



HARDWARE TERMS

1. Terms and Conditions. These Hardware Terms (“Terms”) shall apply to the sale of Hardware, and provision of Installation Services, Advance Exchange Services, Remote Care Services and On-Site Remedial Maintenance Services (collectively, the “Services”) to Customer 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. No addition to or modification of these Terms shall be binding upon ParTech unless expressly agreed to by ParTech in writing, and, if these Terms are deemed an offer, acceptance is expressly limited to these Terms.

2. Delivery of Hardware.

a. **Shipping.** ParTech shall ship the Hardware to the location identified on the Order. ParTech shall have the option of selecting the carrier, the route and method of shipment and Customer shall pay all shipping charges. If Customer requires alternative means of shipment, Customer shall pay any resulting costs. Lead times are as stated by ParTech, and Hardware may be placed on backorder at ParTech’s discretion. Where Hardware availability is limited for any reason, ParTech may fill Orders or otherwise allocate Hardware in any manner it deems appropriate including substituting other hardware similar in form, fit and functionality. Under no circumstances shall ParTech be liable for failure to ship, or for Customer’s failure to receive, Hardware by a certain date.

b. **Title and Risk of Loss.** The Hardware is delivered F.O.B. Origin (ParTech’s applicable warehouse or facility) per UCC (EXW Origin (ParTech’s applicable warehouse or facility) per Incoterms). Risk of loss of the Hardware shall pass to Customer at delivery, and delivery shall mean at the time the Hardware is placed in the possession of the carrier after loading. For Hardware purchased by Customer, title will pass to Customer at delivery. Any Hardware damaged in transit is subject to the limited warranties set forth in Section 8(a) of these Terms.

c. **Purchase of Custom Hardware.** If at any time Customer requests ParTech to purchase any specific Hardware for sale to Customer (or as part of the services provided to Customer hereunder) which ParTech is not currently purchasing for sale or service to other customers (“Custom Hardware”), Customer shall be responsible for the purchase of 100% of the quantity of any such Custom Hardware ordered by Customer and purchased by ParTech that is not purchased or used by Customer as part of the services by the end of the Term of the Agreement.

d. **Price Adjustment Due to Unforeseen Market Fluctuations in the Cost of Material Components or Hardware.** Pricing reflected in any Order or Pricing Schedule for Hardware is based on ParTech’s projections of future ready general availability of and standard year over year increase in price for all material component parts for Hardware throughout the Term of the Agreement and an actual reduction in the cost to ParTech of such parts over the Term. If during the Term of this Agreement there is a (i) decrease in the generally availability of any material component parts for the Hardware or any Hardware itself, including due to obsolescence, unavailability of supplier, or other cause outside the control of ParTech; or (ii) significant increase in the cost for the material component parts of the Hardware or the Hardware itself, which causes the cost of such material component parts or the Hardware to be significantly higher (more than 5% higher) than the cost as of the effective date of any Pricing Amendment, ParTech shall provide Customer with written notice of such change. If ParTech cannot identify a lower cost supplier or a comparable substitute within thirty (30) days of such notice, then ParTech reserves the right to increase its pricing for the Hardware by an amount to cover the additional cost to ParTech of such material component part or Hardware. Further, any failures of Hardware requiring material component parts or replacement of Hardware will be on a commercially reasonable basis and ParTech may in good faith, increase pricing for the Hardware by an amount to cover the additional cost to obtain such parts or Hardware. Any increase in the price of Hardware pursuant to this Section shall apply to the purchase of Hardware by new Participating Locations after the effective date of such increase. Current Participating Locations shall not be affected by such price increase, unless and until such current Participating Locations purchase new Hardware.

Notwithstanding the foregoing, if ParTech ends support for Hardware, including AE Services or RMS Support, due to any of the causes in (i) or (ii) herein, Customer may be required to purchase new or upgraded Hardware to continue to receive support.

3. Hardware Installation Services.

a. **Third-Party Software.** If the Hardware contains any third-party software (e.g. antivirus software), including the embedded operating system from Microsoft (“OS”), the applicable end user license agreement which may be found in a “Read Me”, “About” or similar file within the third-party software or the documentation for such software, or in the case of the OS, the applicable end user license agreement (“Microsoft EULA”) located at Drivers and Downloads (partech.com) are all incorporated into and made a part of these Terms and shall be applicable to Customer, and Customer hereby accepts such license agreements and the terms and conditions thereof.

b. **Installation Services.** ParTech will provide the installation services set forth in the Order (the “Installation Services”) as follows: the Hardware will be installed by ParTech or by an installation subcontractor(s) certified by ParTech at the location identified on the Order. Installation of the Hardware shall be deemed to be complete when ParTech or its installation subcontractor notifies Customer that the Hardware has been properly installed and is ready for use. ParTech will use commercially reasonable efforts to perform the Installation Services in accordance with the time schedule set forth in the Order.

c. **Customer Responsibilities.** If the Order includes Installation Services, the Customer agrees that Customer is responsible for the preparation of the space in which the Hardware will be installed, including confirming the space satisfies ParTech’s specifications as to environment, power, HVAC, and other requirements as described in ParTech’s pre-installation guide (the “Pre-Installation Checklist”). Customer preparation of the site, in accordance with the Pre-Installation Checklist, must be completed prior to installation or the Hardware Warranty will be void. Additionally, Customer shall be responsible for the payment of all fees for electrical work that must be performed by a licensed electrician, required by law in connection with the Installation Services, or any fees to comply with applicable government imposed environmental regulations, including elimination of certain chemical content and recycling fees. If ParTech or its certified installation subcontractor(s) arrives at the site at which the Hardware is to be installed and the Customer is not prepared for installation in accordance with the Pre- Installation Checklist, the Customer will be charged an abort fee.

4. Advance Exchange Services (If Applicable).

a. **Advance Exchange Services.** ParTech will provide the Advance Exchange Services (the “AE Services”) as to the purchased Hardware identified and set forth in the Order (“AE Hardware”) for a period of one (1) year or three (3) years, as elected by Customer, or other period offered to Customer by ParTech (“AE Services Period”). During the AE Services Period, ParTech will provide 24/7 support, tracking and dispatch services and fully operational replacement Hardware for the AE Hardware, in accordance with this Section. The AE Services include parts, labor, and materials to maintain, repair and replace the AE Hardware under normal use and service, and is provided for AE Hardware during the AE Services Period , except for the following holidays (which may vary from year to year) as observed by ParTech in the United States: New Year’s Day, Martin Luther King Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Eve and Christmas Day (“ParTech Holidays”).

b. **Request for AE Services.** To request AE Services and fully operational replacement Hardware, unless otherwise agreed to by ParTech and Customer, Customer must submit a request for AE Services to ParTech’s Technical Support Services Center and Customer must provide ParTech with: (i) all configuration requirements for the replacement Hardware, (ii) the failed AE Hardware’s model and serial number, and (iii) the address that the replacement Hardware is to be shipped (“ship-to address”).

c. **Shipment of Replacement Hardware.** ParTech will ship replacement Hardware to Customer’s ship-to address, freight prepaid, with next day delivery within the United States for requests received prior to 3:00 p.m. (Eastern Time), Monday through Friday. Replacement Hardware will be shipped by premium air

freight carrier when ParTech determines such method of shipment is appropriate. Customer must acknowledge receipt of replacement Hardware by signing the freight carrier air bill or similar shipping/delivery documentation accompanying the replacement Hardware.

d. **Return of Defective AE Hardware.** ParTech will provide Customer with a pre-paid shipping label and packaging instructions for the return of the defective AE Hardware to ParTech. Customer will return the defective AE Hardware to ParTech using the corresponding replacement Hardware packaging (ParTech will ship replacement Hardware in reusable packaging). Customer should be prepared to return ship the defective AE Hardware within two (2) business days of Customer's receipt of the replacement Hardware; however, the defective AE Hardware must be returned to ParTech no later than 14 days of Customer's receipt of the replacement Hardware. If Customer fails to return the defective AE Hardware within such 14-day period, Customer shall purchase the replacement Hardware at full price and pay a 20% restocking fee; and, if Customer fails to pay the invoice for such replacement Hardware, then the Hardware Warranty on the replacement Hardware will be ineffective until Customer's account is current. ParTech reserves the right to charge Customer ParTech's then-current time-and-materials rates for AE Services provided to Customer when ParTech determines that the root cause of the defective AE Hardware was as a result of events or circumstances described in Section 7.c below. If ParTech determines that more than 10% of the AE Hardware returned by Customer in any consecutive three (3) month period was not defective or resulted from events or circumstances described in Section 7.c below, Customer will be invoiced diagnostic and handling fees for each subsequent AE Hardware returned that is not within the Hardware Warranty Period.

e. **Additional Terms for Certain Payment Devices.** The following additional terms will apply with respect to the AE Services for payment devices as set forth on the Order: (i) software updates, upgrades or bug fixes for any software on the payment devices will be provided as part of the AE Services; (ii) upon request for the AE Services, Customer must provide ParTech with the serial number of the payment device being replaced; (iii) the AE Services do not apply to battery packs, cables or accessories for such payment devices; (iii) during the Advance Exchange Warranty Period, ParTech will maintain for Customer a number of payment devices to provide replacement payment devices as part of the AE Services ("PD AE Pool"); the cost of such PD AE Pool is included in the price of the AE Services; and (iv) in addition to the exclusions set forth in Section 7(c)(i) below, if it is determined by ParTech that the defect in the payment device was caused by any of the following, Customer will be charged for the cost of the replacement payment device plus the cost of provisioning such device: (x) tampering/damage to the payment device's security label; or (y) cosmetic damages (such as scratches, stains, paint or stickers).

5. **Remote Care Services (If Applicable).** ParTech will provide asset tracking, health monitoring, software application monitoring, including anti-virus software, and Microsoft OS Patch Management for Customer's point of sale terminals and controllers ("RCS Hardware") by remotely monitoring the RCS Hardware through a secure connection ("Remote Care Services") as follows:

a. **Asset Reporting Monitoring.** ParTech will track and monitor RCS Hardware by location, including the quantity, model number, and serial numbers.

b. **Health Monitoring.** Select operational parameters of the RCS Hardware will be monitored based on parameters established by ParTech for issues that may be indicative of a potential failure. Such monitoring will include but may not necessarily be limited to: (i) fan speed; (ii) temperature; (iii) system voltages; and (iv) hard drives.

c. **Application Monitoring/Self-Healing.** Based on parameters established by ParTech, ParTech will monitor the software applications, log files, service or process performance relative to the RCS Hardware, and/or arrange to receive automatic alerts regarding performance issues. Upon detection of an issue, ParTech will initiate a resolution script aimed at resolving the problem. If the problem cannot reasonably be resolved without Customer's assistance, ParTech will notify Customer.

d. **Anti-Virus Software Activity.** The anti-virus software continuously scans the internet and incorporates inputs to quickly and accurately identify unknown threats which are then automatically updated on the RCS Hardware. ParTech will monitor this anti-virus software activity, including threats detected, active threats,

threats quarantined, threats resolved, scans completed, updates performed. ParTech will notify Customer via email that a threat was detected and the action that was taken to resolve the threat.

e. **Microsoft® OS Patch Management.** ParTech will monitor the RCS Hardware to determine whether the resident Microsoft OS is up to date with all critical operating system patches. Only critical system operating patches for Microsoft OS currently supported by Microsoft will be available. ParTech will apply critical OS patches to the RCS Hardware no later than the shorter of: (i) thirty (30) days of release by Microsoft; or (ii) in accordance with the Payment Card Industry Data Security Standards (“PCI-DSS”) or such other applicable guidelines, standards or Microsoft recommendations. Testing of such patches will be limited to testing on the current operating system configuration available by hardware type and the ParTech software release that is currently in use by Customer.

f. **Customer Responsibilities.** Customer agrees to: (i) ensure that the in-store network supporting the RCS Hardware is connected to the internet 24 hours per day, 7 days per week; (ii) the RCS Hardware is powered on 24 hours per day, 7 days per week; (iii) provide ParTech with reasonable access to Customer’s network and systems as needed to provide the Remote Care Services; and (iii) comply with PCI-DSS, or such other applicable guidelines, standards or laws. If the in-store network is not connected or the RCS Hardware is not powered on, then ParTech will attempt to provide the RCS Services continuously until the provision of the RCS Services is successful.

6. On-Site Maintenance Services (If Applicable)

a. **On-Site Maintenance Services.** ParTech will provide on-site maintenance services for the Hardware (“RMS Hardware”) identified and set forth in the Order (the “RMS Services” and/or “On-Site Maintenance Services”) for a period of one (1) year or other period offered to Customer by ParTech (“RMS Service Period”) as elected by Customer. During the RMS Services Period, ParTech will provide RMS Services as follows:

b. **Principle Periods of Maintenance.** ParTech will provide RMS Services availability during the Principal Period of Maintenance (“PPM”) set forth below:

| Call Priority | PPM (all times are Local Site Time) |
|---------------|---|
| P1 | 8 a.m. –8:00 p.m. - 7 Days/week |
| P2 | 8 a.m. –8:00 p.m. - Monday thru Saturday only, excluding ParTech Holidays |

(i) **Requests for RMS Service.** ParTech will provide a toll-free number and the availability of support personnel 24 hours a day, seven (7) days a week, for Customer’s non-exclusive use to notify ParTech of all requests for RMS Services.

(ii) **Remedial Maintenance.** ParTech will provide RMS Services as required during the PPM, following notification by the Customer and ParTech’s technical assistance confirmation that RMS Hardware is inoperative or malfunctioning. Maintenance will consist of the repair or replacement of parts deemed necessary by ParTech to return RMS Hardware to good operating condition. ParTech reserves the right to refuse to perform RMS Services when, in ParTech’s judgment, conditions at the Participating Location present a hazard to the safety or health of ParTech’s technicians. Maintenance materials, tools, documentation, replaced parts, diagnostic and test hardware provided by ParTech shall remain ParTech’s property.

(iii) **Call Priorities and Response/Restoration Times.**

(A) Call Priority. Requests for RMS Services will be prioritized as follows:

| Call Priority | Definition |
|---------------|--|
| P1 | <ul style="list-style-type: none"> • 50% of front counter terminals are down. • 50% of drive-thru terminals are down. • 50% of KVS monitors are down. |
| P2 | Hardware failures outside of the P1 definition –Participating Location’s operations are not materially affected |

(B) Response Time. Upon confirmation of a request for RMS Services, ParTech will use commercially reasonable efforts to respond on-site at the Participating Location and restore the RMS Hardware within the response/restoration times as follows:

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

“Contract Hour” are those hours falling within the applicable PPM, as defined above.

“Contract Day” is Monday through Saturday.

Additional time shall be permitted for response to P1 calls based upon the distance of the Participating Location from a ParTech RMS Services location, as follows:

| <u>Distance From ParTech RMS Services Location</u> | <u>P1 Added (Hours)</u> |
|--|-------------------------|
| >0 ≤ 75 miles | 0 |
| >75 < 100 miles | 0.5 |
| >100 < 125 miles | 1 |
| >125 < 150 miles | 1.5 |
| >150 < 175 miles | 2.0 |
| >175 Miles | Out of Scope |

c. Customer Responsibilities. Customer agrees to:

- (i) Designate a knowledgeable resource to accurately communicate and collaborate with ParTech’s when Customer makes a request for RMS Services.
- (ii) Be prepared to provide all information needed including error codes, process or procedures leading up to the error and any other information that may be relevant and might help to expedite the resolution. If the knowledgeable resource refuses to troubleshoot over the telephone prior to RMS Services dispatch, the Call Priority will be designated a P2 priority and Customer will be invoiced for the RMS Services visit at then applicable time and material rates if the ParTech customer service technician determines, upon arrival, that the problem could have been remedied through troubleshooting over the telephone.
- (iii) Perform regularly scheduled system and database backups and ensure that they are available when required.
- (iv) Provide ParTech customer service technicians with unencumbered and immediate access to RMS

- Hardware upon arrival at the Participating Location.
- (v) Provide ParTech's customer service technician with operating supplies, consumables, and such other items as the Participating Location would use during normal operation.
- (vi) Provide working space, heat, light, ventilation, phone access, electrical power and outlets for use by ParTech's customer service technician.
- (vii) Remain current on all payments due to ParTech under the Franchisee Adoption Agreement.
- (viii) Provide ParTech with at least thirty (30) days prior written notice of any relocation of the RMS Hardware covered under RMS Services to a location other than the Participating Location.

7. **Limited Warranty.**

a. **Limited Warranty.** (i) ParTech warrants to Customer that (A) (1) for a period of thirty (30) days from the date of shipment of the Hardware (the "Out of Box Failure Warranty Period"), (2) for a period of one (1) year from the date of shipment of Hardware purchased by Customer (the "Depot Warranty Period"), and (3) for Hardware which is drive-thru hardware ("Drive-Thru Hardware") for the applicable period specified here: Drive-Thru Warranty Period, collectively with the Out of Box Failure Warranty Period and the Depot Warranty Period, (the "Hardware Warranty Period"), the Hardware will be free of defects in materials and workmanship under normal use and service (the "Hardware Warranty"), and (B) for a period of 30 days from the completion of any of the Services (the "Services Warranty Period"), the Services were performed in a professional and workmanlike manner (the "Services Warranty"). Customer may elect to purchase an extended maintenance program for the Drive-Thru Hardware as found here: Drive-Thru Extended Maintenance Terms, which Drive-Thru Extended Maintenance Terms are subject to these Terms, unless there is a conflict between these Terms and the Drive-Thru Extended Maintenance Terms, in which case the Drive-Thru Extended Maintenance Terms will prevail.

b. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.a, PARTECH DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

c. Without limiting the foregoing, (i) the Hardware Warranty shall be rendered null and void if: (A) the Hardware (including AE Hardware or RMS Hardware) is placed in an operating environment that is not in compliance with the requirements specified by ParTech or the original hardware manufacturer; (B) the Hardware (including the AE Hardware or RMS Hardware) or any component part is installed, relocated, repaired, maintained or otherwise serviced by a person other than ParTech or a certified ParTech installation subcontractor or authorized service representative; (C) the Hardware (including the AE Hardware or RMS Hardware) was not used under normal operating conditions or in accordance with any labels, instructions or specifications of ParTech or the original hardware manufacturer; (D) the Hardware (including the AE Hardware or RMS Hardware) is used with third-party hardware or components or software that has not been approved for such use by ParTech in advance; or (E) the Hardware (including the AE Hardware or RMS Hardware) is subject to misuse, neglect, negligence, accident or vandalism, or deliberate act, including but not limited to: (w) objects or substance falling or leaking onto/into the Hardware (including the AE Hardware or RMS Hardware); (x) damage due to steam; (y) improper handling, shipping or storage of the Hardware (including the AE Hardware or RMS Hardware) prior to or after installation; or (z) disaster, which shall include but not be limited to, fire, water, wind, flood, lightning, electrical disturbance, power surges, civil disturbance, war, terrorism or other catastrophes or similar causes; and (ii) ParTech shall not be liable for any damage resulting from the failure of the Hardware (including AE Hardware or RMS Hardware) and/or installation services to comply with local laws or regulations.

d. **Exclusive Remedy.** Customer's exclusive remedies and ParTech's sole liability with respect to the Hardware and/or Services, provided hereunder, including, without limitation, for breach of the limited warranty set forth in subsection (a) above, is expressly limited to repair or replacement of the Hardware and/or re-performance of the Services. These exclusive remedies shall not be deemed to have failed in their essential purpose so long as ParTech is willing to repair or replace the defective Hardware and/or re-perform the Services. These exclusive remedies are not limited to defects in Hardware and/or Services, but "defects"

includes defects/mistakes in firmware, preset data programmed by ParTech, and defects in documentation. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE REMEDIES HEREUNDER ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY WARRANTY CLAIM BY CUSTOMER IN CONNECTION WITH OR RELATING TO THE EQUIPMENT AND THE SERVICES, PROVIDED HEREUNDER.

e. **Warranty Claims.** To make a claim for a breach of the Hardware Warranty or the Installation Warranty (a "Warranty Claim"), Customer must notify ParTech of a defect or breach during the applicable Hardware Warranty Period or Installation Warranty Period by calling 1-800-382-6200. If the defect or breach is not discovered and the Warranty Claim made within the applicable Hardware Warranty Period or the Installation Warranty Period, the Warranty Claim shall be waived. The required notice of defect or breach must specify the facts constituting the defect or breach and the existence of the defect or breach must be verified by ParTech. If Customer submits a claim for breach of warranty during the Hardware Warranty Period, Customer agrees to: (i) return any allegedly defective Hardware to ParTech, and ParTech will, at its option and expense (including shipment via ground transportation), either replace the defective Hardware or repair the defective Hardware at ParTech's facility; (ii) be responsible for the proper packing of any Hardware returned to ParTech for repairs; and (iii) to assume the entire risk of loss or damages during return of any allegedly defective or defective Hardware to ParTech and subsequent return to Customer of the repaired or replacement Hardware. Any replacement Hardware supplied by ParTech in connection with the Hardware Warranty is subject to the same warranty for the remaining original Hardware Warranty Period.

f. **Third-Party Products.** Hardware that is manufactured by a third party and resold by ParTech ("Third-Party Hardware") is not covered by the foregoing warranties, and ParTech makes no representations or warranties with respect to any Third-Party Hardware. Third-Party Hardware does not include any Hardware manufactured by a third party and privately labeled by ParTech. ParTech shall pass-through any applicable warranties from its suppliers of the Third-Party Hardware to Customer to the extent permitted and shall use commercially reasonable efforts to, on behalf and at the request of Customer, pursue any warranty claims with the applicable third-party suppliers. ParTech may not be an authorized service provider for certain Third-Party Hardware, and additional fees may be required for repair and/or replacement of Third-Party Hardware, even if the Third-Party Hardware is determined to be defective during the applicable warranty period (if any).

g. **Biometric Technology Notice.** Many states (California, Colorado, Illinois, New York, North Carolina, Texas and Washington) and cities (including New York City) have enacted or are contemplating enacting laws (including Arizona, Connecticut, Florida, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Montana, New Hampshire and New York) regarding the use of technology which may collect and store "biometric information" in your business ("Biometric Technology"). The definition of what constitutes "biometric information" varies from state to state and may include eye scans, facial scans, fingerprints, thumbprints, handprints, voice prints, keystrokes or other similar information that may be derived from the foregoing. Such laws may include the requirement to provide prior notice to and obtain consent from any individual whose "biometric information" is collected, including employees for purposes of time-keeping, login procedures or other uses of a device. In some states, the notice must be in writing, the consent must be signed by the subject person, and a biometric policy must be made publicly available. Customer should review and comply with the laws of the state(s) (including local laws, codes and ordinances) in which it operates its business to determine what, if anything, Customer may need to do in order to use Biometric Technology in compliance with such laws.

8. Miscellaneous.

a. **New or Equivalent.** The Hardware, replacement Hardware, and any parts ParTech furnishes may be refurbished and may contain used components; the foregoing does not have an impact on the Hardware Warranty. Additionally, Hardware replaced under the Hardware Warranty may be replaced with an equivalent model, in form, fit, functionality and price. ParTech shall not be required to replace Hardware under the AE Services or RMS Services with new or upgraded Hardware. Hardware that has been returned to ParTech for replacement (or parts thereof) shall be ParTech property.

- b. **Returns.** No return of Hardware (excluding AE Hardware or RMS Hardware) will be accepted without a Return Material authorization (“RMA”) number provided by ParTech’s Sales Administration Department at 1-800-382-6200. ParTech’s Customer Return Policy is located at: Customer Return Policy.
- c. **Confidentiality.** Customer and ParTech will protect and not disclose each other’s confidential information as provided in the Agreement.
- d. **Default.** If Customer (i) fails to tender any payment for Hardware when due in accordance with the Agreement and the terms of the applicable invoice, (ii) fails or refuses to accept the Hardware properly tendered (iii) fails in any other respect to perform its obligations in accordance with these Terms, or (iv) becomes insolvent or, if any bankruptcy, insolvency, reorganization, or liquidation proceeding or other proceeding or relief under any bankruptcy law or any law for the relief of debtors is instituted by Customer for relief thereunder, or is instituted against Customer, the occurrence of any of the events specified in clauses (i) – (iv) above being deemed to constitute a material breach hereof, ParTech may, in addition to any other remedies ParTech may have at law or in equity, (y) with or without demand or notice to Customer declare the entire amount unpaid with respect to any purchased Hardware immediately due and payable and/or (z) enter upon the premises where the Hardware may be found and remove it and, with respect to purchased Hardware, resell any of the Hardware, the purchase price of which has not been fully paid or which has been shipped and which Customer has wrongfully failed or refused to accept, and receive from Customer the difference between the purchase price with respect to any such Hardware and the price obtained on resale (if less), as well as any incidental costs and expenses incurred by ParTech. All rights and remedies of ParTech shall be cumulative and not exclusive of any other rights or remedies which ParTech would otherwise have at law or in equity. Customer shall cooperate with ParTech in ParTech’s enforcement of its rights and remedies hereunder, including granting ParTech access to Customer’s facilities for the purpose of retaking possession of the Hardware, and shall indemnify ParTech for all costs and expenses incurred by ParTech in connection with the repossession, transport and/or disposal of the Hardware that is damaged or otherwise is unsalable as a direct or indirect result of Customer’s default hereunder. In addition, ParTech may terminate, without liability to Customer, any other agreement between Customer and ParTech.
- e. **Intellectual Property Rights.** All Intellectual Property of either party hereto, and all modifications thereto, shall at all times be and remain the sole and exclusive property of such party, and neither these Terms nor any Order submitted by Customer hereunder shall constitute a license to either party to use or display the Intellectual Property of the other party (or any third party supplier), except as expressly provided in Section 3.a above. “Intellectual Property” means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including moral rights and mask works, and all derivative works thereof; (ii) trademark, service mark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- f. **Export Laws.** Customer acknowledges that the sale of the Hardware may be subject to export and import control laws, restrictions and regulations imposed by the United States or other jurisdictions. Customer shall comply with all applicable export laws, restrictions and regulations of the United States, the European Union or other foreign agency or authority, and Customer agrees not to import, export or re-export, or allow the import, export, or re-export of, any Hardware in violation of any such laws, restrictions, or regulations. Customer certifies to ParTech that neither it, nor any of its customers, is on any U.S. government restricted parties list or similar list, and Customer shall be solely responsible for obtaining all necessary licenses in connection with the import, export or re-export of the Hardware.
- g. **Survival.** Notwithstanding the expiration or termination of these Terms, any rights, and obligations which by their nature extend beyond such expiration or termination shall survive such expiration or termination, including the provisions of Sections 2.b, 7.b, 7.d, 8.d, 8.e and 8.f.
- h. **Subsequent Purchases.** These Terms shall apply to subsequent purchases of Hardware unless expressly

superseded by a document of later date that has been expressly agreed to in writing by ParTech.