



## Master Agreement

This Master Agreement (“Agreement”) is effective on the date of last signature below (“Effective Date”), by and between **ParTech, Inc.**, a New York corporation, and its subsidiaries, with its principal place of business located at PAR Technology Park; 8383 Seneca Turnpike; New Hartford, New York 13413-4991 (“ParTech”) and the legal entity identified below, with its principal place of business located at the address specified below (“Customer”). Together, ParTech and Customer are referred to herein as “the Parties”, and each individually as a “Party”. By executing this Agreement, Customer agrees to be bound by the terms and conditions of this Agreement, including any Schedules, as applicable only for the Licensed Software and the ParTech Services (as defined herein) which Customer is licensing and/or purchasing access to in accordance with any applicable Order (as defined herein).

### Recitals

**WHEREAS**, ParTech provides restaurant technology solutions for enterprise restaurants, franchisees and other restaurant and retail outlets, consisting of, among other things, restaurant and retail hardware and software solutions, including point of sale, loyalty, operations management, digital ordering, delivery, and payments processing, along with related support services;

**WHEREAS**, ParTech desires to provide the ParTech Solution and Customer and/or Franchisees desire to purchase or license (as applicable) the ParTech Solution as set forth in this Agreement.

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

1. **DEFINITIONS.** Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in this Section 1.
  - a. “Affiliate” means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with a Party, where “control” is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
  - b. “Customer-Branded Restaurant” means a specific branded Customer Franchisee Location or Customer-Owned Location as designated on the Order or as set forth below. Other branded restaurants, other than the specific brand specified in the Order or as set forth below, may not be added to this Agreement without the prior written consent of ParTech.
  - c. “Customer-Owned Locations” means all existing Customer corporate restaurants and any new Customer corporate restaurants operating as a Customer-Branded Restaurant.
  - d. “Franchisee” means the owner of a Franchisee Location.
  - e. “Franchisee Adoption Agreement” means the agreement to be signed by any Franchisee who desires to purchase or license (as applicable) the ParTech Solution attached hereto and incorporated by reference.
  - f. “Franchisee Location” means a Customer-Branded Restaurant owned or operated by a Franchisee under a valid license agreement with Customer.
  - g. “Hardware” means the point-of-sale terminals, cash drawers, printers, tablets, kiosks, kitchen display systems, headsets, base stations, and other peripheral hardware as set forth in the applicable Order.
  - h. “Hardware Terms” means the terms and conditions governing the sale of Hardware as incorporated into

and made part of this Agreement.

i. “Licensed Software” means any licensed desktop software or device software that acts as the interface with the hosted environment, including any application programming interfaces (APIs) thereto, all as may be updated, modified, or otherwise changed by ParTech at any time, for access and use hereunder in accordance with the Subscription Services Terms; provided however, if Customer is directly using the API for any ParTech Services (not through a Third Party Service), Customer may be required to pay additional Fees to ParTech for the use of such API.

j. “PAR® Clear Drive-Thru Communications Services” means ParTech’s internet-hosted web services, including operational metrics, remote monitoring and maintenance in connection with the use of ParTech’s drive-thru communications hardware, as may be updated, modified, or otherwise changed by ParTech at any time.

k. “PAR® Drive-Thru Timer Services” means ParTech’s internet-hosted web services, including operational metrics, remote monitoring and maintenance, and real-time customizable metrics in connection with the use of ParTech’s drive-thru timers, as may be updated, modified, or otherwise changed by ParTech at any time.

l. “PAR OPS™ Services” means the subscription software services for operations management available through a hosted environment for access and use hereunder in accordance with the Subscription Services Terms, and other related services, as may be updated, modified, or otherwise changed by ParTech at any time.

m. “PAR® Ordering™ Services” means the subscription software services for consumer ordering (online and mobile) through a hosted environment for access and use hereunder in accordance with the Subscription Services Terms, including Ordering Link and other related services, as may be updated, modified, or otherwise changed by ParTech at any time.

n. “PAR® Pay Services” means the subscription software services, including the PAR Pay store place portal, for payment processing through a hosted environment for access and use hereunder in accordance with the Subscription Services Terms and other related services, as may be updated, modified, or otherwise changed by ParTech at any time.

o. “PAR Payment Services” means payment processing services for in-store, mobile, and online payments for Customer and its Franchisees using the PAR Pay Services or a third-party processing gateway to process debit and credit cards or gift cards through Customer’s or Franchisee’s processor, including real-time reporting, as may be updated, modified, or otherwise changed by ParTech at any time.

p. “PAR POS™ Menu Maintenance Services” means the services provided directly to Customer to manage the Customer-Owned Location database and the Franchisee Location database, including menu items, discounts, promotions and coupons for the PAR POS Services at Menu Maintenance Services, as may be updated, modified, or otherwise changed by ParTech at any time.

q. “PAR POS™ Services” means the subscription software services for point of sale available through a hosted environment for access and use hereunder in accordance with the Subscription Services Terms and other related services, as may be updated, modified, or otherwise changed by ParTech at any time.

r. “PAR® Punchh® Services” means the subscription software services for mobile ordering through a hosted environment for access and use hereunder in accordance with the Subscription Services Terms and other related services, as may be updated, modified, or otherwise changed by ParTech at any time.

s. “PAR® Remote Care Services” means (i) the managed services, as more fully described in the Hardware Terms, provided by ParTech for certain ParTech provided Hardware or Customer provided hardware (point of sale terminals, tablets and kitchen display systems) for the management of the operating system, including updates, system maintenance, and patching, and/or (ii) in connection with providing Technical Support Services, allowing ParTech’s Technical Support Team to remotely connect to Customer’s or Franchisee’s hardware to troubleshoot the ParTech Solution as part of the Technical Support Services, as may be updated, modified, or otherwise changed by ParTech at any time.

t. “ParTech Services” means collectively, the PAR POS Services, the PAR Clear Drive-Thru Communications Services, the PAR OPS Services, the PAR Drive-Thru Timer Services, the PAR Ordering Services, the PAR Pay Services, the PAR Punchh Services, and any other related services made available by ParTech hereunder in accordance with the Subscription Services Terms.

- u. “ParTech Solution” means collectively, the Hardware, the ParTech Services and the Support Services, as applicable.
- v. “Participating Location” means any (i) Customer-Owned Location acquiring the ParTech Solution under this Agreement; or (ii) Franchisee Location for any Franchisee who chooses to acquire the ParTech Solution by signing the Franchisee Adoption Agreement.
- w. “Pricing Addendum” means any addendum agreed to by the Parties, including specific customer commitments (e.g., exclusivity, minimum location commitment), pricing as identified therein, and any pricing incentives provided by ParTech to Customer in consideration of such commitments.
- x. “Pricing Schedule” means any pricing schedule attached to and incorporated into a Pricing Addendum, including specific discounts from list price provided by ParTech to Customer in consideration for any specific customer commitments as identified therein.
- y. “Subscription Services Terms” means the terms and conditions for the access and use of the ParTech Services as incorporated into and made part of this Agreement.
- z. “Support Services” means all other services provided under this Agreement in connection with the ParTech Services, including software development, project management, implementation, including implementation of PAR Pay Services with Customer’s third-party payment processing provider (if applicable), advertising, marketing, installation and training.
- aa. “Technical Support Services” means the technical support services provided directly to a Customer-Branded Location for the support of the Hardware and/or the PAR POS Services and PAR Pay Services, the PAR OPS Services, the PAR Punchh Services, and the PAR Ordering Services, respectively the terms of which are incorporated into this Agreement by this reference as if set forth herein.

## **2. PURPOSE AND PRIMARY ACTIVITIES.**

- a. Purpose. Customer agrees to purchase the Hardware and Support Services, and license and receive access to the Licensed Software and ParTech Services, and ParTech agrees to provide the Hardware, Licensed Software, ParTech Services, and Support Services, at the prices set forth on the applicable Order or within any Pricing Addendum, upon the terms set forth herein for each of its Customer-Owned Locations existing as of the Effective Date of this Agreement and any newly acquired Customer-Owned Locations. Additional Hardware, ParTech Services and/or Support Services may be added from time to time by mutual written agreement of the Parties.
- b. Franchisee Adoption Agreement. ParTech agrees to enter into separate agreements with any Franchisees to allow such Franchisee to acquire the same ParTech Solution (except for the purchase of PAR Punchh Services and the PAR Ordering Services which will be billed directly to Customer on behalf of itself and all Franchisees) described in this Agreement, under terms and conditions substantially the same as those set forth in this Agreement and pricing as agreed upon by Customer and ParTech, except as otherwise noted and subject to change or adjustment as set forth herein. If applicable to the specific ParTech Services being provided, each Franchisee must agree and sign the Franchisee Adoption Agreement.

**3. TERMS APPLICABLE TO ELEMENTS OF THE PARTECH SOLUTION.** All purchases of Hardware shall be made by Customer and Franchisees in accordance with the Hardware Terms, which are incorporated in this Agreement by reference. All use of the ParTech Services by Customer or Franchisee shall be in accordance with the Subscription Services Terms, which are incorporated in this Agreement by reference. Purchases of PAR Payment Services by Customer, if elected by Customer for Customer-Owned Locations or Franchisees for a Franchisee Location, shall be subject to the execution of the PAR Payment Services Terms and Conditions with ParTech’s Affiliate, PAR Payment Services, LLC.

**4. LAB ENVIRONMENT/TESTING.** During the Term of this Agreement, ParTech may agree, subject to additional Fees and an Order accepted by ParTech, to provide Customer with access to a non-production lab environment established and maintained by ParTech solely for the Hardware and the PAR POS Services (“Lab Environment”), for one (1) test store, subject to: (i) the Hardware Terms; and (ii) the Subscription

Services Terms. Customer may elect to include other ParTech Services as part of this Lab Environment by executing a separate statement of work governed by the terms and conditions of this Agreement. If a Franchisee requires access to a Lab Environment, ParTech agrees to provide such Franchisee with a Lab Environment for additional Fees.

**5. PURCHASE OF OTHER OPTIONAL SUPPORT SERVICES.** ParTech will provide additional services in support of Customer's deployment of the ParTech Solution during the Term of this Agreement as requested by Customer. Prices for these optional Support Services will be based on ParTech's then-applicable prices for such Support Services or as may otherwise be agreed to by the Parties in writing. If Customer requests such optional Support Services, details will be set forth in a separate statement of work, mutually agreed upon by the Parties, and governed by the terms and conditions of this Agreement.

## **6. ORDERS.**

a. Customer and/or a Franchisee (that has signed a Franchisee Adoption Agreement) may acquire the ParTech Solution by accepting a sales order, order form, or proposal prepared by ParTech ("Sales Order") or by submitting a written purchase order ("Purchase Order") to ParTech. Sales Orders and Purchase Orders are collectively "Orders", and each an "Order". This Agreement will apply to the Order. In the event of any conflict between the terms of an Order and the terms of this Agreement, the terms of this Agreement will control unless the Sales Order prepared by ParTech expressly states that it is overriding the conflicting term of this Agreement. Purchase Orders issued by Customer or a Franchisee to ParTech are solely for identifying the Hardware, the ParTech Services, and the Support Services to be purchased or licensed, as applicable, requesting delivery dates and quantities, and specifying the ship-to and bill-to addresses. All other terms on any Purchase Order shall have no force or effect. All Orders are subject to acceptance by ParTech (which acceptance may be evidenced by ParTech's shipment of the Hardware, providing access to the ParTech Services or performance of Support Services). Prior to acceptance of any Order, ParTech reserves the right to require a credit check from Customer or Franchisees and any purchase of Hardware over \$25,000 under this Agreement may be subject to a down payment or pre-payment prior to shipping in ParTech's sole discretion based on the credit check. All Orders are non-cancellable by Customer or a Franchisee, as applicable. Notwithstanding the foregoing, if ParTech agrees to cancel any Order, ParTech may condition such cancellation on Customer or Franchisee paying a 20% restocking fee, plus shipping charges, for any Hardware or other items returned to ParTech. The total amount due set forth in any Order for any particular Customer-Branded Restaurant may be increased or decreased based on required Hardware or ParTech Services configuration changes (e.g., an extra bracket, power cord, additional ParTech Services, etc.) ("Configuration Changes") to the ParTech Solution after Customer's or Franchisee's approval of the Order. Customer or Franchisee agrees for any particular Customer-Branded Restaurant identified in the Sales Order that ParTech may increase the total set forth in any Order by up to \$2,500 for Configuration Changes without further authorization from Customer or Franchisee. Any increase that exceeds \$2,500 for Configuration Changes will require either Customer's or Franchisee's e-mail authorization or a new signed Order.

b. Customer and/or Franchisee shall pay ParTech under an Order the fees identified in the Order (collectively "Fees") in accordance with the terms hereof. Customer and/or Franchisee shall execute a new Order and shall be charged additional Fees if Customer and/or Franchisee elects to subscribe to any new services provided by ParTech from time to time. If such services are subscription services, then the Subscription Term for such new services will be co-terminus with Customer's and/or Franchisee's current Subscription Term for any other subscription services already in use by Customer and/or Franchisee under this Agreement.

c. Unless otherwise set forth on an Order, Customer and/or Franchisee will be invoiced for Fees by ParTech or one of its Affiliates as follows: upon shipment for Hardware; on a monthly, quarterly or annual basis in advance for the ParTech Services; in arrears for subscription services provided on a per Transaction basis, including other products or services that ParTech offers under this Agreement on a subscription basis; on a

monthly, quarterly or annual basis in advance for certain support services, including Advance Exchange Services and On-Site Maintenance Services; on a per Transaction basis in arrears for payment processing services; and upon completion of the relevant services for other services. For purposes of payment processing services, a “Transaction” shall mean each act by ParTech initiated to place or withdraw funds for Customer or a Franchisee in connection with credit, debit or gift card payment processing, and includes all submitted authorization requests (even if rejected by the applicable acquirer or issuer), captured requests that do not have a corresponding authorization request (e.g., verbal authorizations, offline/store and forward requests, below minimum limit requests), return requests, and void requests processed through the PAR Pay Services. For products or services that ParTech offers under this Agreement on a subscription basis (including subscription services paid for on a per Transaction basis): (i) Customer or Franchisee shall grant ParTech ACH authorization and Customer’s account will be automatically debited through ACH direct debit monthly for subscription Fees; and (ii) payment will commence upon the first Activation of the applicable subscription product or service on a location-by-location basis or based upon the number of locations subscribed to the subscription services as set forth in the Order or within the specific subscription services, and will be pro-rated based on the effective date of the Subscription Term. “Activation” shall be the date set forth on the applicable Order, or if none, the date when the applicable subscription product or service first becomes available to Customer or Franchisee for use or the date Customer first imports its data into the subscription services, as applicable. Any Fees that are not automatically debited from Customer’s or Franchisee’s account via ACH will be due and payable upon Customer’s or Franchisee’s receipt of the invoice. If ParTech provides an option for Customer or Franchisee to make payments by credit card, ParTech reserves the right to charge a credit card processing fee to the extent permitted by applicable law.

d. Payment terms are net thirty (30) days from date of invoice. Any amounts outstanding beyond the invoice due date will be subject to a late payment charge at the lesser of one- and one-half percent (1.5%) per month or the highest rate permissible under applicable law on the unpaid balance for the actual number of days elapsed. If ParTech is required to pursue collection efforts against Customer or Franchisee (as applicable) due to Customer’s or Franchisee’s failure to pay any Fees due under this Agreement, notwithstanding any limitations of liability hereunder, Customer or Franchisee will pay ParTech’s reasonable costs of collection, including any reasonable attorney’s fees related thereto. If any amounts are outstanding on Customer’s or Franchisee’s account, including amounts for products or services not sold on a subscription basis, upon notification to Customer or Franchisee via email to Customer or Franchisee’s billing contact on file, Customer or Franchisee hereby authorizes ParTech to automatically debit Customer’s or Franchisee’s account via ACH for such amounts, including any late payment charges. All billing and payment will be made in United States dollars, unless otherwise specified in an Order. Customer or Franchisee shall notify ParTech in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute) within fifteen (15) days of the date of such invoice. Any invoice for which such timely notification is not received shall be deemed accepted by Customer or Franchisee as true and correct, and Customer or Franchisee shall be deemed to have irrevocably waived any right to dispute such invoice. The Parties shall seek to resolve all such disputes expeditiously and in good faith.

e. All Fees and payments are nonrefundable and exclusive of all shipping charges and taxes, including, but not limited to, sales, use, excise, value-added, goods and services, consumption, and other similar taxes or duties (except taxes on the income of ParTech), and Customer or Franchisee agrees to pay such shipping charges and taxes, whether federal, state, local, or municipal. If Customer or Franchisee fails to make payments when due, ParTech may, upon notice to Customer or Franchisee and without limiting ParTech’s other available rights and remedies, withhold shipments of Hardware, suspend Customer’s or Franchisee’s access and use of the ParTech Services, and/or suspend performance of other services, until such payments are made. Customer or Franchisee will continue to be charged subscription Fees during any period of suspension. ParTech may impose a reconnection fee for any ParTech Services if Customer or Franchisee is suspended pursuant to this Section prior to reinstating Customer’s or Franchisee’s access. If ParTech provides an option for Customer or Franchisee to make payments by credit card, as a condition of reconnection, Customer shall be required to provide ParTech with direct debit authorization via ACH for Customer’s

account for all Fees payable by Customer under this Agreement on a go-forward basis.

f. If a Customer or Franchisee permanently closes a Customer-Branded Restaurant, Customer or Franchisee (as applicable) must notify ParTech at least thirty (30) days prior to the date of closure. Notification can be sent using the following link: PAR POS Modification. Upon receipt of timely notification of such permanent closure as provided herein, ParTech will (i) adjust Customer's or Franchisee's location count (as applicable) for the subsequent billing cycle, and, if Customer or Franchisee is paying on an annual basis, then (ii) for a Customer or Franchisee with a single billing location refund a prorated amount of any prepaid Fees for ParTech Services; or (iii) for a Customer or Franchisee with multiple locations, apply a pro-rated credit to Customer's account toward future Fees for ParTech Services.

g. ParTech reserves the right to audit Customer's (including its Franchisees' as applicable) use of the ParTech Services under this Agreement at any time during the Term. If the audit determines that Customer's use of and/or access to the ParTech Services exceeded the usage and/or access ordered by Customer under this Agreement as of the date of the audit, based upon ParTech's order and billing records (e.g., any particular Customer-Branded Restaurant has additional Hardware using the ParTech Services or any particular Customer has additional Customer-Branded Restaurants accessing the ParTech Services), (i) ParTech shall issue an invoice to Customer for any additional Fees due for the period of usage and/or access discovered during the audit; (ii) Customer shall pay to ParTech all such additional Fees due in the same manner as such Fees are already being paid by Customer under this Agreement; and (iii) Customer's account shall automatically be updated to include any additional Fees to be paid by Customer based on the additional usage and/or access for the remainder of the Term in accordance with this Agreement.

h. For the PAR OPS Services, PAR Punchh Services and the PAR Ordering Services, additional Customer-Branded Restaurants may be added by Customer by, in the case of the PAR OPS Services, submitting a request to the Technical Support Services Center for a particular location(s), including the anticipated Activation Date, and in the case of PAR Punchh Services and PAR Ordering Services, by adding the Customer-Branded Restaurant to the applicable Customer dashboard available through those services. For all other ParTech Services, Customer may add Customer-Branded Restaurants by contacting ParTech at and executing a new Sales Order for such new Customer-Branded Restaurant. Customer-Branded Restaurants added to the ParTech Services will have the same Subscription Term and will be subject to the same pricing per Customer-Branded Restaurant in effect at the time the Customer-Branded Restaurant is added to the subscription.

## **7. TERM AND TERMINATION.**

a. This Agreement commences on the date Customer executes an Order referencing this Agreement and continues until all Subscription Orders (as defined herein) have expired or have been terminated in accordance with the terms of this Agreement ("Term").

b. The initial term of each Order for subscription-based services, (such Order, a "Subscription Order", and such term, the "Initial Subscription Term") shall be for the period set forth on such Subscription Order, or, if none is specified in the applicable Subscription Order, the Initial Subscription Term shall begin on the effective date of the applicable Subscription Order and continue through the end of the then-current Term of this Agreement. Unless specified otherwise in this Agreement or the applicable Subscription Order, each Subscription Order shall automatically renew for successive (i) periods equal to the duration of the Initial Subscription Term, or (ii) if no Initial Subscription Term is set forth in the applicable Subscription Order, periods equal to and aligned with the Term of this Agreement (each a "Renewal Subscription Term") at the end of the Initial Subscription Term, unless either Party provides the other party with at least sixty (60) days' notice of its intent not to renew the applicable Subscription Order. The Initial Subscription Term and the Renewal Subscription Term shall be referred to herein collectively as the "Subscription Term".

c. ParTech may, at its option, terminate this Agreement and/or any Orders, or suspend its performance hereunder upon written notice to Customer or Franchisee (as applicable) (i) in the event Customer or Franchisee (as applicable) breaches any material term or condition of this Agreement or Order, and such breach has not been cured by Customer or Franchisee (as applicable) within thirty (30) days of receipt of notice of such breach; or (ii) if Customer or Franchisee (as applicable) is the subject of a voluntary or involuntary petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, and such petition or proceeding is not dismissed within ninety (90) days of filing.

d. Customer at its option, may terminate this Agreement or a Franchisee at its option, may terminate a Franchisee Adoption Agreement, and all Orders as applicable thereunder, upon written notice to ParTech (i) in the event ParTech materially breaches any material term or condition of this Agreement or Order, and such breach has not been cured by ParTech within thirty (30) days of receipt of notice of such breach; or (ii) if ParTech is the subject of a voluntary or involuntary petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, and such petition or proceeding is not dismissed within ninety (90) days of filing.

e. Upon expiration or termination of this Agreement for any reason, any Subscription Term under an Order that is not expired or terminated will remain in effect through the expiration of the then-current Subscription Term under such Order or earlier termination in accordance with this Agreement or Order, and the terms of this Agreement shall continue to apply with respect to the active subscription until the expiration of the then-current Subscription Term or earlier termination of the applicable Order.

f. Subject to the limitations and other provisions of this Agreement, Sections 1, 6.c., 6.d, 6.e., 6.f., 6.g, 7.e., 7.f., 8, 11, 12 and 13 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this Agreement.

## **8. CONFIDENTIALITY.**

a. Definition. For purposes of this Agreement, “Confidential Information” of a Party to this Agreement means information or materials disclosed or otherwise provided by such Party (or its franchisees, as applicable) (“Disclosing Party”) to the other Party (“Receiving Party”) during the Term, including, but not limited to: (i) information relating to the business of the Disclosing Party or its franchisees, as applicable, including hardware configurations, sales, financial, marketing, products, identity of suppliers, partners or customers, and product or supply pricing information, (ii) any unannounced product(s) or service(s) of the Disclosing Party; (iv) all information and reports that may be generated by the Disclosing Party pursuant to this Agreement; (v) interim reports and work product that may be generated by the Disclosing Party in connection with this Agreement; (vi) proprietary methodologies, techniques and tools of the Disclosing Party; (vii) Customer Data (as defined in the Subscription Services Terms); and (viii) any other information or materials that are designated as “confidential”, or that the Receiving Party knows or has a reasonable belief should be treated as confidential. Customers’ Confidential Information includes, without limitation, Customer Data (as defined in the Subscription Services Terms). ParTech’s Confidential Information includes, without limitation, the Licensed Software, Subscription Software Services, the ParTech Services (as defined in the Subscription Services Terms), any documentation related to the ParTech Solution, and the pricing and other terms and conditions of the Agreement or any related agreement with Customer or a Customer Franchisee; provided however, Customer may disclose the pricing and other terms and conditions of this Agreement to Franchisees as necessary to fulfill its obligations under this Agreement. The non-disclosure of the pricing, terms or conditions of this Agreement shall survive expiration or termination of this Agreement.

b. Exclusions. The Parties shall have no confidentiality obligations hereunder with respect to any information that is (i) already known to the Receiving Party at the time of the disclosure; (ii) publicly known

at the time of the disclosure, or becomes publicly known thereafter through no wrongful act of the Receiving Party; (iii) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not having a confidential relationship with the Disclosing Party and which third party rightfully acquired such information; or (iv) is independently developed by the Receiving Party without reliance upon or use of the Confidential Information of the Disclosing Party. A disclosure of Confidential Information shall not be a violation of this provision if the Receiving Party is legally compelled to disclose such Confidential Information pursuant to a subpoena, summons, order or other judicial or governmental process, provided the Receiving Party provides, to the extent legally permissible, prompt notice of any such subpoena, order, etc. to the Disclosing Party so that such Party will have the opportunity to obtain a protective order and the Receiving Party discloses only that information which, in the reasonable opinion of its counsel, is required to be disclosed.

c. Restrictions on Use and Disclosure. The Receiving Party must (i) protect the Disclosing Party's Confidential Information using the same degree of care that it uses to protect the confidentiality of its own confidential and proprietary information (but in no event less than reasonable care) and (ii) not disclose or use any Confidential Information of the Disclosing Party for any purpose other than to perform its obligations and exercise its rights under this Agreement. The Receiving Party shall limit access to Confidential Information of the Disclosing Party to its affiliates and its and its affiliates' employees, contractors and service providers who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party no less restrictive than the confidentiality terms of this Section and who are advised of the confidential nature of the Disclosing Party's Confidential Information, or to its professional advisors who have substantially similar professional duties of confidentiality to the Receiving Party. The Receiving Party will be responsible for compliance with these confidentiality obligations by all persons and entities to which it discloses the Disclosing Party's Confidential Information.

d. Return of Confidential Information. Upon written request following the effective date of any termination or expiration of this Agreement, the Receiving Party will immediately return to the Disclosing Party all Confidential Information or destroy all Confidential Information and certify to such destruction of the Disclosing Party's Confidential Information embodied in tangible form. Notwithstanding the foregoing, the Receiving Party may retain (a) Confidential Information to the extent it is not reasonably practicable to return or destroy such Confidential Information because it has been stored as part of an electronic backup tape, storage or retrieval system and (b) Confidential Information reasonably necessary for the Receiving Party to exercise its rights or perform its obligations that survive termination or expiration of this Agreement; provided, however, that any such retained Confidential Information remains subject to the obligations under this Section 8.

**9. ADVERTISING/MARKETING.** Customer agrees to the following in connection with the promoting, advertising, and selling of the ParTech Solution to Franchisees, as applicable:

- i. to cooperate with ParTech to create marketing materials to be used by ParTech in connection with the ParTech Solution, including, customer case studies, customer testimonials, newsletters, brochures and other advertising materials ("Marketing Materials"). Customer hereby gives ParTech the full right, title and interest to all such Marketing Materials (except for the right to use any Marks (as defined below) owned by or licensed to Customer or one of its affiliates), and the unrestricted right to use and publish such Marketing Materials in connection with ParTech's marketing under this Agreement or otherwise, subject to Customer approval of such Marketing Materials in its reasonable discretion. If the Marketing Materials include any photographs of any Customer employees, each employee will be asked to sign a Right to Use Photographic Likeness form (to be provided by ParTech), giving ParTech the right to use and publish the photograph and releasing ParTech from liability related to use of such photograph;
- ii. to work with ParTech to provide Marketing Materials for Customer Franchisee association mailings or other promotional activities as approved by Customer in its reasonable discretion;



- iii. to allow ParTech to promote the ParTech Solution, including pricing and other information on any Customer Franchisee website or other similar website that addresses Customer-approved vendors;
- iv. to allow ParTech to have a demonstration lab in the Customer corporate's headquarters or other point of sale lab to allow Franchisees reasonable access to this lab for in-person demonstrations and receipt of Marketing Materials to see how the ParTech Solution operates, or to allow Franchisees, who have been approved by Customer, to have their own ParTech Solution labs; and
- v. to allow ParTech to be the exclusive POS vendor at each Customer Franchisee conference during the Term of this Agreement.

**10. PUBLICITY AND PROMOTION.** Customer agrees to permit ParTech (and hereby grants to ParTech a license) to use, on a limited, non-exclusive, non-transferable, non-sublicensable basis, certain marks owned or licensed to Customer or one of its affiliates (the "Marks") for the Term of this Agreement for the purpose of advertising and marketing the ParTech Solution in accordance with Section 9, identifying Customer as a Customer of ParTech and displaying Customer's name or logo on ParTech's website, in sales presentations, and in investor materials. ParTech shall abide by Customer's guidelines for the use of the Marks as provided by Customer to ParTech from time to time. Except as provided above in this Section, neither party may use the names(s), trademark(s), or trade name(s) (whether registered or not) of the other party without the other party's prior consent. In addition, ParTech and its Affiliates may disclose information about ParTech's (or any Affiliate's) engagement by Customer or an Authorized Brand, as identified on the signature page, to the extent ParTech's counsel (including internal counsel) determines such disclosure is necessary to comply with the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated under any of the forgoing laws, and the listing standards of the New York Stock Exchange and the rules and regulations promulgated thereunder; provided that, prior to any such disclosure, ParTech shall, to the extent reasonably practicable, provide Customer with prior notice of such disclosure.

## **11. LIMITATION OF LIABILITY.**

a. EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR A PARTY'S BREACH OF SECTION 8 OR A PARTY'S OBLIGATIONS UNDER SECTION 12, PARTECH AND ITS LICENSORS AND SUPPLIERS ON THE ONE HAND, AND CUSTOMER ON THE OTHER HAND, WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, ANY LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOSS OF PROFIT OR REVENUE, OR FINES OR PENALTIES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PARTECH SOLUTION, AND/OR ANY PRODUCTS, INFORMATION OR SERVICES RENDERED HEREUNDER (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY IS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

b. MAXIMUM CAP FOR CLAIMS. PARTECH'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL DIRECT, CONSEQUENTIAL OR INDIRECT DAMAGES WHATSOEVER), WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID UNDER THE ORDER TO WHICH THE LIABILITY RELATES IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING ANY SUCH LIABILITY, LESS ANY SERVICE CREDITS, IF ANY, ISSUED TO CUSTOMER IN CONNECTION WITH SUCH ORDER DURING SUCH PERIOD OF TIME. NOTWITHSTANDING THE FOREGOING, PARTECH'S TOTAL LIABILITY IN CONNECTION WITH THIS AGREEMENT RELATING TO PRE-RELEASES OF PRODUCTS OR SERVICES OR OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER AT NO CHARGE SHALL BE LIMITED TO ONE HUNDRED DOLLARS (\$100.00).

c. MAXIMUM CAP FOR DATA SECURITY CLAIMS. FOR CLAIMS ARISING OUT OF A PARTY'S

BREACH OF ITS DATA SECURITY OBLIGATIONS UNDER THIS AGREEMENT, SUCH PARTY'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT (INCLUDING ALL DIRECT, CONSEQUENTIAL, OR INDIRECT DAMAGES WHATSOEVER) WILL BE LIMITED TO TWO TIMES (2X) THE TOTAL AMOUNT PAID BY CUSTOMER AND CUSTOMER FRANCHISEES (CUMULATIVELY) FOR A CUSTOMER WIDE ENTERPRISE CLAIM TO PARTECH FOR THE APPLICABLE PARTECH SERVICES WHICH ARE THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING ANY SUCH CLAIM.

## **12. INDEMNIFICATION.**

a. By ParTech. ParTech will defend, indemnify and hold harmless Customer and its officers, directors, employees and agents from and against any and all third party claims, actions, demands and lawsuits (each a "Claim") brought against Customer, and shall pay all losses, damages, liabilities, costs and expenses payable to such third party pursuant to such Claim, to the extent arising out of or relating to (A) such third party's allegation that (i) the ParTech Services, as applicable, (other than Customer Data), the Licensed Software, or the Documentation; or (ii) the Hardware, excluding Third-Party Hardware, infringes a United States or Canadian patent, copyright or trademark or (B) personal injury, death or property damage directly caused by the negligence or willful misconduct of ParTech or its employees, agents or subcontractors. If the ParTech Services, the Licensed Software, the Documentation or the Hardware is or may become the subject of a Claim under (A) (i) or (ii) above, ParTech may, at its option, modify or replace the affected parts so the ParTech Services, the Licensed Software, the Documentation or the Hardware becomes non-infringing or terminate this Agreement and refund Customer for any prepaid and unused recurring fees or in the case of Hardware, refund an amount equal to the price paid by Customer for the Hardware less a reasonable depreciated value for a period of useful life of the Hardware. ParTech shall have no obligation with respect to any Claim under (A) (i) or (ii) above based upon Customer Data; Customer's or its Authorized Users' combination, operation or use of the ParTech Services, the Licensed Software, the Documentation or the Hardware with non-ParTech hardware, materials, data, applications, information or services (including Third-Party Services) if the Claim would have been avoided had such combination, operation or use not occurred; Customer's use of a prior version of the ParTech Services, the Licensed Software, the Documentation or the Hardware if the Claim would have been avoided had such prior version not been used by Customer; Pre-Releases or other free, beta, or evaluation use of the ParTech Services, the Licensed Software, the Documentation or the Hardware; or to the extent the alleged infringement is not caused by the particular technology or implementation of the ParTech Services, the Licensed Software, the Documentation, or the Hardware but instead by features or functions common to any similar service. Where a Claim arises with respect to third party products, services, or solutions, ParTech's sole obligation is to pass through to Customer any indemnity that may be available to Customer under the terms and conditions of the agreement between ParTech and such third-party supplier, if any. THIS SECTION 12.a. STATES THE ENTIRE LIABILITY OF PARTECH, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY INFRINGEMENT INVOLVING THE PARTECH SERVICES, THE LICENSED SOFTWARE, OR THE DOCUMENTATION.

b. By Customer. Customer will defend, indemnify and hold harmless ParTech and its affiliates and its and their officers, directors, employees and agents from and against any and all Claims brought against any of the foregoing persons or entities, and shall pay all losses, damages, liabilities, costs and expenses payable to such third party pursuant to such Claim, to the extent arising out of or relating to (i) any breach of this Agreement by Customer and/or its Authorized Users; (ii) ParTech's data transfer as permitted in Section 4.f and 6.c of the Subscription Services Terms; (iii) Customer's and its Authorized Users' use not in accordance with this Agreement and/or modification of the ParTech Solution or the Documentation; (iv) Customer Data and/or (v) personal injury, death or property damage directly caused by the negligence or willful misconduct of Customer or Customer's employees, agents or subcontractors.

c. Process. The indemnified party shall (i) promptly notify the indemnifying party promptly upon becoming aware of the Claim (but failure to promptly notify shall not relieve the indemnifying party of its obligations

unless its ability to defend the Claim is materially prejudiced thereby), and (ii) give the indemnifying party the right to solely control and direct the investigation, preparation, defense and settlement of the Claim, and (iii) fully cooperate with the indemnifying party, at the indemnifying party's expense, in the defense and settlement of the Claim. The indemnified party shall have the right, at its cost, to employ counsel of its choice to participate in the defense of such Claim.

### **13. MISCELLANEOUS.**

a. Each party shall comply with all federal, state, and local laws, ordinances, regulations, and orders that are applicable to the operation of its business and to this Agreement and its performance hereunder, including but not limited to, any and all privacy laws relating to the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security (both technical and physical), disposal, destruction, disclosure or transfer of personal information as defined under such laws and any notification requirements thereunder in the event of a breach. This Agreement shall be deemed an agreement between merchants as that term is defined by the UCC of the State of New York. Customer and ParTech are independent contractors and nothing in this Agreement will be deemed to create any agency, employee-employer relationship, partnership, or joint venture between the parties. Except as otherwise specifically provided in this Agreement, neither party will have or represent that such party has the right, power or authority to bind, contract or commit the other party or to create any obligation on behalf of the other party.

b. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to conflict of laws principles. Each party hereby agrees to submit to the jurisdiction and venue of the United States District Court for the Northern District of New York and the Supreme Court of the State of New York for the purposes of adjudicating any dispute or action arising out of or in connection herewith, and each party consents to the personal jurisdiction of such courts and waives any claim that it is an inconvenient forum. The prevailing party in litigation is entitled to recover its reasonable attorneys' fees and reasonable costs from the other party. The U.N. Convention on the International Sale of Goods is excluded.

c. Customer and ParTech agree that any dispute filed against the other party must be on an individual basis and not as a class or collective action.

d. Each Party acknowledges that a breach or threatened breach by such Party of any of its obligations under Section 8 of this Agreement, Section 8.e of the Hardware Terms, and Section 4.a of the Subscription Services Terms would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such Party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

e. If any provision of this Agreement is held by a court of law to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby and the illegal, invalid, or unenforceable provision will be deemed modified such that it is legal, valid, and enforceable and fully accomplishes the intention of the parties possible.

f. For purposes of this Agreement, (i) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation;" (b) the word "or" is not exclusive; and (ii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This

Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

g. Neither Party may assign or transfer this Agreement without prior written consent of the other party, which shall not be unreasonably withheld; provided, however, (i) if Customer is the party requesting the assignment, ParTech reserves the right to renegotiate pricing with the Customer or any new entity assuming this Agreement to preserve any minimum commitments made by Customer; (ii) ParTech may assign this Agreement to an affiliate or in connection with the sale of all or substantially all its business or assets to which this Agreement relates, or in connection with a merger, stock sale or other similar change in control without Customer's consent; and (iii) Customer Franchisee or Customer may assign a specific Customer Branded-Restaurant in connection with the sale of all or substantially all its business or assets by providing ParTech with at least 30 days' notice of the transfer, completing any documentation required by ParTech with respect to such transfer and paying any applicable administrative transfer fee; provided however, ParTech, will require the payment of all outstanding amounts due on the account for the specific Customer-Branded Restaurant prior to accepting the transfer of a Customer-Branded Restaurant under this Agreement or the Franchisee Adoption Agreement. Any attempted assignment in violation of the foregoing shall be null and void. No assignment or transfer by Customer relieves the assigning or transferring party of any of its liability or obligations under this Agreement. If Customer is the party assigning this Agreement, Customer acknowledges that upon assignment, this Agreement will only continue to apply to a Customer-Branded Restaurant as designated herein or in an Order, and not to any other brand or concept without ParTech's prior written consent and an amendment to this Agreement. Any attempted assignment in violation of the foregoing shall be null and void.

h. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

i. Notices shall be deemed given upon receipt. Unless specifically set forth otherwise herein or in an applicable statement of work, any notices required to be given shall be in writing and in the case of notice to Customer, shall be sent via prepaid certified mail or via reputable overnight courier to the address set forth below to the attention of the individual executing this Agreement on behalf of Customer. Notices to ParTech shall be sent via prepaid certified mail or via reputable overnight courier to: ParTech, Inc. (Attn: Legal Department); PAR Technology Park; 8383 Seneca Turnpike; New Hartford, NY 13413-4991.

j. Any schedule, attachment or statement of work to this Agreement as amended, modified and/or supplemented, and the terms and conditions contained therein (including any defined terms) are incorporated into and are a part of this Agreement. For the avoidance of doubt, and without limitation or application of enforceability herein or therein, any disclaimers of warranties and limitations of liability contained in any schedule, attachment or statement of work to this Agreement are enforceable and are made a part of this Agreement and the schedule, attachment or statement of work in which such terms are set forth.

k. This Agreement and any schedule, attachments or statement of work hereto and all Orders constitute the entire agreement between the Parties with respect to the purchase and sale, licensing and/or provision of the ParTech Solution, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter, and no representation or statement not contained in this Agreement shall be binding upon either Party as a warranty or otherwise. In the event of any inconsistency or ambiguity between a term in the body of this Agreement and any schedule, attachment, statement of work or purchase order, the Parties agree that the term in the body of this Agreement shall control.

l. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of

that or any other provision of this Agreement. Any waiver of terms and conditions of this Agreement must be approved in writing by the Parties. No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. No course of dealing or failure by either party to strictly enforce any term, right or condition of this Agreement or any terms incorporated herein, or an Order will be construed as a waiver thereof.

m. The Parties may execute this Agreement in one or more counterparts, each of which when so executed shall be an original but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart's signature page of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

n. Except as expressly provided in this Agreement (including the attachments hereto) the remedies under this Agreement shall be cumulative and are not exclusive. Election of one remedy shall not preclude pursuit of other remedies. Other than those remedies specifically disclaimed or otherwise limited in this Agreement or the schedules hereto, all remedies set forth in this Agreement shall be in addition to all other remedies available under this Agreement or at law or in equity.

o. Customer shall promptly report to ParTech any changes to Customer's contact, mailing, or payment information.

p. ParTech shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond ParTech's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) epidemic, pandemic, or other public health emergency; (i) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (j) shortage of adequate power or transportation facilities (each, a "Force Majeure Event"). ParTech shall promptly give notice to Customer upon experiencing a Force Majeure Event stating the period the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. If ParTech's performance under any Order is delayed by more than sixty (60) days, then ParTech may cancel any unperformed portion of the Order upon written notice to Customer without liability to Customer.

[Signature Page Follows on Next Page.]

IN WITNESS WHEREOF, the Parties, through their authorized representatives have executed this Agreement as of the date of each Party's signature below.

**ParTech, Inc., including its subsidiaries**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(printed)

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

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

Email: legal@partech.com  
Address: 8383 Seneca Turnpike  
New Hartford, New York 13413

**Customer:**

*[Insert Legal Name of Customer]*

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(printed)

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

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

Email: \_\_\_\_\_

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

\_\_\_\_\_

Authorized Brands: \_\_\_\_\_

\_\_\_\_\_



## FRANCHISEE ADOPTION AGREEMENT

This Franchisee Adoption Agreement (this “Franchisee Adoption Agreement”) is made effective as of the date of signature below of the named Franchisee (the “Franchisee Adoption Agreement Effective Date”) by and between such named Franchisee and **ParTech, Inc.**, with an address of 8383 Seneca Turnpike New Hartford, New York 13413 (“ParTech”) for the Participating Location(s) specified herein; ParTech and Franchisee are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

### RECITALS

- A. **[Insert Customer Name]** (“**Insert Customer Name or Abbreviated Name**” or “Franchisor”) and ParTech entered into a certain Master Agreement with an effective date of [●] (the “Agreement”).
- B. The Agreement contemplates the provision of certain products and services by ParTech to Franchisee for its Franchisee Locations.
- C. The purpose of this Franchisee Adoption Agreement is to set forth the terms and conditions for ParTech’s provision of such products and services to Franchisee for its Franchisee Locations.

NOW THEREFORE, in consideration of the promises contained in this Franchisee Adoption Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Franchisee and ParTech agree as follows:

### AGREEMENTS

1. Incorporation of the Agreement. This Franchisee Adoption Agreement is entered into under the provisions of the Agreement, and except as provided in this Franchisee Adoption Agreement or as specified in the Agreement, all of the terms and conditions of the Agreement, as may be amended from time to time by ParTech and Franchisor, are incorporated into this Franchisee Adoption Agreement by this reference, as if fully set forth herein. Franchisee hereby agrees to be bound by the terms and conditions (including all obligations of “**Insert Customer Name or Abbreviated Name**” therein) of the Agreement, as may be amended from time to time by ParTech and Franchisor, as if Franchisee had been an original signatory to the Agreement as Customer (and hence ParTech shall have all rights against the undersigned as if the undersigned was “**Insert Customer Name or Abbreviated Name**” pursuant to the Agreement). In the event of any inconsistency between the terms of this Franchisee Adoption Agreement and the Agreement, this Franchisee Adoption Agreement shall control as to the subject matter of this Franchisee Adoption Agreement. Capitalized terms used in this Franchisee Adoption Agreement, to the extent not otherwise defined in this Franchisee Adoption Agreement, shall have the meanings given to such terms in the Agreement.
2. Term. The term of this Franchisee Adoption Agreement will commence on the Franchisee Adoption Agreement Effective Date and will continue thereafter until the expiration or termination of the Agreement unless this Franchisee Adoption 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 Franchisee Adoption Agreement by reference.

3. Additional, Modified or Inapplicable Provisions. Sections 2.a, 4, 11, 12 and the Franchisee Adoption Agreement of the Agreement do not apply to this Franchisee Adoption Agreement and are not incorporated into this Franchisee Adoption Agreement on the basis that such Sections are only applicable to Customer and other Franchisee Adoption Agreements shall not be executed under this Franchisee Adoption Agreement and can only be executed under the Agreement itself.
4. The following additional provisions shall apply in lieu of any conflicting provisions of the Agreement or in addition to the requirements of the Agreement (but only with respect to obligations under this Franchisee Adoption Agreement):
- (a) Consent to Release Data. Franchisee hereby authorizes ParTech to disclose, release and transmit all data in each of Franchisee's locations and hosted on the ParTech Services, to Franchisor and its subsidiaries and affiliates, including without limitation sales, labor, inventory, product mix, and data compiled or derived from such data. In addition, notwithstanding anything to the contrary in this or any other agreement between Franchisee and ParTech (whether entered before, on or after the Effective Date), Franchisee acknowledges that the foregoing disclosures and transmissions to Franchisor, its subsidiaries and affiliates shall not constitute a breach of Section 10 of the Agreement or any other obligation (whether express or implied) of ParTech under any such agreement. ParTech may rely on this authorization in making such disclosures and transmissions to Franchisor, its subsidiaries and affiliates and Customer hereby releases ParTech from any actual or alleged liability, loss or damage, and all claims, demands, actions and proceedings, relating to such disclosures and transmission.
- (b) Limitation of Liability.
- (i) SUBJECT TO ANY LIMITATION OF LIABILITY IN THE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR A PARTY'S BREACH OF SECTION 10 OF THE AGREEMENT OR ITS OBLIGATIONS UNDER SECTION 14 OF THE AGREEMENT, PARTECH AND ITS LICENSORS AND SUPPLIERS ON THE ONE HAND, AND FRANCHISEE ON THE OTHER HAND, WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, ANY LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOSS OF PROFIT OR REVENUE, OR FINES OR PENALTIES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PARTECH SOLUTION, AND/OR ANY PRODUCTS, INFORMATION OR SERVICES RENDERED HEREUNDER (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY IS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES.
- (ii) SUBJECT TO ANY LIMITATION OF LIABILITY IN THE AGREEMENT, PARTECH'S TOTAL CUMULATIVE LIABILITY TO FRANCHISEE IN CONNECTION WITH THIS PARTICIPATION AGREEMENT OR THE AGREEMENT (INCLUDING ALL DIRECT, CONSEQUENTIAL OR INDIRECT DAMAGES WHATSOEVER), WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID UNDER THE ORDER TO WHICH THE LIABILITY RELATES IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING ANY SUCH LIABILITY, LESS ANY SERVICE CREDITS, IF ANY, ISSUED TO FRANCHISEE IN CONNECTION WITH SUCH ORDER DURING SUCH PERIOD OF TIME. NOTWITHSTANDING THE FOREGOING, PARTECH'S TOTAL LIABILITY IN CONNECTION WITH THIS AGREEMENT RELATING TO PRE-RELEASES OF PRODUCT OR SERVICES OR OTHER PRODUCTS OR SERVICES PROVIDED TO FRANCHISEE AT NO CHARGE SHALL BE LIMITED TO ONE HUNDRED DOLLARS (\$100.00). THIS SECTION 4 SHALL SURVIVE ANY TERMINATION OF THIS PARTICIPATION AGREEMENT.



(iii) **SUBJECT TO ANY LIMITATION OF LIABILITY IN THE AGREEMENT, FOR CLAIMS ARISING OUT OF A PARTY’S BREACH OF ITS DATA SECURITY OBLIGATIONS UNDER THIS AGREEMENT, SUCH PARTY’S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT (INCLUDING ALL DIRECT, CONSEQUENTIAL, OR INDIRECT DAMAGES WHATSOEVER) SHALL BE LIMITED TO TWO TIMES (2X) THE TOTAL AMOUNT PAID BY FRANCHISEE FOR THE APPLICABLE PARTECH SERVICES WHICH ARE THE SUBJECT OF THE CLAIM TO PARTECH IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING ANY SUCH CLAIM.**

(c) **Governing Law.** Except as otherwise provided in this Franchisee Adoption Agreement, this Franchisee Adoption Agreement, and any disputes in relation to the subject of this Franchisee Adoption Agreement (including non- contractual disputes and/or claims) shall be governed by and construed in accordance with the laws of the United States and the State of New York, as applicable, without giving effect to any principles of conflicts of law. Each party hereby agrees to submit to the jurisdiction and venue of the United States District Court for the Northern District of New York and the Supreme Court of the State of New York for the purposes of adjudicating any dispute or action arising out of or in connection herewith, and each party consents to the personal jurisdiction of such courts and waives any claim that it is an inconvenient forum. The prevailing party in any litigation is entitled to recover its reasonable attorneys’ fees and reasonable costs from the other party. The U.N. Convention on the International Sale of Goods is excluded. If a Party identifies a technical legal deficiency in this Franchisee Adoption Agreement that could cause a court in the applicable jurisdiction to void or fail to enforce this Franchisee Adoption Agreement, or to interpret the terms of this Franchisee Adoption Agreement in a manner inconsistent with this section, the Parties will promptly amend and restate, effective from the Effective Date, if possible, this Franchisee Adoption Agreement.

(d) **Notices.** Notices shall be deemed given upon receipt. Any notices required to be given shall be in writing and if to Franchisee, shall be sent via email to the email address specified below or as updated by Franchisee from time to time and as provided to ParTech by sending an email to **[insert email address for updated contact information]**. Notices to ParTech shall be sent via prepaid certified mail or via reputable overnight courier to the address set forth in the preamble to this Franchisee Adoption Agreement to Attention: Legal Department with a copy via email at legal@partech.com.

(e) **Counterparts.** This Franchisee Adoption 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.

(f) **Miscellaneous.** The Parties agree that Franchisee is individually entering into this Franchisee Adoption Agreement solely on its own behalf and therefore, neither Customer or any other affiliate of Customer: (i) shall be liable to ParTech in respect of any payments due and owing by the Franchisee for products or services provided under this Franchisee Adoption Agreement; (ii) shall be liable for any other obligations of the Franchisee; (iii) can enforce the obligations of the Franchisee under this Franchisee Adoption Agreement entered into by the Franchisee; or (iv) can require that the Franchisee comply with the terms of this Franchisee Adoption Agreement.

**Participating Locations:**

<b>Location/Unit #</b>	<b>City</b>	<b>State</b>	<b>Zip</b>


(Attach additional list, if necessary.)

IN WITNESS WHEREFORE, Franchisee through its authorized representative has executed this Franchisee Adoption Agreement as of the date of the signature below.

**Franchisee:** [Insert Legal Entity Name of Franchisee]

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

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

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

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

Telephone No.: \_\_\_\_\_

Email: \_\_\_\_\_

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