the Participation Agreement.

This authorization is to remain in full force and effect until thirty (30) days after the Participation Agreement has been terminated and Client has received written notification from Operated Locations, Participating Franchisee or Sub-Franchisee of this authorization's termination in such time and in such manner as to afford Client and its third party service providers and the Depository a reasonable opportunity to act on it. No such termination shall relieve Operated Locations, Participating Franchisee or Sub-Franchisee of any obligations or liabilities that accrue or relate to events that have occurred prior to such termination.

**Authorization and Agreement:**

**Operated Locations, Participating Franchisee or Sub-Franchisee:**  
*(Please type or legibly write legal entity name on line below)*

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

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

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

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

Street Address: \_\_\_\_\_

City, State and ZIP: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Facsimile (Fax): \_\_\_\_\_

E-mail: \_\_\_\_\_

Entity Taxpayer ID #: \_\_\_\_\_



**EXHIBIT C**

**Program Fees**

**Card Transaction Fee:** Participating Franchisee or Sub-Franchisee will pay Client an initial transaction processing fee of **\$0.04** on all Card redemption, reload, balance inquiry, time-out reversal and void transactions initiated from Card Authorization Equipment within each of Participating Franchisee or Sub-Franchisee's Designated Locations, subject to adjustment per **Section 3** of the Participation Agreement.

**Help Desk Support Fee:** Participating Franchisee or Sub-Franchisee will pay Client a monthly fee of **\$3.50** for each Designated Location that Participating Franchisee or Sub-Franchisee signs up for the Program.

**ACH Settlement Services Fee:** Participating Franchisee or Sub-Franchisee will pay Client a fee of **\$0.10** for each ACH debit or credit entry initiated to the Participating Franchisee or Sub-Franchisee Account.

**ACH Returned Item Fee:** Participating Franchisee or Sub-Franchisee will pay Client a returned ACH item fee of **\$25.00** for each ACH entry submitted against the Franchisee or Sub-Franchisee Account that is returned for any reason, including but not limited to insufficient funds. Fee will not be charged to Participating Franchisee or Sub-Franchisee if returned ACH item is caused by Client's service provider.

**Terminal Reprogramming Fee:** For Participating Franchisee or Sub Franchisee owned FD-150 Terminals that are not provided by GIFT, there is a **\$25.00** per Terminal reprogramming fee associated with downloading a GIFT gift card Terminal application via telephone.

## ADDENDUM #1

## Addendum for FD-150 Terminals

This Terminal Addendum ("**Addendum**"), effective as of the latest date that appears in the signature block, is between **First Data Resources, LLC**, successor in interest to Gift Solutions LLC, f/k/a ValueLink, LLC ("**GIFT**") and the undersigned **Operated Location, Participating Franchisee** and **Sub-Franchisee**, and supplements the Participation Agreement between them dated \_\_\_\_\_, 20\_\_\_\_ (the "**Agreement**") and sets forth the terms pursuant to which Operated Locations, Operated Location, Participating Franchisee and Sub-Franchisee will purchase or rent Terminals. Capitalized terms not defined herein shall have the meanings assigned in the Agreement.

**1. Purchase and Rental Options.**

- 1.1. **Purchase.** Participating Franchisee and Sub-Franchisee may purchase Terminals subject to terms set forth below.
  - 1.1.1. **Sale Price; Adjustments.** Operated Locations, Participating Franchisee and Sub-Franchisee may purchase a new Terminal(s) offered by GIFT at a sale price of \$245.00 (the "**Sale Price**").
  - 1.1.2. **Deployment Fee.** In addition, Operated Locations, Participating Franchisee and Sub-Franchisee will be charged a one-time deployment fee of \$75.00 per Terminal deployment per Designated Location.
  - 1.1.3. **Equipment Replacement Program.** Participating Franchisee and Sub-Franchisee may, but shall not be obligated to, participate in an equipment replacement program for Terminal(s) purchased from GIFT that are out of warranty at a cost of \$125.00 per replaced Terminal. Equipment replacement includes, but is not limited to, overnight service on replacement Terminal and call tag pick-up of defective Terminal.
- 1.2. **Rental.** Participating Franchisee and Sub-Franchisee may rent Terminals subject to the terms set forth below.
  - 1.2.1. **Rental Rates.** Operated Locations, Participating Franchisee and Sub-Franchisee may rent Terminal(s) from GIFT, or another provider designated by GIFT pursuant to GIFT's (or the alternative provider's) standard rental agreement terms at a rate of \$25.00 per Terminal with no rental term commitment; \$14.00 per Terminal based on a rental term commitment of 36 months and \$11.00 per Terminal based on a rental term commitment of 48 months. Rental Terminals deployed by GIFT or its alternative provider may be either new or refurbished.
  - 1.2.2. **Deployment Fee.** In addition, Operated Locations, Participating Franchisee and Sub-Franchisee will be charged a one-time deployment fee of \$75.00 per Terminal deployment plus applicable shipping, duties and taxes per Designated Location.
  - 1.2.3. **Purchase Option.** Should Participating Franchisee and Sub-Franchisee choose the Terminal rental option of either a 36 month or 48 month term commitment, Participating Franchisee and Sub-Franchisee shall have the option to purchase any or all of the rented Terminal(s) at \$25.00 per Terminal at the end of the Rental Term. Terminals not purchased shall be returned to the Terminal provider.
  - 1.2.4. **Early Termination Fees.** Should Participating Franchisee and Sub-Franchisee choose the Terminal

**EXECUTION**

rental option of either a 36 month or 48 month term commitment and if Terminal(s) are rented for less than the term of the rental commitment, Participating Franchisee or Sub-Franchisee will be subject to an administration fee for each rented Terminal at the cessation of the Rental Term equal to (A) For a 36 month rental term; \$10.41 multiplied by the difference between thirty-six (36) and the number of monthly rental payments made by Participating Franchisee or Sub-Franchisee; (B) For a 48 month rental term; \$7.81 multiplied by the difference between forty-eight (48) and the number of monthly rental payments made by Participating Franchisee or Sub-Franchisee and (C) a "Restocking Fee" calculated as follows:

- a) If less than 20 Rental Payments are Made then the Restocking Fee Per Terminal is \$50.00
- b) If 20 to 36 Rental Payments are Made then the Restocking Fee Per Terminal is \$40.00
- c) If 37 to 48 Rental Payments are Made then the Restocking Fee Per Terminal is \$30.00

1.2.5. **Equipment Replacement Program.** All Terminals rented shall be included in an equipment replacement program at no additional cost. Equipment replacement includes, but is not limited to, overnight service on replacement Terminal and call tag pick-up of defective Terminal.

**2. Election.**

Operated Locations, Participating Franchisee and Sub-Franchisee hereby selects the following (check all applicable and fill in quantities):

Terminal Option	Terminal Type	Terminal Quantity	Term (if applicable)	Applicable Price	Total
<input type="checkbox"/> Purchase	First Data 150 terminal (N-FD-150)		N/A	\$245.00 per Terminal *	
<input type="checkbox"/> Equipment Replacement Program	First Data 150 terminal (N-FD-150)		N/A	\$125.00 per Terminal	<b>N/A</b>
<input type="checkbox"/> Rental	First Data 150 terminal (N-FD-150)		N/A	\$25.00 per Terminal *	
<input type="checkbox"/> Rental	First Data 150 terminal (N-FD-150)		36 months	\$14.00 per Terminal *	
<input type="checkbox"/> Rental	First Data 150 terminal (N-FD-150)		48 months	\$11.00 per Terminal *	

\* Per Terminal Deployment Fee: \$75.00 per terminal:

- Inclusive of all application setup, download, shipping and handling fees.
- Inclusive of one terminal and/or peripherals and/or accessories that accompany one terminal.
- Inclusive of 1-3 business day delivery (3 day guaranteed).

**3. ACH Debit Authorization.** Operated Locations, Participating Franchisee and Sub-Franchisee authorizes GIFT and its service providers, acting on behalf of GIFT, to initiate ACH debit and credit entries to the deposit account indicated on Exhibit A to the Franchisee and Sub-Franchisee Participation Agreement, and to debit and credit the same to such account, as necessary or appropriate to effect any charge, fee or other transfer contemplated by this Addendum and all adjustments and corrections thereto. Operated Locations, Participating Franchisee and Sub-Franchisee shall comply with Applicable Law and the rules and regulations of the National Automated Clearing House Association as in effect from time to time.

**EXECUTION**

**4. Conflict with Agreement.** Except as supplemented or amended by this Addendum, all provisions of the Agreement shall continue in full force and effect, but if there shall be any conflict or inconsistency between the provisions of this Addendum and the Agreement, the provisions of this Addendum shall govern and control.

**Authorized Signatures:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
and copy to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**First Data Resources, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Address for Notices:

First Data Resources, LLC  
2900 Westside Parkway  
Alpharetta, GA 30004  
Attn: Vice President Operations  
and copy to:  
First Data Resources, LLC  
6855 Pacific Street  
Omaha, Nebraska 68106  
Attn: Legal Department

## SECTION B: CREDIT APPLICATION

### INSTRUCTIONS

- Step 1. **Print 1 copy** of the attached Credit Application.
- Step 2. An owner, partner, or officer must complete and sign the Credit Application. A Social Security number is required. Complete as indicated.

## Credit Application

### Gift Solutions - Participating Franchisee

All questions must be answered fully in order for this credit application to be processed.

#### Participating Franchisee Information ("Franchisee")

<b>1.</b>	Legal Name of Operated Location, Participating Franchisee or Sub-Franchisee:	
<b>2.</b>	Doing Business As (d/b/a):	
<b>3.</b>	Form of Organization:	<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability <input type="checkbox"/> Company <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Other: _____
<b>4.</b>	State of Incorporation / Formation / Registration:	
<b>5.</b>	Date of Incorporation / Formation / Registration:	
<b>6.</b>	Federal Tax ID No (FEIN):	
<b>7.</b>	Mailing Address (Street/City/State/Zip):	
<b>8.</b>	Time at present address:	
<b>9.</b>	Time in Business:	
<b>10.</b>	Telephone Number:	
<b>11.</b>	Fax Number:	
<b>12.</b>	Contact Name:	
<b>13.</b>	Contact Email address:	
<b>14.</b>	Contact Phone Number:	
<b>15.</b>	Contact Fax Number:	

#### Terms and Conditions

All statements contained in this application and in the financial statements and other documentation submitted in support of this application are true and correct. Permission and authorization is hereby granted to First Data Resources, LLC, First Data Corporation and its and their affiliates and representatives (collectively "FDC") as well as to prior employers, trade references, Dun & Bradstreet, banks, consumer credit services, consumer reporting agencies and state and federal government representatives, without regard to whether they are listed herein, to verify, receive, exchange, and obtain business and/or personal credit and other information including, without limitation criminal background checks, as part of this application. The undersigned further agree that neither FDC nor anyone who has furnished FDC any information concerning Franchisee or the undersigned owners and/or principals of Franchisee shall be responsible for any losses or damages of Franchisee or the undersigned owners or principals of Franchisee may claim as resulting from said verification, receipt, exchange, or obtaining business and/or personal credit or other business and/or personal information. Under penalty of perjury, the undersigned certify that: (i) the federal taxpayer identification number shown on this application as Franchisee's Federal Tax ID Number is the correct taxpayer identification number of Franchisee (or Franchisee is waiting for a number to be issued to Franchisee), and (ii) Franchisee is not subject to backup withholding because either Franchisee is exempt from backup withholding, or Franchisee has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or the IRS has notified Franchisee that it is no longer subject to backup withholding.

**Owner/Partner/Officer Information:**

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

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

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

Date of Birth: \_\_\_\_\_

Home Street Address: \_\_\_\_\_

Percentage of Ownership: \_\_\_\_\_

Home Phone Number: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

**PREPAID IMPLEMENTATION AND BOARDING FORM—REQUIRED VERSION DQ**

FRANCHISEE / SHIP TO:		TAX REPORTING REQUIREMENTS:	
Franchise Owner Name:		Business Tax ID:	
Franchise Phone #:		What Type? (SSN, EIN)	
Store Phone #:		<b>GIFT Consortium:</b>	Check one: <input type="checkbox"/> US 8448 <input type="checkbox"/> Canada 8454
Company DBA Name:		<b>GIFT MID (if already accepting GC today):</b>	
Store Location #:		<b>GIFT Alt MID: (Dairy Queen 5 digit Store #)</b>	
Store Address:		Channel: (First Data, Wells Fargo)	<b>First Data</b>
City, State or Province:		1099k Address 1	
Zip or Postal Code:		1099k Address 2	
Country:		1099k City/State/Zip/Country	
Franchise Owner Email address:		Payee Type (Check one): <input type="checkbox"/> D = Main Chain Account <input type="checkbox"/> U = Independently Owned Locations linked or not to a Chain <input type="checkbox"/> E = Not included in IRS Reporting; i.e Corporate locations	
<b>MORE INFORMATION TO ASSIST US WITH YOUR REQUEST:</b>			
<b>Check One:</b> <input type="checkbox"/> New business <input type="checkbox"/> Existing business adding location.		If you are setting up a <u>new account</u> for a new business, a Gift Card Merchant ID will be assigned for you.	
Do you currently own another store that is operating a DQ giftcard program?	<input type="checkbox"/> YES <input type="checkbox"/> NO	Current Locations Gift Card Merchant ID Number:	
Gift Card Processor:	<b>First Data</b>	Who is your Credit/ Debit Processor: (Ex. Citi/First Data, BAMS, etc)	
Is this a change of ownership?	<input type="checkbox"/> YES <input type="checkbox"/> NO	Existing Credit Merchant ID#: <i>If Applicable</i>	
Ship Method for Gift Cards inventory (Initial Card Shipment):		<input type="checkbox"/> Ground <input type="checkbox"/> Priority <input type="checkbox"/> Overnight	
<b>BANKING INFORMATION:</b>			
Bank Name:			
Bank Account Name:			
Bank Account Number:			
Bank Routing Number:			
<b>AUTHORIZATION:</b> Your signature on this form confirms that all information submitted on this form is accurate			
<b>Owner Signature:</b>			
<b>Date</b>			
<b>Comments:</b>			
*All Fields on this form are required in order to complete your request. Please print and sign*			
<b>Fax Enrollment forms to: 1-402-916-8946</b>			
<b>First Data Use Only:</b>			
New Gift MID:			
FD Net User ID:			
FD Net Temp Password:			

## AUTHORIZED OPERATOR TERMS & CONDITIONS (ADOPTING)

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

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

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

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

**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.

## MASTER SERVICES AGREEMENT

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

### RECITALS

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

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

NOW, THEREFORE, the parties agree as follows:

#### 1. Definitions

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

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

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

Party without reference to the discloser’s Confidential Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. **Services**

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

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

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

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

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

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

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

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

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

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

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

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

### 3.3. Data.

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

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

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

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

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

#### 4. **Fees & Payments**

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

#### 5. **Confidentiality; Security; Privacy**

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

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

#### 5.2. Security.

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

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

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

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

#### 6. **Representations and Warranties**

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

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

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

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

OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 7. Indemnification

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

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

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

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

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

terminate this Agreement with respect to the infringing Service.

## 8. **Limitation of Liability**

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

## 9. **Term and Termination**

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

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

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

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

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

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

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

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

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

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

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

9.5. Effect of Termination.

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

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

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

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

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

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

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

## 10. Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

## 11. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

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

*[signature page follows]*

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

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

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

**Digital Ordering Terms & Conditions Addendum**

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

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

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

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

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

## Dispatch Services Terms & Conditions Addendum

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

### **1. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3. Delivery**

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

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

### **4. Additional Obligations**

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

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

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

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

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

**6. Disclaimer.**

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

## **Rails Terms & Conditions Addendum**

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

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

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

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

## Support Services Addendum

### 1. Definitions

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

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

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

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

### 3. Platform Incident Escalations

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

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

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

**EXHIBIT A**  
**AUTHORIZED OPERATOR TERMS & CONDITIONS (ADOPTING)**

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

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

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

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

**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. Customer Information

<b>American Dairy Queen Corporation</b>
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 Ralls 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
<b>Total</b>	<b>3,250</b>

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>	<p>Applied when the original corporate or Authorized Operator location owner is replaced by a new corporate or Authorized Operator location owner.</p> <p>This fee will be charged to the new corporate or Authorized Operator location owner.</p>	\$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**  
By: Kevin Baartman  
Kevin Baartman (Feb 7, 2024 21:31 CST)  
Name: **Kevin Baartman**  
Title: **E.V.P. - Information Technology**  
Date: **02/07/2024**

**Olo Inc.**  
By:   
Noah Glass (Feb 7, 2024 22:36 EST)  
Name: **Noah Glass**  
Title: **Founder & CEO**  
Date: **02/07/2024**

## 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

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.**

*Confidential Information*

**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  
*Confidential Information*

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.

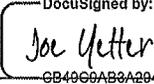
**18.11 Entire Agreement.** This Agreement, including these Terms and Conditions, Statements of Work and each Order hereunder, constitutes the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or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

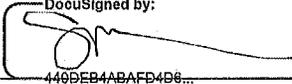
**For Punchh:**

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

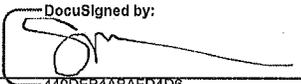
**For Customer:**

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

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 $\leq$ 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) $\leq$ 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:





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

<b>Company Information</b>		
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

<b>Company Ownership Information</b>		
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

## PARTICIPATION AGREEMENT

This agreement ("Agreement") by and between Acumera Inc., a Delaware corporation, with its principal place of business at 3307 Northland Drive, Suite 500, Austin, Texas 78731 ("Acumera"), and \_\_\_\_\_ located at \_\_\_\_\_ ("Participating Location") is effective on the date that it is acknowledged and agreed to at the end of this Agreement by Acumera ("Effective Date"). Participating Location acknowledges that Acumera and American Dairy Queen Corporation ("Dairy Queen") have negotiated a Master Services Agreement (the "Master Agreement") to cover the acquisition and use of Equipment and delivering of Services. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**1. Definitions.** The following definitions apply to this Agreement:

- 1.1.** "Location". Means the physical location or locations from where Participating Location is utilizing the Services.
- 1.2.** "Participating Location," "you" or "your" means the firm, corporation, or other entity that utilizes Acumera's Service and Equipment, and that is responsible for the payment of charges under, and for compliance with, this Agreement.
- 1.3.** "Participating Location Equipment" refers to equipment that Participating Location acquires from a source other than Acumera and is used in conjunction with the Service.
- 1.4.** "Equipment" means equipment at Participating Location's Location(s) that is directly provided and/or maintained by Acumera and used in conjunction with the Services.
- 1.5.** "Services" refers to any services provided to Participating Location by Acumera. The current description of the Services is provided at: [www.Acumera.com/description-of-services](http://www.Acumera.com/description-of-services). The Description of Services is subject to change.
- 1.6.** "PCI-DSS" refers to the Payment Card Industry Data Security Standard which is an information security standard for organizations that handle credit cards. The PCI-DSS standard is mandated by the card brands and administered by the Payment Card Industry Security Standards Council.
- 1.7.** "Party" means a party to this Agreement.

**2. Work Orders and Contract Documents.** Services will be provided to locations as indicated on each Work Order ("Work Order"), SOW, Service Fees and Pricing Exhibit, and/or other applicable contract document. By submitting a Work Order, SOW and/or Service Fees and Pricing Exhibit, Participating Location agrees that the Work Order immediately becomes a part of and is governed by this Agreement. Acumera is not obligated to provide any Services until a completed Work Order or SOW has been submitted by Participating Location and accepted by Acumera. This Agreement, and any Exhibits and addenda together with any applicable Work Order, governs the services provided by Acumera to Participating Location.

**3. Setup.** Participating Location shall be responsible for the installation and setup of Participating Location Equipment including software, operating-system patches, or new or different operating-system versions. Participating Location shall be responsible for keeping scheduled installation appointments or timely rescheduling. Remote setup of the Equipment by Acumera shall take place Monday through Friday, 7:00 a.m. through 7:00 p.m. EST; additional costs may be assessed to Participating Location for evening and weekend setup and for set up delays caused by nonstandard or incomplete configuration requests.

**4. Costs at Location.** Participating Location is solely responsible for all costs at Its Location(s), including without limitation, personnel, wiring, computer equipment, Internet access, electrical power and the like, necessary for the use of the Acumera Services and Equipment. Participating Location is solely responsible for any third-party fees not specifically covered under this Agreement or any Work Order, including, but not limited to, fees incurred to facilitate installation, Participating Location's IT or technical assistance, or any other third-party fees expended.

**5. Equipment.** Acumera may provide Equipment to Participating Location to facilitate performance of Services. If any such Equipment fails during the Term of this agreement as a result of misuse, abuse, the fault or negligence of Participating Location or a third party, or due to an Act of God, it will be replaced by Acumera after payment to Acumera by Customer of the replacement cost of the item. Title to any Equipment passes to Customer upon shipment (FOB Origin). If any Equipment is not received by the Participating Location or is damaged in the shipping process, Acumera will replace that Equipment with no additional charge to the Participating Location. If the Equipment fails for reasons other than misuse, abuse, or the fault or negligence of Participating Location or a third party, or an Act of God, it will be replaced by Acumera without additional payment from the Customer.

**6. Maintenance.** In the routine process of managing and maintaining deployed Equipment, Acumera may occasionally perform remote maintenance activities on Equipment, such as a firmware update etc., that may result in the Equipment being reset and unavailable and/or result in a loss of connectivity at a Location for a short period of time. Except in the case of emergency or in the process of troubleshooting a critical service issue, Acumera will perform this type of work during planned maintenance windows which take place each day between 1AM and 5AM local time and for which Acumera will use commercially reasonable efforts to give eight (8) hours or more notice that the maintenance will be performed and Equipment may be unavailable.

**7. Location List.** The locations covered by this Agreement shall be specified in a Work Order or on a Location List which, if applicable, will be attached as an Exhibit hereto. The addition of a new Location to this Agreement will require the submission of an Addendum to the Agreement adding the Location in the form attached as Exhibit "A", New Location Addendum.

**8. Term.** The term of this Agreement is thirty six (36) months plus any partial first month beginning on the date Service commences. ("Initial Term"). The Agreement shall automatically be renewed after the Initial Term on the applicable anniversary of the Effective Date for subsequent one (1) year periods (each, a "Renewal Term"). The Initial Term and all Renewal Terms shall collectively be referred to as the "Term."

**9. Location Term.** The Term for any Location(s) is the same as Paragraph 8 above, except as follows: The Location Term begins on the date Service commences at that Location. The Location Term(s) is independent and does not run coterminous with any other Location Term unless the date of commencement of Service is the same.

**10. Fees and Payment.**

**10.1. Fees and Invoicing.** Participating Location agrees to pay all recurring charges and non-recurring charges, (collectively, the "Fees") as indicated in any Work Order or SOW. Participating Location agrees that recurring charges commence upon installation of the equipment and/or commencement of Services at a Location and non-recurring charges upon shipment of the Equipment to a Location. Acumera will invoice for install/set up fees and shipping and handling charges on the firewal shipping date. The pricing is confidential and may not be disclosed to third parties. Any partial month at the beginning of the Term will be invoiced to Participating Location on a pro-rated basis. Invoicing, which will occur one month in advance, begins upon shipment. Payments shall be made to Acumera via credit card or auto ACH debit and shall be paid fifteen (15) days from invoice date, or if such due date falls on a weekend or holiday, on the first business day after such due date. ACH or credit card payment shall be set up with Participating Location prior to the commencement of Service. Fees are non-refundable. Participating Location may pay on a monthly basis, or on an annual up-front basis according to preference.

**10.2. Additional or Change in Fees.** Acumera may introduce additional services or features during the Term with associated Fees, which Participating Location may elect not to utilize. If Participating Location does not elect to use the additional services or features, then Participating Location will not be charged any additional fees. For Fees related to the Core Services as described in an applicable Work Order, Acumera will use commercially reasonable efforts to maintain the Fees at the price specified in the Work Order for the duration of the Participating Location's term. However, Acumera may increase such Fees once per year as necessary to accommodate unforeseen increases in its costs, subject to a maximum annual increase equal to the lesser of 2% or the amount of Consumer Price Index ("CPI") increase calculated based on the immediately preceding unadjusted 12 months (10/01 through 9/30), derived from the U.S. Department of Labor, Bureau of Labor Statistics web site, <https://www.bls.gov/news.release/cpl.nr0.htm>.

**10.3. Overdue Payments.** At Acumera's discretion, any undisputed payment not received from Participating Location by the due date may accrue late charges at the rate of one and a half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**10.4. Suspension of Service.** If Participating Location's account is fifteen (15) days or more overdue, in addition to any of its other rights or remedies, Acumera reserves the right to suspend the Service provided to Participating Location, without liability to Acumera, until such amounts are paid in full; provided, however, that prior to any such suspension, Acumera shall provide

Participating Location with at least ten (10) days' prior written notice that payment is overdue and the date upon which Services will be suspended if payment is not received. Acumera may require an activation fee to change or resume a suspended Account.

**10.5. Payment of Fees.** In the event of Participating Location's breach of the terms of this Agreement, including without limitation, failure to pay any sum due hereunder, in addition to other remedies and recoveries provided for hereunder (e.g., for early termination), Participating Location shall reimburse Acumera for all attorney's fees, court, collection and other costs incurred by Acumera in the enforcement of Acumera's rights hereunder and Acumera may keep any deposits or other payments made by Participating Location.

**11. Billing Disputes.** To dispute an Invoice, or a portion thereof, Participating Location must, within thirty (30) days of the date on the Invoice ("Dispute Due Date"), submit a written claim fully documenting the reasons for the dispute (the "Claim") via certified or overnight mail, return receipt requested, to the address below. After receipt of the Claim, Acumera shall undertake an investigation of the Claim, so long as Participating Location has not waived its rights pursuant to this paragraph to make the Claim. At the conclusion of the investigation, Acumera will notify Participating Location of any amount determined by Acumera to be correctly charged and such amount will become immediately due and owing. If the Claim is not sent by the Dispute Due Date, Participating Location waives all rights to dispute the applicable Charges, unless otherwise provided by law. All billing disputes must be sent to the Billing Department at the address listed in the first paragraph of this Agreement, and to [bcreceivables@acumera.com](mailto:bcreceivables@acumera.com).

**12. Taxes.** Federal, state, local, county, municipal and other governmental or regulatory agencies may assess taxes, including, without limitation, excise, franchise, sales, value-added, use, personal and real property taxes, surcharges, tariffs or fees (collectively, "Taxes") on Participating Location's purchase or use of the Services or Equipment. These Taxes may change from time-to-time, with or without notice to Participating Location. Participating Location is responsible for the payment of all applicable Taxes now in force or enacted in the future. The Taxes are in addition to the amounts paid for the Services and Equipment. If Participating Location is exempt from any or all Taxes, it must provide Acumera with an original certificate that satisfies applicable legal requirements attesting to its tax-exempt status. Tax exemption shall only apply from and after the date that Acumera receives such valid certificate. If any amounts paid by Participating Location for the Services are refunded by Acumera to the Participating Location, applicable Taxes may not be refundable.

**13. Termination.**

**13.1. Master Termination.** If Dairy Queen terminates the Master Agreement for an uncured material Breach of Contract, this Agreement will terminate immediately and no further fees will be due for Products or Services under this Agreement. Acumera may, at Acumera's option and expense, require Participating Location to return Products supplied under this Agreement. Termination shall not relieve Participating Location of the obligation to pay any Fees accrued or payable to Acumera prior to the effective date of termination. Should Participating Location elect to continue to use Acumera's Services past the date of termination of the Master Agreement, the portions of this Agreement which do not concern duties of Dairy Queen will remain in full force and effect, and Participating Location is responsible for all fees Incurred as long as Services are being used. In no case will this Agreement extend beyond the Initial Term, if the Master Agreement has been terminated prior to the end of the Initial Term, or beyond the end of the current Renewal Term, if the Master Agreement has been terminated after the end of the Initial Term.

**13.2. Termination.** Either party may terminate this Agreement for any reason or for no reason at the end of a Term or Location Term by giving written notice to the other party not less than thirty (30) days prior to the end of the then current Term. Participating Location may terminate this Agreement only in accordance with the termination conditions set forth in this Agreement.

**13.3. Early Termination.** If Participating Location desires to terminate this Agreement prior to the end of the Initial Term or Initial Location Term ("Early Termination"), Participating Location shall give Acumera notice, pursuant to Section 23, of its intent to terminate early thirty (30) days prior to the desired termination date. Termination shall not relieve Participating Location of the obligation to pay any Fees accrued or payable to Acumera prior to the effective date of termination. Participating Location shall also be responsible for paying an early termination charge according to the following schedule:

Months Paid Under this Agreement	Termination Fee*
0-12	\$1000
12 - 24	\$500
24 - 36	\$300

**13.4. Termination for Breach.** Either party may terminate this Agreement at any time by giving thirty (30) days written notice ("Breach Notice") of termination to the other party in the event that the other party: (i) breaches the terms or conditions of this Agreement including, but not limited to, payment of the Monthly Service Fee, and fails to remedy such breach within thirty (30) days of the date of the Breach Notice; or (ii) becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, or if a receiver is appointed over such party's assets. In the event Acumera terminates this Agreement due to Breach, Participating Location agrees to pay an early termination charge according to Paragraph 13.3.

**13.5. Termination for Change in Service.** In the event Acumera provides Participating Location with written notice pursuant to section 23 herein that it is no longer able to provide a material aspect of its Services, including but not limited to the Data Breach Financial Protection Program located at [www.Acumera.com/DBFP](http://www.Acumera.com/DBFP), and Acumera is unable to provide suitable alternative Services within thirty (30) days of notice of same, Participating Location shall within thirty (30) days of the date of such notice have the right to terminate this Agreement without penalty or early termination charge. In the event of such termination, Participating Location shall provide notice of termination to Acumera pursuant to section 23 herein.

**14. Self-Service Portal Access/Communication/Participating Location Responsibilities/Data Access.**

**14.1.** In the context of performing the services purchased through each Work Order, Acumera may grant self service portal access ("Access") to and communicate with only those employees or agents of Participating Location ("Contacts") who are specified in the Account Permissions section of each Work Order or who have been added as Contacts by the person designated in each Work Order as Participating Location's Administrative Contact. The Access of Contacts will be limited by the permissions granted to them by the Administrative Contact.

**14.2.** By Access, Participating Location is responsible for the review, download, and distribution of scans and logs.

**14.3.** With respect to Access, Participating Location agrees to be bound by the Terms of Use and Privacy located at <http://www.Acumera.com>.

**14.4.** Participating Location authorizes Acumera to share scan results, logs and other data regarding POS, PCI and compliance with Dairy Queen. No personal cardholder data is intentionally seen by Acumera, and no personal data from either Participating Locations or employees will be shared within this process without prior authorization.

**15. Privacy and Confidentiality.** In the course of providing the deliverables, Acumera may be given access to, or be provided with, confidential information about Participating Location's business and/or Participating Location's website ("Business Information"), and personal information about Participating Location, Participating Location's employees, Participating Location's account and/or card holders and/or Participating Location's website ("Personal Information"). Participating Location authorizes such access and disclosure of Participating Location's Business Information to Acumera. Acumera will use reasonable efforts to keep Participating Location's Business Information confidential and will not disclose Participating Location's Business Information to any third party. To the extent that access to Personal Information by Acumera occurs, Participating Location authorizes such access and authorizes Acumera to use such Personal Information for the sole purpose of providing the services contemplated by this Agreement. Acumera will not use any such Personal Information for any other purposes than those specifically related to providing the services contemplated by this Agreement. As a Service Provider as defined under PCI-DSS regulations, Acumera acknowledges it is responsible for the security of cardholder data that it possesses, stores, processes, or transmits on behalf of the Participating Location, or to the extent it impacts the security of the Participating Location's cardholder data environment. Participating Location acknowledges that it is responsible for the security of cardholder data that is in its possessions or that it stores, processes, or transmits while it is in Participating Location's possession or care. Participating Location further acknowledges that it is responsible for complying with any applicable regulations.

**16. Intellectual Property.** The intellectual property associated with any Equipment installed at Participating Location's Location(s) is and remains Acumera's property. By its possession and use, Participating Location acquires no rights or interests of any kind in the intellectual property and hereby expressly covenants that it will not disclose anything about Acumera's intellectual property or allow any physical access to Acumera's intellectual property. If Participating Location is subject to a claim or demand that the Services infringe a third party's property rights, Acumera will: (1) procure for Participating Location the right to continue to use the Services, replace the Services, or modify the Services to avoid infringement; and (2) indemnify Participating Location against damages and costs (including reasonable attorney's fees and legal expenses) incurred in connection with the alleged infringement.

**17. Responsibility for PCI-DSS Compliance and Network Security.** Acumera supplies and manages the firewall and the configuration of that firewall required to provision its services. Acumera establishes firewall configuration and policy based on PCI-DSS recommendations, generally accepted industry best practices and in consultation with Dairy Queen. Participating Location acknowledges that:

**17.1.** Once Dairy Queen and Acumera have established security configurations and policies for the Dairy Queen system, Acumera will not honor Participating Location requests to configure Equipment in ways that are contrary to those established configurations and policies unless and until Acumera receives a Configuration Exception from Dairy Queen.

**17.2.** "Configuration Exception" shall mean a written exception to a configuration policy from Dairy Queen, describing the Participating Location and the requested exception in sufficient detail to allow Acumera to fulfill the request.

**17.3.** Dairy Queen has agreed to respond to the request for a Configuration Exception within 2 business days.

**17.4.** Participating Locations may request information on Dairy Queen's established security configurations and policies from Dairy Queen.

**17.5.** Acumera may honor such approved Participating Location requests to configure the firewall and/or network in ways that may be contrary to Acumera's or PCI-DSS recommendations or may not adhere to generally accepted data security best practices and acknowledges that Acumera has no liability for any issues that may arise due to the fulfillment of these requests.

**17.6.** In accordance with PCI-DSS standards, Acumera recommends segmentation of the card data environment (CDE) to isolate it away from all other segments containing non-CDE network traffic.

**17.7.** Acumera will not entertain requests from Participating Locations to allow non-CDE network traffic within the CDE, unless and until Participating Location receives a Configuration Exception from Dairy Queen and provides it to Acumera.

**17.8.** Acumera does not recommend opening firewall ports to allow traffic or access for non-business related needs, including, by example, the use of insecure remote access tools, and Acumera will not carry out any request by a Participating Location to do so, unless and until Participating Location receives a Configuration Exception from Dairy Queen and provides it to Acumera.

**17.9.** Acumera provides both internal and external vulnerability scanning services administered by the third-party ASV for those Participating Locations subscribing to those services. Acumera provides limited advisory services to assist with the completion of PCI-DSS. Notwithstanding the aforementioned, Acumera does not warrant or assume any legal liability or responsibility concerning Participating Location's compliance with the PCI Data Security Standard. Acumera, is not responsible for the completion of Participating Location's Self Assessment Questionnaire (SAQ), the filing or refiling of failed external ASV scan exceptions, the failure of scans due to Participating Location premise IP address changes, or any other PCI-DSS requirement that requires Participating Location's action or attestation.

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

## **18. Limitation on Liability.**

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

**18.2. No Indirect Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS ASSOCIATED WITH INTEGRATION, INTERRUPTION OF BUSINESS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**18.3.** THE LIMITATIONS IN THIS SECTION 18 DO NOT APPLY TO EITHER PARTY'S LIABILITY FOR ITS (OR ITS RESPECTIVE AGENT'S AND/OR SUBCONTRACTOR'S) GROSS NEGLIGENCE OR WILLFULL MISCONDUCT, WILFUL FAILURE TO COMPLY WITH LAW, FRAUD.

**18.4. Managed Firewall/SD-WAN Exclusions** In no event shall Acumera have any liability to Participating Location for any data breach that occurs:

- a. during any period in which the Acumera-provided or Acumera-approved firewall or SD-WAN device has yet to be initially connected or is disconnected or has been circumvented;
- b. due to the failure to implement a security measure as recommended by PCI-DSS Standards;
- c. in any Participating Location environment where POS system data traffic is not configured to be on an isolated network segment through the Acumera firewall;
- d. when Participating Location requests that the isolated network segment containing POS data traffic is granted access to any system or service not directly related to processing POS transactions. However, this exclusion will not apply unless Participating Location received a Configuration Exception from Dairy Queen;
- e. when Dairy Queen mandates implementation of a configuration, policy or procedure that Acumera recommends against (if Dairy Queen has been notified of the recommendation);
- f. through any firewall in use, whether provided by Acumera or otherwise acquired by Participating Location, that has not passed its most recent Approved Scanning Vendor's scan (unless the issue has already been remediated);
- g. in a manner that industry-standard firewall technology employed at time of breach is not able to prevent.

**18.5.** In no event shall Acumera have any liability to Participating Location or any third party for Participating Location's VoIP system performance, including, but not limited to phone registration failures, call quality, dropped calls or other issues regardless of whether the VoIP traffic is configured to pass through the Acumera firewall. Participating Location acknowledges that Acumera does not provide and does not manage Participating Location's Internet circuit and is not responsible for the performance of said circuit and assumes no liability for issues with Internet speed or performance related to the Internet circuit. Furthermore, Participating Location's acknowledges that if their Internet connectivity is not a terrestrial (land based) high-speed always-on cable, broadband, fiber, or dedicated circuit (i.e. T1 or similar), Acumera services may not perform optimally and that under such circumstances Acumera shall have no liability to Participating Location for issues caused by any inadequate or faulty Internet circuit.

**18.6. ASV Scan Exclusion.** If applicable to the Services contracted pursuant to this Participation Agreement or any contract document(s), Acumera may agree to launch certain ASV scans and/or file or re-file external ASV scanning exceptions on behalf of the Participating Location following a specific request from Participating Location. In no event shall Acumera have any liability to Participating Location or any third party related to launching said scan(s) or for filing or re-filing external ASV scanning exceptions on behalf of Participating Location. Participating Location is solely responsible for the validity of the information provided to Acumera in support of the filed exception(s). Participating Location further agrees to defend and indemnify Acumera in the event said information is inaccurate or changes without proper notification to Acumera.

**18.7. VoIP Exclusion.** If applicable to the Services contracted pursuant to this Participation Agreement or any contract document(s), in no event shall Acumera have any liability to Participating Location or any third party for Participating Location's VoIP system performance, including, but not limited to phone registration failures, call quality, dropped calls or other issues regardless of whether the VoIP traffic is configured to pass through the Acumera Equipment. Participating Location acknowledges that Acumera does not provide and does not manage Participating Location's Internet circuit and is not responsible for the performance of said circuit and assumes no liability for issues with Internet speed or performance related to the Internet circuit. Furthermore, Participating Location acknowledges that if their Internet connectivity is not a terrestrial (land-based) high-speed always-on cable, broadband, fiber, or dedicated circuit (i.e. T1 or similar), Acumera services may not perform optimally and that under such circumstances Acumera shall have no liability to Participating Location for issues caused by any inadequate or faulty Internet circuit. Customer acknowledges that if cellular data services are utilized by Customer, either for backup or primary connectivity, by a third-party, not covered under in this Agreement, Acumera shall not be responsible for any charges, including overage charges, incurred by Participating Location associated with the use of those services, including but not limited to circumstances where the data flows through the Equipment and/or the Equipment is managed or co-managed by Acumera to accommodate failover/fallback or restrict the flow of said data.

**18.8. Cellular Usage and Over Charge Fees.** Participating Location understands that there is a probability that an over usage will result when any traffic traverses a cellular backup circuit. Participating Location understands that it is solely responsible for

paying any and all overage fees and associated taxes and fees that result from over usage associated with any of their devices, activated or not at the time of invoicing, regardless of the circumstances that caused the over usage to occur.

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

**19. Data Breach Financial Protection Program.** The Data Breach Financial Protection Program ("DBFP") is provided through the North American Data Security Risk Purchasing Group ("NADSRPG") and administered by RGS Limited LLC ("RGS"). The DBFP grants membership in the NADSRPG for merchants whose merchant ID numbers ("MIDS") are provided to the NADSRPG on a monthly basis. General information relating to the DBFP may be found at: [www.Acumera.com/DBFP](http://www.Acumera.com/DBFP). Full details of the DBFP are set out at [www.nadsrpg.com](http://www.nadsrpg.com). By entering this Agreement Participating Location confirms he/she has read and agrees to the terms of the Program as set out on the [www.nadsrpg.com](http://www.nadsrpg.com) webpage describing the limitations and requirements relating to coverage and claims (including requirements to be satisfied in order for payments to be made under the DBFP). The DBFP's standard policy provides levels of up to \$100,000 per MID/\$500,000 per Merchant of coverage per breach occurrence subject to the terms and conditions set out on the webpage. The total liability in relation to the DBFP is limited to the Program's stated amount of coverage. Participating Location hereby acknowledges that Acumera is merely facilitating access to the DBFP by providing MID reporting and payment services for Participating Location in connection with provision of the Services hereunder and Acumera shall in no way be held liable or responsible for any loss or damage of Participating Location or any merchant arising in connection with the Program.

**20. No Benefit to Others.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

**21. Assignment.** Neither Participating Location nor Acumera may assign or transfer this Agreement to a third party without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, the Agreement may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of either party.

**22. Integration; Amendment; Headings; Construction; Counterparts.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement, oral or written. This Agreement supersedes any prior written or oral agreements between the parties. This Agreement may be amended only if the amendment is in writing and is signed by both parties. The headings used in this Agreement are for convenience of reference only and form no part of this Agreement. This Agreement was negotiated by the parties, and, therefore, it shall not be strictly construed against either party as the drafter. This Agreement may be executed in one or more counterparts; if so, all counterparts constitute one agreement.

**23. Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) upon receipt of overnight mail during business hours or the third business day after mailing using postal service first class mail; (iii) 24 hours after sending by confirmed email; or, for operational issues, to Participating Location at the email address given by Participating Location to Acumera. Notices to Acumera shall be addressed to the attention of its VP, Customer Service, with a copy to its General Counsel at the address set forth in the first paragraph of this Agreement. Notices to Participating Location are to be addressed to Participating Location at the address set forth in the first paragraph of this Agreement. A party can change the address for receipt of notice by sending written notice to the other party.

**24. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**25. Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, the provision shall be changed by the court or arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement by notice to the other party.

**26. Governance; Venue; Dispute Resolution.** This Agreement is governed by the law of Florida, and venue concerning any disputes arising hereunder is either Broward County, Florida or the county where the Participating Location resides.

**27. Entire Agreement and Construction.** This Agreement (including any exhibits, amendments, Work Orders, and addenda hereto which are incorporated herein by reference) and any confidentiality agreements entered into between the parties constitute the entire agreement between the parties as to the subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the parties against whom the modification, amendment, or waiver is to be asserted. In the event of any inconsistency between the provisions in this Agreement and any Exhibit, Work Order or incorporated web page, the terms of this Agreement shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions orally made to a Participating Location, or in any other Participating Location order documentation, or other written sales material, shall be incorporated into or form any part of this Agreement.

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

**Acknowledged and Agreed:**  
Acumera Inc.

{PARTICIPATING LOCATION}

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

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

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

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

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

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

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

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

### Statement of Work and Pricing

This Statement of Work and Pricing ("SOW") Exhibit is subject to and made a part of the Participation Agreement between \_\_\_\_\_ ("Participating Location") and Acumera Inc. ("Acumera"). This SOW together with the Participation Agreement governs the sale and purchase of the Services described below.

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

Item	SKU	Services	QTY	Monthly Service Fee	One-time Setup Fee
1	905	BranchSDO CXD 3600		N/A	\$399.00
2	758	BranchSDO CXD Management Pack		\$50.00	N/A
3	757	BranchSDO CXD Orchestrator		Included	N/A
4	759	BranchSDO CXD PCI Compliance Readiness Pack (Includes External Vulnerability Scanning)		Included	N/A

5	760	BranchSDO CXD Cloud NGFW Pack		Included	N/A
6	809	BranchSDO CXD IVS (Internal Vulnerability Scanning)		Included	N/A
<b>Item</b>	<b>SKU</b>	<b>Add-on Services</b>		<b>Monthly Service Fee</b>	<b>One-time Setup Fee</b>
1	823	BranchSDO Cellular CXD 1Gb Fallover Pack		\$15.00	N/A
2	892	BranchSDO Cellular CXD 1Gb Fallover Pack - Telus		\$22.50	N/A
3	917	Datto AP440 Wi-Fi 6 Access Point		N/A	\$129.00
4	806	BranchSDO WiFi CXD Extended Management Pack		\$12.00	N/A
5	828	BranchSDO WiFi CXD Extended Addl AP Management Pack (per AP)		\$10.00	N/A
6	918	Netgear Switch 8		N/A	Included
7	933	Netgear Switch 8 PoE		N/A	\$228.00
8	935	Netgear Switch 24		N/A	\$316.00
9	936	Netgear Switch 24 PoE		N/A	\$516.00
10	938	Netgear Switch 48		N/A	\$516.00
11	939	Netgear Switch 48 PoE		N/A	\$828.00
12	798	BranchSDO Switch CXD Management Pack (per switch)		\$15.00	N/A
13	685	BranchSDO Cellular Additional 1Mb data		\$0.025	N/A
<b>Item</b>	<b>SKU</b>	<b>Installation Options (per location)</b>		<b>Select only one</b>	<b>One-time Fee</b>
1	834	Remote Installation – Business Hours		<input type="checkbox"/>	Included in Setup Fee
2	835	Remote Installation – Extended Hours – Weeknights		<input type="checkbox"/>	\$149
3	836	Remote Installation – Extended Hours – Weekends		<input type="checkbox"/>	\$179
4	448	On-Site Installation – Business Hours		<input type="checkbox"/>	\$329
5	837	On-Site Installation – Extended Hours - Weeknights		<input type="checkbox"/>	\$399
6	838	On-Site Installation – Extended Hours - Weekends		<input type="checkbox"/>	\$499
7	840	On-Site Cellular Gateway Installation		<input type="checkbox"/>	\$60
8	839	On-Site Wireless Access Point Installation		<input type="checkbox"/>	\$60
9	841	On-Site Switch Installation		<input type="checkbox"/>	\$120
10		Expedited Installation Fee		<input type="checkbox"/>	\$200
11		Equipment Shipment (minimum per shipment. Actual charges may be higher depending on weight or priority)			\$25
<b>Item</b>	<b>SKU</b>	<b>Additional Options and Fees</b>			<b>One-time Fee</b>
1	842	Remote Installation Additional Hours			\$99
2	843	On-Site Installation Additional Hours – Business Hours			\$129
3	843	On-Site Installation Additional Hours – Extended Hours - Weeknights			\$149
4	843	On-Site Installation Additional Hours – Extended Hours - Weekends			\$179

<b>Payment Options (Check Only)</b> <b>(One)</b> all fees are per location and exclude any applicable tax		
<input type="checkbox"/> <b>Standard</b>	<input type="checkbox"/> <b>Year 1 Pre-pay</b>	<input type="checkbox"/> <b>Annual Pre-pay</b>
Monthly Recurring Fees:     \$ _____  One-time install/setup Fees*: \$ _____	Year 1 Fee*:                     \$ _____  Monthly recurring Fees (from month 13+)                 \$ _____	Annual Fee**:                     \$ _____

\* Payable upon shipment of Equipment or execution of SOW for Software Items

\*\* Payable upon shipment of Equipment or execution of SOW for Software items and the 1-year anniversary date thereafter

**Term.** The Initial Term of this SOW is thirty-six (36) months plus any partial first month beginning on the date individual Services commence ("Effective Date"). The SOW shall automatically be renewed after the Initial Term on the applicable anniversary of the Effective Date for subsequent one (1) year periods (each, a "Renewal Term"). The Initial Term and all Renewal Terms shall collectively be referred to as the "Term."

**Installation Appointment Cancellation and Turn-Away Fees.** It is the Participating Location's responsibility to keep scheduled installation appointments. Remote installation appointment cancellations made less than two (2) business days in advance will result in a \$150 rescheduling fee. On-site installation appointment cancellations made less than two (2) business days in advance will result in a \$250 rescheduling fee. On-site installation appointments cancelled on the day scheduled for will result in an additional \$75 turn-away fee (\$325 total). Notwithstanding the above, Acumera will waive the above cancellation or rescheduling fees under the following circumstances:

- 1) if equipment shipped by Acumera arrives at a Participating Location nonfunctional and such equipment is received within the windows above; or
- 2) If equipment shipped by Acumera in time for a scheduled installation does not arrive in time, through no fault of the Participating Location.

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

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

**Intrusion Detection/Prevention System (IPS) and Data Throughput.** Enabling IPS may have an impact on the speed of data through the firewall/CXD. This reduction in speed will not have a material effect on credit card processing. Acumera shall have no liability to Participating Location for issues or inconvenience caused by slow data throughput through a Acumera provided firewall or other network device.

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

**Participating Location Requirements for Remote Installations:**

- Installations take place during standard business hours (Monday thru Friday 7am to 7pm CST). Installations outside of standard business hours will be charged the Extended Hours rate indicated above.
- Participating Location must choose a location for the CXD or Firewall and any other Acumera provided equipment to be installed. Location(s) must be elevated, clean and such that the equipment is unlikely to be damaged due to spills or other misuse. CXD or Firewall location must be in close proximity to the Participating Location's Internet modem/router and other network gear that must be connected to the CXD or Firewall.

- Acumera requests a 2-week lead time from the submission of all required paperwork (Participation Agreements, SOWs, Work Order, etc.) to ensure proper scheduling and material procurement.
- A list of all business applications must be provided to Acumera prior to installation to ensure the CXD or Firewall is configured properly to allow those applications to function as before.
- Contact information for vendors providing various connected systems (networked) must be provided to Acumera in the event troubleshooting is necessary to restore connectivity or troubleshoot other issues after the firewall installation.
- Participating Location must provide Acumera installation technician with Login credentials (username and password) for any existing routers, modems or firewalls currently in use at location.
- If a remote installation is to be performed, Participating Location must have administrative privileges for and access to a PC on the location's existing network.

**Remote Installation Scope of Work:**

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

**Remote Installation Out of Scope Work:**

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

**Acumera will not be responsible for:**

- Circumstances where the installing technician is late but is still able to complete the installation in the allotted timeframe.

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

**Cellular Backup Service, Cellular Data Usage, Pooling and Under/Over Usage.**

- 1) Cellular services provided to Participating Location by Acumera are provided expressly as a temporary backup circuit to be used at Participating Location's location only in circumstances where the primary data circuit becomes inoperable. Participating Location is expressly prohibited from using Acumera's Cellular Backup Service as a replacement for or in place of Participating Location's primary data circuit at any Location. In the event Participating Location's primary circuit becomes inoperable, it is the Participating Location's responsibility to engage their primary data circuit provider to repair inoperable circuits and restore connectivity as quickly as possible. Acumera configures deployed firewalls to automatically failover to the backup cellular circuit in circumstances where the primary circuit is detected to be inoperable and to fail back when the primary circuit is restored. Acumera further reserves the right to configure deployed firewalls to limit the throughput of data traffic through the cellular backup circuit to critical functions such as credit card processing and Participating Location should have no expectation that all location connectivity will be available or operate at typically experienced speeds when the backup cellular circuit is in use. Participating Location is expressly prohibited from using a Acumera deployed cellular gateway if removed from its configured connection to the firewall. Participating Location acknowledges that they are responsible for all Over Usage in cases where the cellular gateway is used after being removed from its configured connection to the firewall.
- 2) Participating Location expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider of its affiliates or contractors and that Participating Location is not a third-party beneficiary of any agreement between Participating Location and the underlying carrier. Participating Location hereby waives any and all claims or demands therefor.
- 3) Individual Locations ("IL") that subscribe to a pooled cellular failover plan, are combined with other related Locations associated with the same individual Legal Entity ("LE") to create a "Data Pool." An LE consists of an individual legal entity contracted with Acumera and their subset of associated Locations within that legal entity that subscribe to a Acumera cellular failover plan. Every billing cycle, each IL first uses its plan's included domestic data usage ("Included Usage"). If an IL does not use all its Included Usage, it creates an underage in the amount of the unused MB of data usage ("Under Usage"). If an IL uses more than its Included Usage, it creates an overage in the amount of the excess MB of data usage ("Over Usage"). The Data Pool's Under Usage amounts for each IL and Over Usage amounts for each IL are then aggregated respectively within the LE and the totals are compared. If the aggregate Under Usage amount exceeds the aggregate Over Usage amount for the LE, then those ILs incurring an Over Usage will not be charged an overage fee. Any excess Under Usage will be forfeited. If the aggregate Over Usage amount exceeds the aggregate Under Usage amount for the LE, then each IL incurring Over Usage will be billed an Overage Fee for their individual Over Usage on a per MB basis at the additional cellular data rate defined above. Any partial MBs are rounded up to the next whole MB. PARTICIPATING LOCATION UNDERSTANDS THAT THERE IS A PROBABILITY THAT AN OVER USAGE WILL RESULT WHEN ANY TRAFFIC TRAVERSES THE CELLULAR BACKUP CIRCUIT. PARTICIPATING LOCATION UNDERSTANDS THAT IT IS SOLELY RESPONSIBLE FOR PAYING ANY AND ALL OVERAGE FEES AND ASSOCIATED TAXES AND FEES THAT RESULT FROM OVER USAGE ASSOCIATED WITH ANY OF THEIR DEVICES, ACTIVATED OR NOT AT THE TIME OF INVOICING, REGARDLESS OF THE CIRCUMSTANCES THAT CAUSED THE OVER USAGE TO OCCUR.
- 4) Unless otherwise specified, all Acumera devices utilize a Cat1 cellular modem and throughput is capped at 10Mbps regardless if the device is connected to a 3G, 4G or 5G network.

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

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

**Acumera Inc.**

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

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

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

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

**Participating Location**

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

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

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

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

## PARTICIPATION AGREEMENT

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

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

1. Vendor shall provide the Services to operate the DMB Program at the Customer’s Participating Site.
2. Customer shall pay the fees set forth in Schedule A attached hereto in the manner set forth therein. To activate the commencement of the Services, Customer shall deliver an executed copy of this Agreement to Vendor, together with payment of the total fees for Equipment and Installation and one year’s worth of monthly Services for the Participating Site, on a pro-rated basis for the remainder of the calendar year. Vendor will then invoice the Customer for the annual Service fees for the following year on or before the start of the next calendar year, or date to be determined by Vendor in its sole discretion, and Customer shall pay such amounts within thirty (30) days of receipt of the invoice. If Vendor changes its billing practice from billing on the anniversary of the Installation Date to a fixed date or other payment cycle, it shall provide Customer with at least sixty (60) days prior written notice. If Customer’s total annual fees are greater than \$300, and Customer pays the total balance owing in advance of the due date will receive a 2% discount off their total annual fees.
3. Customer acknowledges and agrees that the Service fees are non-refundable in the event the franchise is sold or assigned, and that all paid-up Service fees will be transferred to the new owner once this Agreement has been successfully assigned. Service fees will be refunded on a pro-rata basis in the event that a store closes.
4. For Participating Sites in Canada, CDN will use an US/Canadian exchange rate of 1.21 (\$100 USD = \$121 CDN). The exchange rate shall be reviewed quarterly against the rate set by the Bank of Canada, and the fees will be adjusted if the rate is five points above or below the exchange rate set out above. CDN will provide thirty (30) days prior written notice of any fee adjustments.
5. This Agreement begins when fully executed by both Customer and Vendor, and continues for a period of five (5) years, unless earlier termination of this Agreement or the expiration or termination of the MSA. Customer may terminate this Agreement for convenience, upon thirty (30) days written notice to CDM. In the event Customer

terminates this Agreement for convenience, CDM will refund, on a pro-rated basis, any fees previously paid for services that have not been delivered as of the date of termination of this Participation Agreement. In the event of termination by Customer, Customer shall reimburse Vendor for any warranties that were paid in advance on behalf of Customer on a pro-rated basis from the amount paid by Customer prior to the date of termination (this amount will be provided by Vendor to Customer when notice of termination is given to Vendor).

6. Vendor will use all commercially reasonable efforts to make the Subscription Services available 24/7/365, except for (a) planned maintenance; (b) any unavailability caused by circumstances described in Section 8 below; or (c) any unavailability caused by any failure on the part of ADQ, Customer or any other person (other than Vendor and its contractors). Customer shall make all requests for support or assistance to the Help Desk.
7. In order for Vendor to perform its Help Desk Services in an effective and efficient manner, and to help ensure minimal incidents with the Equipment and Digital Signage Network, Customer is responsible for the following at the Participating Site:
  - a) Following the installation of any Equipment, ensuring the proper and ongoing operation of the Equipment on a 24/7 basis, including ensuring Equipment is properly plugged into an appropriate surge protector and power source and that the power is turned on, and ensuring that each Media Player and Display, where applicable, is connected to the Internet and the Media Players are connected to the Display at all times, as well as paying all third party costs associated with such power and connectivity.
  - b) Ensuring and/or verifying at the request of a Help Desk service representative that the hardware/appliance components of the equipment interfacing with or connecting to the Subscription Services are turned on and have a functioning power source in a timely manner.
  - c) Ensuring and/or verifying that all Customer-provided Internet services at the Participating Location are fully functional, and if not, engaging its Internet Service Provider to resolve the issue.
  - d) Power cycling any of the DMB Program equipment upon request by Vendor's Help Desk.
  - e) Co-operating with Vendor or its representatives, including Level 1 Help Desk service representatives, on a timely basis to help ensure that the Subscription Services, Equipment and Digital Signage Network are functioning to the best of their capacity, including the provision of relevant information and completion of rudimentary tasks as reasonably requested by the Level 1 Help Desk service representative. Customer will ensure that any dispatched technician to the Participating Site is provided with immediate access to the equipment interfacing with or connecting to the Subscription Services and is otherwise provided with such assistance or resources as they might reasonably request.

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

Omissions of the Vendor, its employees, contractors, representatives or those for whom it is responsible at law.

14. Customer shall maintain at its own sole expense throughout the Term of this Participation Agreement a comprehensive general liability insurance policy with minimum coverage of at least one million dollars (\$1,000,000) per occurrence and at least two million dollars (\$2,000,000) in the aggregate, covering bodily and personal injury, including death, and property damage. Such coverage shall cover Vendor as an additional insured. Customer will provide copies of all insurance policies evidencing such coverage to the Vendor upon request. Customer's failure to maintain the required insurance coverage shall constitute a material breach of this Agreement.
15. If Customer breaches any of the Customer's obligations under this Agreement, Vendor may suspend or terminate the Customer's right to access and use the Subscription Services and software.
16. Customer may not assign any of Customer's rights or obligations under this Agreement to any person without the prior written consent of Vendor.
17. Customer agrees that all terms and conditions described in this Agreement are binding and will therefore abide to its provisions.

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

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

**SCHEDULE A  
TO THE PARTICIPATION AGREEMENT  
FEES**

2024 FLEX Fusion ME USD	2025 FLEX Fusion ME USD	2026 FLEX Fusion ME USD	2024 FLEX Fusion SOC USD	2025 FLEX Fusion SOC USD	2026 FLEX Fusion SOC USD
3% Increase	3% Increase each year	3% Increase each year	3% Increase	3% Increase each year	3% Increase each year

1 Displays						
Total Monthly	\$ 54.11	\$ 55.73	\$ 57.40	\$ 22.29	\$ 22.96	\$ 23.65
Annual Total	\$ 649.27	\$ 668.75	\$ 688.81	\$ 267.47	\$ 275.49	\$ 283.76

2 Displays						
Total Monthly	\$ 99.29	\$ 102.27	\$ 105.34	\$ 44.58	\$ 45.92	\$ 47.29
Annual Total	\$ 1,191.50	\$ 1,227.25	\$ 1,264.07	\$ 534.94	\$ 550.99	\$ 567.52

3 Displays						
Total Monthly	\$ 102.28	\$ 105.35	\$ 108.51	\$ 66.87	\$ 68.87	\$ 70.94
Annual Total	\$ 1,227.35	\$ 1,264.17	\$ 1,302.09	\$ 802.41	\$ 826.48	\$ 851.28

4 Displays						
Total Monthly	\$ 105.27	\$ 108.42	\$ 111.68	\$ 89.16	\$ 91.83	\$ 94.59
Annual Total	\$ 1,263.19	\$ 1,301.09	\$ 1,340.12	\$ 1,069.88	\$ 1,101.98	\$ 1,135.04

5 Displays						
Total Monthly	\$ 108.20	\$ 111.45	\$ 114.79	\$ 111.45	\$ 114.79	\$ 118.23
Annual Total	\$ 1,298.42	\$ 1,337.37	\$ 1,377.49	\$ 1,337.35	\$ 1,377.47	\$ 1,418.80

6 Displays						
Total Monthly	\$ 111.18	\$ 114.51	\$ 117.95	\$ 133.74	\$ 137.75	\$ 141.88
Annual Total	\$ 1,334.14	\$ 1,374.16	\$ 1,415.39	\$ 1,604.82	\$ 1,652.97	\$ 1,702.56

7 Displays						
Total Monthly	\$ 114.21	\$ 117.63	\$ 121.16	\$ 156.02	\$ 160.71	\$ 165.53
Annual Total	\$ 1,370.48	\$ 1,411.59	\$ 1,453.94	\$ 1,872.29	\$ 1,928.46	\$ 1,986.32

	2024 FLEX Fusion ME CAD	2025 FLEX Fusion ME CAD	2026 FLEX Fusion ME CAD	2024 FLEX Fusion SOC CAD	2025 FLEX Fusion SOC CAD	2026 FLEX Fusion SOC CAD
	3% Increase	3% Increase each year	3% Increase each year	3% Increase	3% Increase each year	3% Increase each year

1 Display						
Total Monthly	\$ 68.17	\$ 70.21	\$ 72.32	\$ 31.20	\$ 32.13	\$ 33.10
Annual Total	\$ 817.98	\$ 842.52	\$ 867.80	\$ 374.38	\$ 385.62	\$ 397.18

2 Displays						
Total Monthly	\$ 123.50	\$ 127.20	\$ 131.02	\$ 62.40	\$ 64.27	\$ 66.20
Annual Total	\$ 1,481.96	\$ 1,526.42	\$ 1,572.22	\$ 748.77	\$ 771.23	\$ 794.37

3 Displays						
Total Monthly	\$ 128.02	\$ 131.86	\$ 135.82	\$ 93.60	\$ 96.40	\$ 99.30
Annual Total	\$ 1,536.22	\$ 1,582.31	\$ 1,629.78	\$ 1,123.25	\$ 1,156.85	\$ 1,191.55

4 Displays						
Total Monthly	\$ 131.35	\$ 135.29	\$ 139.34	\$ 124.79	\$ 128.54	\$ 132.39
Annual Total	\$ 1,576.15	\$ 1,623.43	\$ 1,672.13	\$ 1,497.54	\$ 1,542.46	\$ 1,588.74

5 Displays						
Total Monthly	\$ 135.29	\$ 139.35	\$ 143.53	\$ 155.99	\$ 160.67	\$ 165.49
Annual Total	\$ 1,623.49	\$ 1,672.19	\$ 1,722.36	\$ 1,871.92	\$ 1,928.08	\$ 1,985.92

6 Displays						
Total Monthly	\$ 139.11	\$ 143.29	\$ 147.58	\$ 187.19	\$ 192.81	\$ 198.59
Annual Total	\$ 1,669.34	\$ 1,719.42	\$ 1,771.00	\$ 2,246.31	\$ 2,313.70	\$ 2,383.11

7 Displays						
Total Monthly	\$ 143.19	\$ 147.49	\$ 151.91	\$ 218.39	\$ 224.94	\$ 231.69
Annual Total	\$ 1,718.29	\$ 1,769.84	\$ 1,822.93	\$ 2,620.69	\$ 2,699.31	\$ 2,780.29

## STATE EFFECTIVE DATES:

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

California	March 28, 2024, <a href="#">as amended October 1, 2024</a>
Hawaii	April 4, 2024, <a href="#">as amended [pending]</a>
Illinois	March 28, 2024, <a href="#">as amended October 1, 2024</a>
Indiana	March 28, 2024, <a href="#">as amended October 1, 2024</a>
Maryland	April 2, 2024, <a href="#">as amended October 1, 2024</a>
Michigan	March 29, 2024, <a href="#">as amended October 1, 2024</a>
Minnesota	April 18, 2024, <a href="#">as amended [pending]</a>
New York	March 28, 2024, <a href="#">as amended October 1, 2024</a>
North Dakota	April 2, 2024, <a href="#">as amended October 1, 2024</a>
Rhode Island	April 2, 2024, <a href="#">as amended October 1, 2024</a>
South Dakota	March 28, 2024, <a href="#">as amended October 1, 2024</a>
Virginia	April 2, 2024, <a href="#">as amended October 1, 2024</a>
Washington	March 28, 2024, <a href="#">as amended October 1, 2024</a>
Wisconsin	March 28, 2024, <a href="#">as amended October 1, 2024</a>

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

RECEIPT

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If ADQ offers you a franchise, it must provide this disclosure document to you at least 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**Michigan requires that ADQ give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.**

If ADQ does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state agency referred to in Exhibit A.

ADQ’s franchise sellers involved in the offering and sale of new franchises are Gregg Bevenuto, ADQ’s Vice President - Franchise Development, Jennifer Rude, ADQ’s Franchise Sales and Development Director, and Franchise Developer Roger Schone (Central West Region), Tara Fry (Southeast Region), ~~York Ragsdale or Tom Troechie~~ (Northeast Region), or Chris LaRoe (West Region). Their address is 8000 Tower, Suite 700, 8331 Norman Center Drive Bloomington, MN 55437, and phone number is (952) 830-0200. If any other franchise seller is involved in this transaction, his or her address and phone number will be the same, with the name provided here: \_\_\_\_\_.

Issuance date: March 28, 2024, as amended October 1, 2024 (for registration state effective dates see “State Effective Dates” page immediately preceding these Receipt pages)

I received a disclosure document with an issuance date of March 28, 2024, as amended October 1, 2024, that included the following Exhibits: A) List of State Administrators/Agents for Service of Process; B) Operating Agreement with Guarantee and related Addenda and Appendices; C) Conversion Addenda; D) Franchise Application; E) Gift Card Program Agreements; F) Design Services Agreement; G) Construction Consultation Services Agreement; H) Sublease; I) Tables of Contents for Manuals; J) List of franchises; K) List of franchisees whose franchise agreements were terminated or transferred; L) Financial Statements (with Guarantee of Performance); and M) Receipts.

**FRANCHISEE (For an Entity)**

**FRANCHISEE (For an Individual)**

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

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

\_\_\_\_\_, a

Signed: \_\_\_\_\_

\_\_\_\_\_

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

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

Address: \_\_\_\_\_

(Signature of person signing on behalf of entity)

City: \_\_\_\_\_ State: \_\_\_\_\_

\_\_\_\_\_  
(Print name of person signing on behalf of entity)

Phone: ( ) \_\_\_\_\_ Zip: \_\_\_\_\_

Its: \_\_\_\_\_

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

(Title of person signing on behalf of entity)

Address: \_\_\_\_\_

Signed: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

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

Phone: ( ) \_\_\_\_\_ Zip: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Prospective Applicant’s Copy

Phone: ( ) \_\_\_\_\_ Zip: \_\_\_\_\_

RECEIPT

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If ADQ offers you a franchise, it must provide this disclosure document to you at least 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**Michigan requires that ADQ give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.**

If ADQ does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state agency referred to in Exhibit A.

ADQ’s franchise sellers involved in the offering and sale of new franchises are Gregg Bevenuto, ADQ’s Vice President - Franchise Development, Jennifer Rude, ADQ’s Franchise Sales and Development Director, and Franchise Developer Roger Schone (Central West Region), Tara Fry (Southeast Region), ~~York Ragsdale or Tom Troeechie~~ (Northeast Region), or Chris LaRoe (West Region). Their address is 8000 Tower, Suite 700, 8331 Norman Center Drive Bloomington, MN 55437, and phone number is (952) 830-0200. If any other franchise seller is involved in this transaction, his or her address and phone number will be the same, with the name provided here: \_\_\_\_\_.

Issuance date: March 28, 2024, as amended October 1, 2024 (for registration state effective dates see “State Effective Dates” page immediately preceding these Receipt pages)

I received a disclosure document with an issuance date of March 28, 2024, as amended October 1, 2024, that included the following Exhibits: A) List of State Administrators/Agents for Service of Process; B) Operating Agreement with Guarantee and related Addenda and Appendices; C) Conversion Addenda; D) Franchise Application; E) Gift Card Program Agreements; F) Design Services Agreement; G) Construction Consultation Services Agreement; H) Sublease; I) Tables of Contents for Manuals; J) List of franchises; K) List of franchisees whose franchise agreements were terminated or transferred; L) Financial Statements (with Guarantee of Performance); and M) Receipts.

**FRANCHISEE (For an Entity)**

**FRANCHISEE (For an Individual)**

Date: \_\_\_\_\_  
\_\_\_\_\_, a

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

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

By: \_\_\_\_\_  
(Signature of person signing on behalf of entity)

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

(Print name of person signing on behalf of entity)

Phone: ( ) \_\_\_\_\_ Zip: \_\_\_\_\_

Its: \_\_\_\_\_  
(Title of person signing on behalf of entity)

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

Address: \_\_\_\_\_

Signed: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

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

Phone: ( ) \_\_\_\_\_ Zip: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Office Copy

Phone: ( ) \_\_\_\_\_ Zip: \_\_\_\_\_