



## SUBSCRIPTION SERVICES TERMS

These Subscription Services Terms (“Terms”) govern Customer’s access to and use of the ParTech Services under the Agreement between ParTech and Customer to which these Terms are attached. Any capitalized terms used but not defined in these Terms shall have the meaning assigned to them in the Agreement. For purposes of these Terms, the “ParTech Products” include, as applicable, (i) the Licensed Software, as may be updated, modified, or otherwise changed by ParTech at any time and (ii) the ParTech Services, all as may be updated, modified, or otherwise changed by ParTech at any time.

### 1. USAGE AND ACCESS RIGHTS.

- a. License. Subject to the terms and conditions of the Agreement and these Terms, ParTech grants to Customer a personal, nonexclusive, limited, nontransferable, nonsublicensable, right and license during the applicable Subscription Term (as herein in the Agreement) to (i) access and use the ParTech Services, as applicable, in object code form only, solely for Customer’s internal business purposes and solely for use by such employees or agents of Customer (A) who are authorized by Customer to access or use the ParTech Services, as applicable, for Customer’s internal business purposes and (B) to whom a password-protected account for use of the ParTech Services, as applicable, has been created by or on behalf of Customer (each, an “Authorized User”), (ii) install the Licensed Software on ParTech hardware or other hardware expressly approved by ParTech as compatible with the Licensed Software and run the Licensed Software for the purpose of connecting to and using the ParTech Services, as applicable, and as permitted by these Terms and the Agreement; and (iii) to use and copy the standard user guide, manual or other explanatory materials regarding the ParTech Services as provided by ParTech to Customer, as may be modified or updated by ParTech from time to time (“Documentation”).
- b. Non-Production Environment and Pre-Releases. ParTech may, from time to time, subject to the payment of additional Fees, provide Customer with a non-production lab environment to give Customer the opportunity to review and evaluate new features and functionality of pre-released versions of the Licensed Software and the ParTech Services, as applicable, in a sandbox environment (each, a “Pre-Release”). The foregoing license shall not apply to Pre-Releases, and Customer may not use any Pre- Releases in live production environments. To the extent ParTech provides any Pre-Release to Customer, ParTech grants to Customer a personal, nonexclusive, limited, nontransferable, nonsublicensable, right and license during the Subscription Term (or such shorter period as ParTech may specify) solely for Customer’s internal evaluation purposes to allow Customer to provide feedback to ParTech relating to the applicable Pre-Release.

### 2. SCOPE AND RESTRICTIONS.

- a. Restrictions. Customer shall not, directly or indirectly, use, or allow others to use, any ParTech Products and Documentation in any manner other than as expressly allowed in these Terms. Customer may not (i) reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to create or permit, allow, or assist others to create the source code of the ParTech Products or their structural framework, (ii) sell, rent, lease, distribute, redistribute, transfer, sublicense, subcontract, translate, license or grant any rights to any ParTech Products or the Documentation (including without limitation allowing any distribution or sublicense of the ParTech Products or Documentation or other access to any ParTech Products by any person or entity that is not an Authorized User, or processing data using any ParTech Products on behalf of third parties or any affiliated entities), (iii) use any ParTech Products in a hosted or managed services environment, except as expressly permitted by this

Agreement, (iv) remove any proprietary notice, labels, or marks on or in the ParTech Products or the established with respect to the ParTech Products, (v) disable or circumvent any access control or related device, process or procedure established with respect to the ParTech Products, (vi) use the ParTech Products in any manner that does or could potentially undermine the security of any ParTech Products or other products or services, (vii) provide the ParTech Products or the Documentation to any third-party without ParTech's prior written consent (which may be subject to a license fee), (viii) use any robot, spider, site search or retrieval mechanism or other manual or automatic device or process to retrieve, index, data mine, or in any way reproduce or circumvent the navigational structure or presentation of any ParTech Products, (ix) harvest or collect information about or from other users of any ParTech Products (x) probe, scan or test the vulnerability of any ParTech Products, or breach the security or authentication measures of any ParTech Products, (xi) take any action that imposes an unreasonable or disproportionately large load on the infrastructure of any ParTech Products (xii) modify or create derivative works of any ParTech Products or the Documentation (and any modified or changed portion of any ParTech Products or the Documentation shall be deemed ParTech Products or Documentation and subject to these Terms), (xiii) attempt to gain unauthorized access to any ParTech Products or its related systems or networks, (xiv) use any ParTech Products in whole or in part for any illegal purpose, (xv) access or use any ParTech Products to build a competitive service or product, or copy any feature, function or graphic for competitive purposes; (xvi) use any ParTech Products other than in accordance with all applicable laws, rules and regulations; or (xvii) facilitate or encourage any violations of this Section. Customer shall (A) take all reasonable precautions to prevent unauthorized or improper use of any ParTech Products, (B) not interfere with or disrupt the integrity or performance of any ParTech Products, (C) not attempt to gain unauthorized access to any ParTech Products or any related systems or networks, and (D) not create Internet "links" to any ParTech Products or "frame" or "mirror" any content therein.

- b. Additional Restrictions. Customer shall not, and not attempt to, defeat, avoid, bypass, remove, deactivate, or otherwise circumvent, or otherwise interfere with, modify or disable, any protection mechanisms, features, functionality or security controls of any ParTech Products.
- c. Acceptable Use Policy. Customer acknowledges that ParTech engages third party suppliers to host the ParTech Services and may change such suppliers from time to time. Customer shall use the ParTech Services in accordance with such suppliers' acceptable use policy as made available by ParTech to Customer from time to time ("AUP"), and the AUP is incorporated into these Terms in its entirety as if fully set forth herein. As of the Effective Date, ParTech's hosting provider for all the ParTech Products, excluding the PAR OPS Services, is AWS, and for the PAR OPS Services is Microsoft Azure ("Azure"). Customer shall comply with AWS' AUP found at <https://aws.amazon.com/aup/> and Azure's Terms of Use ("TOU") found at <https://www.microsoft.com/en-us/legal/terms-of-use>, as applicable to the ParTech Products ordered by Customer. Customer acknowledges that the supplier's AUP or TOU may change at any time and from time to time, and that it is Customer's responsibility to review the current supplier's AUP or TOU regularly to ensure Customer's continued compliance.
- d. Customer Security and Requirements. Customer shall ensure the security of its account ID, password, and connectivity with the ParTech Services and shall use commercially reasonable efforts to prevent unauthorized access to its account in the ParTech Services. If any administrative account ID or password is stolen or otherwise compromised, Customer shall immediately change the password and inform ParTech of the compromise. Customer acknowledges that responsibility for all Customer Data (as herein defined), text, information, messages, and other material submitted by its Authorized Users to the ParTech Services lies solely with Customer. Customer is solely responsible for the accuracy and completeness of the Customer Data and all activity in its account in the ParTech Services. ParTech may change the authorization method for access to the ParTech Services if it determines in its sole discretion that there are circumstances justifying such changes. ParTech is not responsible for loss of any data in transmission or improper transmission by Customer or its Authorized Users. As between the parties, Customer is responsible for obtaining and maintaining all computer hardware, software, communications, and hardware needed to access and use the ParTech Services, and for

paying all associated third-party access charges.

- e. Monitoring and Use of Data. ParTech may monitor all use of the ParTech Services. ParTech may immediately suspend provision of or access to the ParTech Services at any time, without notice to Customer and without liability, if ParTech suspects or becomes aware that the ParTech Services or the use thereof may infringe or violate any third-party rights or may violate applicable laws. ParTech may suspend Customer's and its Authorized Users' access to and use of the ParTech Services to comply with applicable laws, or upon having reason to believe that any improper activity or any potential damage to any ParTech Products, customers, or consumers is associated with Customer's or its Authorized Users' use of or access to the ParTech Services. ParTech may gather operational telemetry and usage analytics data for the purpose of optimizing the ParTech Services, including identifying trends and the formulation of statistics.
- f. Changes to the ParTech Products. ParTech reserves the right, without prior notice to Customer, to supplement, replace or otherwise make changes of any kind or nature to the ParTech Products at any time in ParTech's sole discretion, including changes to meet applicable laws or any industry standard requirements. ParTech shall have no obligation to supplement or otherwise make changes to prior versions of the Licensed Software in use by Customer.
- g. IP Addresses. ParTech may assign Internet Protocol ("IP") addresses to the Customer for its use in connection with certain of the ParTech Services. The Customer has no right to use IP addresses not assigned to it or to use IP addresses in any manner not permitted by ParTech in connection with the use of the ParTech Services. ParTech maintains control of all IP addresses that are assigned to the Customer and reserves the right to change or remove them at its sole and absolute discretion, provided that ParTech gives Customer at least thirty (30) days' prior notice of such change to the extent feasible. ParTech acknowledges that changes to IP address changes may occur (for example, at the request of the American Registry for Internet Numbers ("ARIN")), or as ParTech may reasonably require (e.g., for its operational purposes, capacity planning, scaling, etc.). The parties acknowledge that the allocation of IP addresses is restricted by the policies of ARIN, and that said policies dictate that name-based hosting must be used whenever possible. ParTech reserves the right to periodically review IP address usage and revoke authorization to use those IP addresses not being utilized or where name-based hosting could be used to comply with ARIN policies.

### **3. SERVICE LEVELS AND SECURITY.**

- a. Service Levels Commitments. ParTech shall make the ParTech Services, including any applicable API Services, available in accordance with the service levels set forth in ParTech's current Service Level Commitments for PAR POS Services, for PAR POS API Services, for PAR Pay Services, for PAR Punchh Services, and for PAR Ordering Services, respectively, the terms of which are incorporated into these Terms by this reference as if set forth herein (the "ParTech Service Level Commitment(s)").
- b. Noticeable Events. In order to maintain the Service Level Commitments to Customer on an ongoing basis during the Term of the Agreement, Customer shall provide ParTech with at least six (6) weeks' notice of any special promotions or events which Customer reasonably anticipates may exceed the API Rate Limits for each of the API Services for the ParTech Services ("Noticeable Event(s)") to allow ParTech, at its option, to perform load testing prior to such Noticeable Event. Notifications can be sent to Customer's Customer Success Team as assigned by ParTech to Customer. Upon notification from Customer, Customer shall provide ParTech with such additional information as reasonably requested by ParTech to determine if any load testing should be performed, including a description of the event, dates of the event, expected traffic patterns, expected increase in orders, etc. If ParTech elects to do load testing and ParTech determines that such Noticeable Event may exceed the API Rate Limits applicable to each of the ParTech Services, ParTech may, at ParTech's discretion, provide Customer with a proposal for the additional cost to add temporary infrastructure to the applicable ParTech Services specifically for Customer to ensure the Service Level Commitments can be met during the Noticeable Event. If (i) ParTech recommends that Customer add additional temporary

infrastructure for the Noticeable Event based on ParTech's load testing and Customer does not; or (ii) Customer fails to notify ParTech of a Noticeable Event as provided herein, and the load exceeds the API Rate Limits for the applicable ParTech Services, then ParTech's failure to meet the Service Level Commitments during the Noticeable Event shall not be a breach of these Terms or the Agreement.

- c. **Security.** ParTech shall protect Customer Data within the ParTech Services (as specified therein) in accordance with ParTech's Security Overview, the terms of which are incorporated into these Terms by this reference as if set forth herein (also a "ParTech Security Overview") and shall provide at least commercially reasonable security measures and controls. ParTech shall protect and secure the Customer Data and Transaction Data (both as defined herein) within the PAR Pay Services in accordance with the requirements of the PCI-DSS.

#### **4. PROPRIETARY RIGHTS.**

- a. **Reservation of Rights.** All rights not expressly granted to Customer herein are expressly reserved by ParTech and/or its third-party licensors, as applicable. As between the parties, the ParTech Services, the Licensed Software (including any software enhancements made to the ParTech Services or the Licensed Software as may be requested by Customer), all related processes, algorithms, user interfaces, know-how, techniques, designs and other tangible and intangible technical material or information and content therein (other than Customer Data, as defined in herein, and the Documentation (collectively "ParTech Items")) are and will remain the exclusive property of ParTech and/or its third-party licensors and suppliers, as applicable, and ParTech and/or its third-party licensors and suppliers, as applicable, will retain ownership of all copyrights, patents, trademarks, trade secrets, know-how, databases, and other intellectual property rights relating to or residing in the ParTech Items and any updates, improvements, modifications and enhancements (including error corrections and enhancements) thereto, and all derivative works thereof, and Customer will have no right, title, or interest in or to the same. Nothing in these Terms will be deemed to grant, by implication, estoppel, or otherwise, a license under any of ParTech's or its third-party licensors' existing or future rights in or to the ParTech Items. ParTech's and/or its third-party licensors trade names, trademarks, service marks, titles, and logos, and any goodwill appurtenant thereto, shall be owned exclusively by ParTech and/or its third-party licensors, as applicable, and shall inure solely to the benefit of ParTech and/or its third-party licensors, as applicable.
- b. **Feedback.** Customer hereby assigns to ParTech and/or its third-party licensors, as applicable all right, title and interest in and to all feedback, suggestions, ideas, improvements and other comments provided by Customer and Authorized Users to ParTech and/or its third-party licensors, as applicable, relating to the ParTech Services (excluding Customer Data and Transaction Data) (collectively, "Feedback"), and ParTech and/or its third-party licensors, as applicable, will have the unrestricted right to use and disclose Feedback into and in connection with the ParTech Products, without duty or obligation to Customer, and Customer acknowledges that any improvements, modifications and changes arising from or in connection with its contribution to the ParTech Services are the exclusive property of ParTech and/or its third-party licensors, as applicable; *provided, however*, that ParTech and/or its third-party licensors, as applicable, will not identify Customer in connection with any such use or disclosure.
- c. **Customer Data/Transaction Data.** As between the parties, and subject to ParTech's rights in and to Aggregated Data, (1) Customer has and shall retain sole and exclusive title and ownership of all (a) information, data and materials input by Customer or Authorized Users into the ParTech Services; and (b) data derived from any payment transaction, including Gift/Credit/Debit Card Masked Data and Gift/Credit/Debit Card Unmasked Data (both as defined in subsection d. below), information derived from the EMV chip on a Gift/Credit/Debit Card, Near Field Communication ("NFC") and magnetic stripe reader ("MSR") technology that Customer may use to swipe/insert/tap on any third-party hardware (all as defined in subsection d. below); additional Gift/Credit Card Data collected as part of a transaction submitted by Customer, excluding a Customer Token, amount, date, store number,

transaction type, transaction status, transaction time, customer name and transaction amount (“Transaction Data”) and all derivatives and transformations thereof (collectively, (a) and (b) herein, “Customer Data”). Customer hereby grants to ParTech a limited, nonexclusive, royalty free right and license to access, store, copy, modify, process, combine with other data, distribute, display Customer Data and otherwise use Customer Data (x) for the performance of ParTech’s obligations and exercise of its rights under this Agreement; (y) to offer or develop other ParTech products and services and/or alternative pricing structures; and (z) to create derivatives of Customer Data, solely in de-identified and aggregated form (such derivatives, “Aggregated Data”). ParTech shall own all right, title, and interest in all Aggregated Data and in such improvements and derivative works thereof and may use such Aggregated Data for any lawful purpose, including, without limitation, by sharing Aggregated Data with its affiliates and across the ParTech Services. To the extent (if any) that Customer receives or provides Customer Personal Information (as defined in the Data Processing Addendum) in the course of using the ParTech Services, Customer agrees to comply with all laws and regulations, including data privacy laws, applicable to its provision or receipt of such Customer Personal Information, including obtaining, and maintaining any notices, consents, or approvals necessary to make such information available to ParTech for processing and use. For Customer Data that is also considered Customer Personal Information, Customer agrees that ParTech processes such data based on Customer’s instructions and these Terms, and ParTech shall do so in accordance with the [Data Processing Addendum](#), which is hereby incorporated into these Terms by this reference.

- d. **Definitions Applicable to Customer Data/Transaction Data.** All capitalized terms used in [Section 4.c](#) and this [Section 4.d](#), to the extent not otherwise defined therein, shall have the following meanings: “Customer Token” means a derived alphanumeric value that is linked with a Gift/Debit/Credit card and is only used within Customer’s database of Customer Data to uniquely identify a customer; it cannot be used to process a payment transaction. “Gift/Credit/Debit Card” means a plastic card with encoded card number used as a token for the transaction. “Gift/Credit/Debit Card Masked Data” means the last four (4) digits of the Gift/Credit/Debit Card Number. “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 PAR Pay Services and in compliance with all applicable laws, including the cardholder’s name, primary account number, expiration date, card security code (CSC) or service code. “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.
- e. **Return of Customer Data.** Provided Customer has paid all Fees and other amounts due under the Agreement, ParTech will extend Customer’s access to the ParTech Services for a period of sixty (60) days beyond the expiration or early termination of this Agreement. During such period, Customer may extract any data in appropriately available formats. This extraction right is limited to Customer Data and does not grant Customer any rights to ParTech’s data structure, data alignment, or other intellectual property. Any assistance required by Customer to execute such data extraction will be provided by ParTech in a cooperative fashion as professional services, billed at prevailing rates and payable in advance. After such sixty (60) day period, ParTech shall have no obligation to maintain or provide any access to Customer Data and may thereafter, unless legally prohibited, delete all Customer Data within the ParTech Services or otherwise in its possession or under its control. Customer may request that ParTech not delete certain Customer Data following expiration or termination, and ParTech will not delete such Customer Data and shall continue to maintain such Customer Data in accordance with these Terms and the Agreement subject to ParTech’s agreement to such retention request and to Customer’s continued payment of Fees for the applicable ParTech Services.

- 5. **EFFECT OF TERMINATION.** Upon termination of the applicable Order, Customer’s right to access or use the ParTech Services, and Customer’s license to the Licensed Software, shall immediately cease and ParTech will have no obligation to maintain, deliver or provide access to any

Customer Data. Customer's payment obligations under the Agreement will survive termination of the Agreement or the applicable Order. Upon any termination of an Order for ParTech Products, Customer shall pay any amounts due to ParTech, uninstall the Licensed Software and follow any instructions set forth in the Documentation, and destroy or return all Documentation and all other Confidential Information of ParTech. Customer will confirm its compliance with this requirement in writing upon written request of ParTech. Except as set forth herein, ParTech has no obligation to maintain Customer Data, and may destroy it in accordance with applicable laws. Notwithstanding the expiration or termination of these Terms, the Agreement or the applicable Order, any rights, and obligations under these Terms which by their nature extend beyond such expiration or termination shall survive such expiration or termination, including Sections 4, 5, 6.b, and 6.c of these Terms.

## **6. WARRANTIES AND DISCLAIMERS.**

- a. Customer Warranties. Customer represents, warrants and covenants that (i) Customer will comply with all applicable laws with respect to its and its Authorized Users' access to and use of the ParTech Products; (ii) the Customer Data, and the use thereof as contemplated by this Agreement, do not and will not infringe upon or violate the intellectual property, proprietary, publicity, or privacy rights of any third party; (iii) Customer has all necessary rights to grant ParTech the rights and licenses granted hereunder; (iv) Customer will obtain and maintain all third-party consents and certifications necessary for the transmission of Customer Data to ParTech and for ParTech to use the Customer Data as contemplated by this Agreement; and (v) Customer is solely and exclusively responsible for ensuring the ParTech Solution, including Customer's menu, integrations, labor scheduling, inventory, offers and campaigns (as applicable) are properly configured prior to Customer deploying the ParTech Solution to production. ParTech is not responsible for ensuring that the ParTech Services, or any portion thereof, is in compliance with Customer's criteria for legal compliance.
- b. Disclaimers. PARTECH AND ITS SUPPLIERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PARTECH PRODUCTS, DOCUMENTATION AND ANY OTHER INFORMATION, MATERIALS AND SERVICES PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. PARTECH DOES NOT REPRESENT OR WARRANT THAT THE PARTECH PRODUCTS OR ANY SERVICES WILL BE AVAILABLE, ERROR FREE, COMPLETELY SECURE, VIRUS FREE, OR WITHOUT INTERRUPTION, OR THAT THEIR FUNCTIONS WILL MEET ANY PARTICULAR REQUIREMENTS, OR THE ACCURACY OR COMPLETENESS OF THE SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE PRODUCTS OR SERVICES, OR THAT DEFECTS OR ERRORS ARE CAPABLE OF CORRECTION OR IMPROVEMENT, OR THAT UNAUTHORIZED ACCESS BY THIRD PARTIES CAN BE PREVENTED. THE PARTECH PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND PARTECH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. CUSTOMER ASSUMES FULL RESPONSIBILITY AND RISK FOR USE OF PARTECH PRODUCTS AND THE INTERNET. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, PRE-RELEASES, THEIR CONTENT, AND ANY SERVICES OR ITEMS OBTAINED IN CONNECTION WITH PRE-RELEASES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND.
- c. Third Party Services. Customer may choose to use third-party data, information, products or services ("Third-Party Services") in connection with the ParTech Services. Use of Third-Party Services is subject to Customer's agreement with the relevant provider and not this Agreement. ParTech does not control and has no liability for Third-Party Services, including their security, functionality, operation, availability, or interoperability or how the Third-Party Services or their providers use Customer Data.

If Customer enables a Third-Party Services which integrates with any of the ParTech Services, Customer hereby authorizes ParTech to access and/or exchange Customer Data with the Third-Party Services on Customer's behalf. The ParTech Services may allow access to data, information, or services disseminated by Third-Party Services and Customer acknowledges that, except as otherwise provided herein, ParTech and its suppliers and licensors disclaim responsibility for the use, content, accuracy, timeliness, completeness or availability of such third-party data information, or services and make no warranty concerning such information. CUSTOMER USES SUCH THIRD-PARTY SERVICES AT ITS OWN RISK.

**7. PAR PAY SERVICES SPECIFIC TERMS.**

- a. Store and Forward Functionality. The PAR Pay Services offer functionality that enables Transaction Data to be stored in a payment device in the event the payment device's connection to the processor is lost, and to forward the Transaction Data upon reconnection with the processor (commonly known as "Store and Forward" or "SAF" functionality). Customer may, in its discretion, enable SAF functionality and set available parameters for number and value of Transactions that may be stored through the PAR Pay Services. In the event that SAF Transaction Data stored in a payment device is not forwarded to the processor as desired, Customer may request that ParTech attempt to recover the SAF Transactions. Upon such a request, ParTech may, in its discretion, use commercially reasonable efforts to recover any SAF Transaction Data stored in a payment device, provided that ParTech does not represent or warrant that recovery (in whole or in part) is possible or will be successful. Any SAF recovery efforts by ParTech will be chargeable on a time and material basis or at such other prices as may be quoted by ParTech from time to time. ParTech disclaims, and Customer releases ParTech from, any liability resulting from Customer's election to enable SAF functionality or ParTech's SAF recovery efforts.

**8. PAR PUNCHH SERVICES AND PAR ORDERING SERVICES SPECIFIC TERMS.**

- a. Privacy Policy. If Customer is collecting PII directly from data subjects (as defined by applicable law) through the PAR Punchh Services, Customer must provide ParTech a privacy policy compliant with applicable law, that ParTech can include as part of any Customer App (as defined below) at or before the point of collection (the "Privacy Policy"). Customer represents and warrants that the Privacy Policy will comply with all applicable laws and sufficiently describe ParTech's processing of PII herein and as otherwise required in connection with ParTech's delivery and Customer's use of the PAR Punchh Services.
- b. 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 PAR Punchh Services, the PAR Ordering Services, or as otherwise agreed to by Customer and ParTech. Customer represents, warrants and covenants that it will be solely responsible and liable for (i) the content of Consumer Communications, including any Customer Data 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 and regulations 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 ParTech provided to Customer regarding Consumer Communications Content and Consents, including any assistance related to any "opt-in" or "opt-out" consent mechanisms, ParTech will not be responsible or liable for, and Customer agrees to indemnify, defend and hold harmless ParTech and its affiliates and its and their officers, directors, employees and agents from and against any Claims incurred or suffered by ParTech and its affiliates and its and their officers, directors, employees and agents in connection with, Consumer Communications Content and Consents.
- c. Customer App
- i. Development. If agreed to by ParTech and Customer, ParTech will develop a mobile application or



online-ordering application (“Customer App”) for Customer as specified in a statement of work which shall include detailed specifications for such Customer App. Customer will provide ParTech with all information and assistance specified in the applicable statement of work or otherwise reasonably requested by ParTech to assist ParTech in the development of the Customer App. As between Customer and ParTech, ParTech shall own all right, title and interest in and to the Customer App.

- ii. Approvals. Customer will be responsible for submission of the Customer App to each applicable app store (e.g., the Apple App Store, Google Play, etc.) specified in the applicable statement of work (each, an “App Store”) and for obtaining all registrations (including domain name registrations if applicable) and other approvals necessary for distribution of the Customer App through each App Store or hosting of the Customer App. ParTech shall provide reasonable assistance to Customer in the submission and approval or registration of the Customer App upon request. Unless otherwise specified in an applicable statement of work, Customer shall (i) submit the Customer App, along with any required documents or information, to each applicable App Store and provide timely responses to all requests for additional information necessary for the registration or approval of the Customer App by each App Store, (ii) make all such submissions and obtain all such approvals and registrations under Customer’s name, and (iii) enter into all agreements and provide all other consents or acknowledgements required by each App Store for the approval or registration of the Customer App. Customer acknowledges and agrees that its ability to exploit and distribute the Customer App is dependent upon and subject to obtaining and maintaining all required approvals and registrations from each App Store and that Customer shall be solely responsible for obtaining and maintaining all such approvals and registrations. If Customer’s failure to obtain approvals or registrations for the Customer App results from issues with the Customer App, ParTech will take reasonable steps to rectify the issues such that Customer will be able to obtain approvals and registrations.
- iii. Terms and Conditions. Customer shall prepare and provide a set of terms and conditions (“User Terms”) applicable to the Customer App. Customer will ensure that all Customer App users agree to be bound by the User Terms before accessing or using the Customer App. All User Terms will be consistent with the terms of this Agreement and will include all licenses, consents, and permissions from each Customer App user necessary to provide Customer and ParTech with all applicable rights granted under this Agreement. Customer acknowledges that ParTech may require additional terms applicable to participation by Customer App users in the Promotional Programs to be included in the User Terms, such terms to be provided by ParTech and to be approved by Customer.
- iv. Distribution. Customer will be responsible for all distribution of the Customer App through each App Store. Customer will distribute the Customer App solely through App Stores that have approved or registered the Customer App and at all times in compliance will all requirements of such App Stores, all applicable User Terms, and the terms of this Agreement. Additionally, ParTech agrees to comply with all requirements of such App Stores and the terms of this Agreement.