

## INTERNATIONAL DAIRY QUEEN, INC. AND SUBSIDIARIES

(A Wholly Owned Subsidiary of Berkshire Hathaway Inc.)

### Notes to Consolidated Financial Statements

*In thousands*

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#### 1. NATURE OF BUSINESS

International Dairy Queen, Inc. (the “Company”) is a wholly owned subsidiary of Berkshire Hathaway Inc. (“Berkshire”). The Company is engaged in developing, licensing, franchising, and servicing a system of approximately 7,500 retail restaurants featuring over-the-counter sales of dairy desserts, food, and blended fruit drinks. On December 31, 2023 and 2022, the Company operated two Dairy Queen restaurants.

#### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Basis of Presentation**—The consolidated financial statements were prepared in accordance with generally accepted accounting principles (GAAP) in the United States of America and include the accounts of the Company and its affiliates after elimination of all significant intercompany balances and transactions. The Company’s fiscal year ends on December 31.

**Cash and Cash Equivalents**—Cash equivalents include all short-term investments with an original maturity of 90 days or less. Cash and cash equivalents are recorded at cost, which approximates their fair value.

**Notes and Accounts Receivable**—Accounts and notes receivable consist primarily of service fees, franchise sales fees, and advertising fees due principally from franchisees and gift card receivables. The need for an allowance for doubtful accounts is reviewed on a specific identification basis based upon past due balances and the financial strength of the obligor.

**Cash Pooling Receivable from Affiliate**—In 2022, the Company began participating in a centralized cash management program (cash pooling) with an affiliate, BH Finance LLC (BH Finance), a wholly owned subsidiary of Berkshire. The agreement with BH Finance allows for day-to-day cash borrowing not to exceed \$10 million with no limit on invested amounts with BH Finance. Loans to the Company bear interest at the one-month LIBOR rate. Loans by the Company to BH Finance bear interest at a rate established by BH Finance. The agreement automatically renews on December 31 of each year unless either party gives notice to the other party at least ninety days prior to the renewal date, in which case the amounts must be repaid. Amounts owed to the Company are shown as cash pooling receivable from affiliate.

**Inventories**—Inventories consist primarily of marketing material created or purchased for resale and are carried at the lower of cost (first-in, first-out) or net realizable value.

**Property and Equipment**—Property and equipment is stated at historical cost. Depreciation and amortization of property and equipment are computed on the straight-line method over the estimated useful lives of the assets or the remaining term of the lease for leasehold improvements. Estimated useful lives range from 3 to 10 years for equipment, the shorter of 20 years or remaining lease term for

leasehold improvements, and 15 to 40 years for buildings. Significant improvements that extend the lives of property and equipment are capitalized. Costs for repairs and maintenance are charged to expense as incurred. When property is retired or otherwise disposed of, the recorded cost of the assets and their related accumulated depreciation are removed from the Consolidated Balance Sheets and any related gains or losses are included in income.

**Recoverability of Long-Lived Assets**—The Company reviews the recoverability of long-lived assets, such as property and equipment, for impairment whenever events or changes in circumstances indicate the carrying value of an asset or group of assets may not be recoverable. The Company determines potential impairment by comparing the carrying value of the assets with the net undiscounted cash flows expected to be provided by operating activities of the business or related products. If the sum of the expected future net undiscounted cash flows is less than the carrying value, the Company determines whether an impairment loss should be recognized. An impairment loss is measured by comparing the amount by which the carrying value exceeds the fair value of the assets. Impairment losses on long-lived assets held for sale are determined in a similar manner, except that fair values are reduced for the cost to dispose of the assets. The measurement of impairment requires the Company to estimate future cash flows and the fair value of long-lived assets. The Company did not record any long-lived asset impairments for the years ended December 31, 2023, 2022 and 2021.

**Goodwill and Intangibles**—Goodwill and indefinite-lived intangibles are recorded in accordance with Accounting Standards Codification (ASC or the “Codification”) 350, *Intangibles—Goodwill and Other*, and ASC 805, *Business Combinations*. The Company evaluates goodwill and indefinite-lived intangibles for impairment at least annually. The Company did not record any goodwill or intangible impairments for the years ended December 31, 2023, 2022 and 2021. Computer software, classified as intangible assets, is amortized over estimated useful lives of 3 to 7 years.

**Leases**—Leases are recorded in accordance with ASC 842, *Leases* which requires a lessee to recognize a liability to make lease payments and an asset for the right to use the underlying asset for the lease term. A right of use asset and lease liability is recognized for all leases with lease terms greater than one year. Right of use assets are classified as operating lease assets and represent the right to use an underlying asset for the lease term. Lease liabilities are classified as operating lease liabilities and represent the obligation to make lease payments under the lease. Operating lease liabilities are measured based on the non-cancellable lease term using a risk-free interest rate for highly liquid market securities. Operating lease assets are reviewed for impairment whenever events or changes in circumstances indicate that an operating lease asset’s carrying amount may not be recoverable.

**Committed Advertising**— The Company facilitates the collection of sales promotion funds from franchisees and administers programs to spend the funds for the purpose of growing sales and profits at franchised locations. Contributions to the advertising and marketing fund represent a distinct performance obligation to administer the collection, spending and reporting of Committed Advertising activity. The Franchise Advertising Committee, which is made up of franchisee-elected representatives independent of the Company, exercises control over the advertising and marketing fund through approval of the annual promotional calendar and budget. As a result, the Company acts as an agent of the Committed Advertising fund and thus records receipts and disbursements from the fund net on the balance sheet. Committed advertising, when in a net liability position, represents unexpended amounts

received from franchisees to finance national and regional advertising programs. When in a net asset position, it represents expended amounts to be received from franchisees.

**Revenue Recognition**—Revenue is recognized when a good or service is transferred to a customer. A good or service is transferred as the customer obtains control of that good or service. Revenues are based on the consideration expected to be received in connection with the Company's promises to deliver goods and services to its customers. Contracts include various combinations of products and services which generally are capable of being distinct and accounted for as separate performance obligations. Substantially all of the Company's revenues are recognized at a point in time which is when services are provided. Sales are recognized net of any taxes collected from customers which are subsequently remitted to governmental authorities.

*Service fees* represent continuing license fees paid by franchisees and are based on sales activity at franchised locations. Service fee revenue is recognized as the usage of the license occurs which corresponds with the sales at franchised restaurants.

*Other fees and franchise sales* includes fees related to supply chain, new store development and the administration of franchise contracts. Supply chain fees are recognized at a point in time as products are sold by vendors and distributors to franchised locations. New store development fees are recognized as revenue when the Company's obligations regarding services to be performed in opening a restaurant are fulfilled which is generally at the time the restaurant is opened. Fees associated with the administration of franchise contracts principally relate to sales promotion management fees and fees assessed upon transfer and termination of franchise agreements. Such fees are recognized at a point in time when the services are performed. Sales promotion management fees are recognized as a percentage of sales promotion funds reported as Committed Advertising. Such funds are generated in conjunction with the sales of products at franchised locations and are managed by the Company to provide advertising programs on behalf of its franchisees. The management fees represent revenues of the Company that are earned upon its performance obligation to oversee the collection and administration of sales promotion funds.

A portion of the fees associated with the renewal of franchise agreements and new store development are recognized over the contractual term of the agreement during which time the Company is obligated to provide continuing licensing rights. Unearned revenue, representing a contract liability, is recorded when revenue is recognized subsequent to invoicing and represents revenue related to sales of licensing rights in certain geographic areas, revenue associated with contract renewals, and revenue associated with store openings in which the Company is not required to provide store opening services to franchisees. Unearned revenue is generally invoiced at the beginning of each contract period for multi-year agreements and recognized ratably over the life of the agreement. Unearned revenue is denoted as deferred franchise income on the consolidated balance sheets.

*Sales by company-owned restaurants* and *sales of advertising kits* represent the sales of products to customers in restaurants that are owned by the Company and the sale of in-store promotional materials to franchised locations and are recognized at a point in time when control of the product transfers to the customer, which coincides with customer pickup or product delivery or acceptance, depending on terms of the arrangement.

**Income Taxes**—The Company is included in the consolidated federal tax return of Berkshire. The provision for income taxes included in these consolidated financial statements is prepared on a separate company basis with certain modifications to eliminate the effects of inconsistent conclusions related to realizability as a result of inclusion in the Berkshire consolidated return.

The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the consolidated financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

In general, it is the Company's practice and intention to permanently reinvest the earnings of its Canadian subsidiaries and that position has not changed following payment of the transition tax under the Tax Act. No deferred taxes have been provided for withholding taxes or other taxes that would result upon repatriation of undistributed foreign earnings of approximately \$8.5 million and \$8.3 million as of December 31, 2023 and 2022, respectively. To the extent these earnings are repatriated, foreign tax credits will be available to substantially eliminate any additional U.S. income taxes that might otherwise result from such repatriation.

The Company records net deferred tax assets to the extent it believes these assets will more likely than not be realized. In making such determination, the Company will consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies, and recent financial operations. In the event the Company were to determine that it would be able to realize its deferred income tax assets in the future in excess of the net recorded amount, the Company would make an adjustment to the valuation allowance, which would reduce the provision for income taxes. As of December 31, 2023 and 2022, the Company had a valuation allowance of \$3.7 million.

**Unredeemed Gift Card Liabilities**—The Company sells stored value gift cards of various denominations at Dairy Queen restaurants and other retail stores. Cash receipts from gift card sales are classified as a current liability on the Company's consolidated balance sheets. As gift cards are presented for redemption at Dairy Queen franchised restaurants, the liability is reduced through reimbursement to franchisees for the value redeemed. Based on historical redemption rates, a percentage of gift cards will never be redeemed, and the estimated value of unredeemed gift cards is recognized as gift card breakage reducing the liability. The Company recognizes gift card breakage over time in proportion to actual gift card redemptions.

**Concentration of Credit Risk**—Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash equivalent investments and accounts and notes receivable.

The Company places its cash equivalent investments with high-credit-quality financial institutions, with original maturities of 90 days or less and, by policy, limits the amount of credit exposure of any one financial institution. Accounts receivable are generally unsecured; however, concentrations of credit risk with respect to these receivables are limited due to the large number of franchisees and their

dispersion across many different geographic areas. Notes receivable are generally secured by the equipment purchased or the existing franchise agreement.

**Use of Estimates**—The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements, the reported amounts of revenues and expenses during the reporting period and accompanying notes. Accounts affected by significant estimates include service fee accruals, tax contingencies, and allowance for doubtful accounts. Actual results could differ from those estimates.

**Foreign Currency Translation**—The financial statements of subsidiaries located outside the United States are measured using the local currency as the functional currency. Assets and liabilities of these subsidiaries are translated at the rates of exchange at the balance sheet date. Income and expense items are translated at average monthly rates of exchange. The resultant translation adjustments are included in accumulated other comprehensive income, a separate component of stockholder's equity.

**Comprehensive Income**—The Company's comprehensive income consists of net income and foreign currency translation adjustments related to its investment in its Canadian subsidiary.

**Retained Deficit**—The Company has paid dividends to Berkshire in excess of net income and has resulted in a retained deficit on the consolidated balance sheets as of December 31, 2023 and 2022.

### 3. PROPERTY AND EQUIPMENT

Property and equipment as of December 31 consisted of the following:

	<b>2023</b>	<b>2022</b>
Property and equipment—at cost:		
Land	\$ 1,408	\$ 1,408
Buildings	1,966	1,976
Leasehold improvements	7,352	7,372
Equipment	7,227	8,521
Vehicles	4,598	3,746
Work in process	<u>-</u>	<u>47</u>
Property and equipment—at cost	<u>22,551</u>	<u>23,070</u>
Less accumulated depreciation	<u>10,242</u>	<u>10,842</u>
Property and equipment—net	<u>\$ 12,309</u>	<u>\$ 12,228</u>

Depreciation expense for the years ended December 31, 2023, 2022, and 2021, was \$2,378, \$2,275, and \$2,348, respectively.

### 4. GOODWILL AND OTHER INTANGIBLES

As discussed in Note 2, the Company accounts for goodwill under the provisions of ASC 350 and ASC 805. The Codification requires business combinations to be accounted for using the purchase method of accounting and broadens the criteria for recording intangible assets other than goodwill.

Franchise rights reacquired prior to January 1, 2005 are classified in the consolidated balance sheets as goodwill. The Codification requires franchise rights reacquired subsequent to January 1, 2005 to be recognized as an intangible asset apart from goodwill. Intangibles include any reacquired franchise rights and trademarks/trade names acquired after January 1, 2005.

The Company tests goodwill and indefinite lived intangible assets for impairment on an annual basis, or more frequently if events or changes in circumstances indicate that the asset might be impaired, based on several factors, including operating results, business plans, and future estimated cash flows. The Company has elected to perform its annual tests for indications of goodwill and intangible asset impairment as of December 31 of each year. Impairment testing is done at a reporting unit level. An impairment loss is recognized when the carrying amount of the reporting unit's net assets exceeds the estimated fair value of the reporting unit. The estimated fair value is determined using a discounted future cash flow analysis.

The net carrying value of goodwill for the years ended December 31, 2023 and 2022 includes \$1.2 million of accumulated impairment. The changes in the carrying value of goodwill for the years ended December 31 were as follows:

	<b>2023</b>	<b>2022</b>
Net carrying value—January 1	\$ 92,162	\$ 92,303
Foreign currency translation	<u>52</u>	<u>(141)</u>
Net carrying value—December 31	<u>\$ 92,214</u>	<u>\$ 92,162</u>

The following is a summary of the components of intangible assets as of December 31:

	<b>2023</b>			<b>2022</b>		
	<u>Cost</u>	<u>Accumulated Amortization</u>	<u>Net</u>	<u>Cost</u>	<u>Accumulated Amortization</u>	<u>Net</u>
<b>Indefinite-lived</b>						
Territorial franchise rights	\$73,295	\$ -	\$73,295	\$73,270	\$ -	\$73,270
<b>Definite-lived</b>						
Software	<u>9,788</u>	<u>(3,034)</u>	<u>6,754</u>	<u>6,046</u>	<u>(2,132)</u>	<u>3,914</u>
Total	<u>\$83,083</u>	<u>\$ (3,034)</u>	<u>\$80,049</u>	<u>\$79,316</u>	<u>\$ (2,132)</u>	<u>\$77,184</u>

Amortization expense for the years ended December 31, 2023, 2022, and 2021 was \$973, \$585, and \$477, respectively.

Estimated future amortization expense is as follows:

**Years ending December 31**

2024	\$ 1,317
2025	1,351
2026	1,023
2027	930
2028	944
Thereafter	<u>1,189</u>
Total	<u>\$ 6,754</u>

## 5. OTHER ASSETS

Other long-term assets as of December 31 consisted of the following:

	<b>2023</b>	<b>2022</b>
Deferred compensation	\$ 24,858	\$ 22,335
Deferred incentives	7,627	9,950
Notes receivable	44	41
Other	<u>18</u>	<u>17</u>
Total	<u>\$ 32,547</u>	<u>\$ 32,343</u>

The Company has a deferred compensation plan that enables U.S. officers of the Company to defer a specified percentage of their cash compensation into mutual funds within a rabbi trust. The Company accounts for this deferred compensation plan in accordance with ASC 710, *Compensation*. All the funds within the plan are classified as Level 1 in accordance with ASC 820, *Fair Value Measurements and Disclosures*. This classification is based on the ability of these mutual funds to actively trade with enough frequency and volume to enable pricing information to be obtained on an ongoing basis. The Company didn't make any contributions to the plan for the years ended December 31, 2023, 2022, and 2021.

The Company periodically offers an incentive program for franchisees who invest in their stores, including remodels, technology investments, or building new stores. The programs typically offer an incentive equal to the lesser of a percentage of specific capital costs of improving or building a restaurant or a specified incentive dollar limit. The incentives generally are amortized over the period of expected increased economic benefit resulting from the investment, which ranges from 3 to 7 years, depending on the scope of the project. If a location that was awarded an incentive subsequently closes, the Company's policy is to expense the remaining unamortized portion of the incentive in the year of the location closure.

## 6. OTHER LIABILITIES

Other current liabilities as of December 31 consisted of the following:

	<b>2023</b>	<b>2022</b>
Accrued salaries and benefits	\$ 19,259	\$ 13,334
Charity donations collected from franchisees	6,640	6,196
Deposits	11,984	8,322
Accrued remodel incentives	237	231
Other	<u>493</u>	<u>434</u>
Total	<u>\$ 38,613</u>	<u>\$ 28,517</u>

Other long-term liabilities as of December 31 consisted of the following:

	<b>2023</b>	<b>2022</b>
Deferred compensation	\$ 24,858	\$ 22,335
Incentive compensation	16,564	14,049
Accrued remodel incentives	268	213
Other	<u>12</u>	<u>24</u>
Total	<u>\$ 41,702</u>	<u>\$ 36,621</u>

## 7. INCOME TAXES

The provision for income taxes for the years ended December 31 consisted of the following:

	<b>2023</b>	<b>2022</b>	<b>2021</b>
Current:			
U.S. federal	\$ 16,643	\$ 15,049	\$ 18,143
State	4,825	4,341	4,579
Foreign	<u>10,517</u>	<u>9,368</u>	<u>8,267</u>
	<u>31,985</u>	<u>28,758</u>	<u>30,989</u>
Deferred:			
U.S. federal	(1,695)	(315)	(2,155)
State	(274)	(51)	(349)
Foreign	<u>(46)</u>	<u>(52)</u>	<u>37</u>
	<u>(2,015)</u>	<u>(418)</u>	<u>(2,467)</u>
Total	<u>\$ 29,970</u>	<u>\$ 28,340</u>	<u>\$ 28,522</u>

Included in foreign taxes are taxes withheld by foreign countries on dividends and service fees received by U.S. entities.

A reconciliation of differences between the U.S. federal statutory income tax rate and the consolidated effective tax rate for the years ended December 31 were as follows:

	<b>2023</b>	<b>2022</b>	<b>2021</b>
U.S. federal statutory rate	21.00 %	21.00 %	21.00 %
State income tax—net of federal effect	2.90	2.86	2.88
Foreign income tax	0.82	0.88	0.84
Other—net	<u>(0.52)</u>	<u>(0.54)</u>	<u>0.55</u>
Consolidated effective tax rate	<u>24.20 %</u>	<u>24.20 %</u>	<u>25.27 %</u>

The Company's deferred tax assets and liabilities as of December 31 were as follows:

	<b>2023</b>	<b>2022</b>
Deferred tax assets:		
Employee benefits	\$ 12,497	\$ 10,690
Notes/accounts receivable/inventory allowances	205	309
Operating lease liability	2,043	2,230
Deferred revenue	597	608
Other	<u>2,488</u>	<u>1,887</u>
Total deferred tax assets	<u>17,830</u>	<u>15,724</u>
Deferred tax liabilities:		
Goodwill and other intangibles	28,933	28,384
Fixed assets	3,158	2,899
Operating lease assets	1,231	1,358
Other	<u>1,845</u>	<u>2,435</u>
Total deferred tax liabilities	<u>35,167</u>	<u>35,076</u>
Net deferred tax liabilities	<u>\$ 17,337</u>	<u>\$ 19,352</u>

The Company does not have any unrecognized tax benefits as of December 31, 2023 and 2022.

The Company is subject to taxation in the United States and various state and foreign jurisdictions. The tax years for 2012 through 2023 are subject to examination by the Internal Revenue Service. The expiration of the statute of limitations related to the various state and foreign income tax returns that the Company files varies by jurisdiction; in general, the years 2012 through 2023 remain open for state purposes.

## **8. LEASES**

The Company and its subsidiaries have leases for administrative facilities, equipment, and one retail restaurant facility. Most of the leases require the lessee to pay executory costs (property taxes, maintenance, and insurance) and many of the leases provide for one or more renewal options. The retail restaurant facility lease requires the Company to pay the greater of an annual base rent amount or a percentage of annual gross sales, as defined in the lease agreement.

Total remaining operating lease payments are as follows:

<b>Years ending December 31</b>		
2024		\$ 1,174
2025		1,183
2026		1,222
2027		1,241
2028		1,187
Thereafter		<u>4,269</u>
Total lease payments		10,276
Imputed interest		<u>(949)</u>
Operating lease liabilities		<u>\$ 9,327</u>

The weighted average term of these leases are 7.7 years and the weighted average discount rate used to measure operating lease liabilities was 2.38%.

Components of operating lease costs are as follows:

<b>Year Ending December 31</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
Operating lease cost	\$ 1,002	\$ 1,072	\$ 1,096
Short-term lease cost	15	15	15
Variable lease cost	791	618	759
Sublease income	<u>-</u>	<u>-</u>	<u>(33)</u>
Total operating lease costs	<u>\$ 1,808</u>	<u>\$ 1,705</u>	<u>\$ 1,837</u>

## 9. EMPLOYEE BENEFIT PLANS

The Company sponsors a retirement savings plan. Substantially all permanent full-time employees of the Company and participating affiliates are eligible to participate and may contribute from 1% to 35% of their base pays, subject to Internal Revenue Service limitations. The Company matches 100% of the first 1% contributed and 50% of the next 5% contributed for a maximum Company match of 3.5%. The Company's contribution including administrative fees for the years ended December 31, 2023, 2022, and 2021 was \$1,520, \$1,411, and \$1,252, respectively.

## 10. CONTINGENCIES

The Company is involved in various legal proceedings in the ordinary course of its business. In the opinion of the Company's management, the ultimate disposition of these proceedings and claims will not have a material effect on the consolidated financial position or results of operations of the Company.

## **11. RELATED PARTY TRANSACTIONS**

In the ordinary course of business, the Company has transactions between Berkshire and its affiliates that are included in these financial statements.

As described in Note 2, the Company participates in a centralized cash management program (cash pooling) with BH Finance, a wholly owned subsidiary of Berkshire. As of December 31, 2023 and 2022, the Company had a cash pooling receivable due from BH Finance of \$55.8 million and \$54.2 million, respectively. The Company also recognized interest income from BH Finance of \$2.6 million and \$0.6 million for the years ended December 31, 2023 and 2022, respectively.

The Company paid dividends of \$110 million, \$85 million, and \$110 million, to Berkshire for the years ended December 31, 2023, 2022, and 2021, respectively.

The Company recognized revenue for supply chain and services fees from Berkshire affiliates for the years ended December 31, 2023, 2022, and 2021, of \$0.4 million, \$0.5 million, and \$0.6 million, respectively.

## **12. SUBSEQUENT EVENTS**

In accordance with ASC 855, *Subsequent Events*, the Company has considered subsequent events for recognition or disclosure through February 9, 2024, the date that the financial statements are available to be issued. No subsequent events were noted.

**EXHIBIT L**

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January 8, 2024

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**EXHIBIT M**

**CONSTRUCTION CONSULTATION SERVICES AGREEMENT**



# American Dairy Queen Corporation

## CONSTRUCTION CONSULTATION SERVICES AGREEMENT

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

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

City/State/Zip: \_\_\_\_\_ Store #: \_\_\_\_\_

Phone: \_\_\_\_\_  ARD  NRD  DR  Replace/Relocate  Remodel

American Dairy Queen Corporation (“ADQ”) shall provide construction consultation services to Licensee (“Licensee” or “you”) for the Authorized Location indicated below:

Concept: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

**1. Scope of Construction Consultation Services:** The activities described in Exhibit “A” attached.

**2. Cost of Services:** The cost of the construction coordination services will vary depending primarily upon: (1) whether your project involves construction of a new restaurant or the relocation/replacement of an existing restaurant; and (2) whether your new restaurant is in a freestanding building or a leased multi-tenant structure such as an enclosed mall, open air shopping center, strip center, C-Store or non-traditional site.

**New Units:** If you are constructing a new (NRD/ARD) freestanding restaurant, the cost of the service is \$7,500. If your new restaurant is located in a multi-tenant structure (such as an enclosed mall, open air shopping center, C-Store, strip center) to which you will only be making tenant improvements, the cost of the services is \$5,000. The full fee must be paid when you sign this Agreement. **If you paid a full NRD/ARD initial franchise fee to ADQ, the cost of the service is included in the initial franchise fee.** If your project is cancelled, you will receive: (1) a refund of the entire fee if your building plans have not been submitted to ADQ for review; or (2) a refund of the fee less \$1,500 at any time before construction begins; or (3) no refund after construction begins.

**Replacements, Relocations and Remodels:** If you are replacing, relocating or remodeling your existing *DQ* restaurant facility, the cost of the service will be \$7,500. The full fee must be paid when you sign this Agreement and before any services are rendered. If you are participating in the current Replacement/Relocation incentive program, if any, please refer to program specific payment options available.

**3. To Proceed:** Sign and date this agreement and send to American Dairy Queen Corporation, 8000 Tower, Suite 700, 8331 Norman Center Drive, Bloomington, MN 55437, Attn: Architecture/Construction Department.

4. **Acknowledgment:** The undersigned acknowledges that ADQ's obligation under this agreement shall be limited to providing construction consultation services in concert with the project's selected general contractor and architect for the construction of, and installation of equipment, in the restaurant. ADQ is not responsible for the actual construction of the restaurant, installation of equipment therein, delays in construction, construction or architectural errors or omissions, cost overruns, change orders or any consequential costs, expenses, injuries or damages arising out of or relating to any of those events or conditions, or to the actual construction of, or installation of equipment in the restaurant. ADQ will not provide construction consultation services on projects that are not under contract with, and under the supervision and control of, a general contractor licensed to work in the city and state where the project is located. Furthermore, the Licensee understands that the scope of services to be provided are specifically limited to those that are described in the attached Exhibit "A" and are not intended to provide a "turn-key" service to the Licensee. ADQ is not responsible for ensuring that the restaurant to be constructed complies with building standards or legal requirements, including, but not limited to, architectural, structural, mechanical, electrical, accessibility (including without limitation those under the Americans with Disabilities Act), and other standards.

5. **Additional Billing:** If ADQ's construction consultant must be on site for purposes of consulting longer than specified in Exhibit "A" due to delays or complications beyond the control of ADQ, the Licensee agrees to pay ADQ an additional sum of \$200 per day for each day the construction consultant is available on site. Should the construction consultant have to make a return visit, related travel expenses, including, but not limited to, air travel, meals and lodging, will be added to the daily \$200 fee.

6. **Liability and Indemnification:** Licensee waives all claims against ADQ for damages to property or injuries to persons arising out of the design and/or construction of Licensee's building. Licensee must fully protect, indemnify and defend ADQ and its affiliates and hold them harmless from and against any and all claims, demands, damages and liabilities of any nature whatsoever arising in any manner, directly or indirectly, out of, in connection with, or incident to the franchised location, this Agreement (regardless of cause or any concurrent or contributing fault or negligence of ADQ) or any breach or failure to comply with this Agreement.

7. **Insurance:** Licensee must purchase and maintain at its own expense liability insurance in an amount equal to the greater of (a) \$2,000,000 per occurrence or a higher amount that ADQ may in the future require of similarly situated Licensees, (b) the amount the lessor of the Restaurant premises may require or (c) the amount required under Licensee's operating agreement for the location. The insurance coverage must start no later than the date Licensee begins construction. Licensee must deliver to ADQ a certificate of insurance and additional insured and other endorsements showing compliance with this section. The insurance coverage must:

- A. Insure Licensee, ADQ, ADQ's affiliates and any other person or entity designated by ADQ by name from liability for any and all such damage and injury;
- B. Be written with a company rated no less than "A" by AM Best Insurance Rating;
- C. Name ADQ and its affiliates as an additional insured; and
- D. Provide that ADQ will be given 30 days' prior written notice of material change in or termination or cancellation of the policy.

ADQ does not represent or warrant that any insurance that Licensee is required to purchase will provide adequate coverage for Licensee. The requirements of insurance specified in this Agreement are for ADQ's protection. Licensee should consult with its own insurance agents, brokers, attorneys and other

insurance advisors to determine the level of insurance protection it needs and desires, in addition to the coverage and limits required by ADQ.

**Licensee:** \_\_\_\_\_ **Dated:** \_\_\_\_\_

*Construction Consultation Services Agreement (Including Exhibit "A") Total of Four Pages*

**Company: AMERICAN DAIRY QUEEN CORPORATION**

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

## EXHIBIT A

### CONSTRUCTION CONSULTATION SERVICES AGREEMENT

#### THE SERVICES PROVIDED ARE AS FOLLOWS:

1. Consult with the Licensee in the plan review process and with state and local regulatory agencies relevant to compliance with building, health and fire codes. It is the Licensee's sole responsibility to ensure that the plans conform to all state and local codes. (Construction plans and specifications provided by ADQ are design intent drawings based on Minnesota state codes.) (Site-specific changes will need to be made to the plans by the local architect hired by the Licensee).
2. Review availability of utilities (i.e. gas, electricity, sewer and water) to the site/space with the Licensee. Freestanding locations may require, at ADQ's discretion, an on-site visit relative to building location, ingress, egress, sign locations, parking and landscape requirements.
3. Review construction bids with the Licensee and consult with the Licensee in selecting a general contractor for the project, considering price, reputation, and ability to perform. The actual selection of the qualified contractor is the Licensee's sole responsibility.
4. Assist the Licensee and bidding general contractors in reviewing plans and information gathered in the above-mentioned functions to facilitate the submission of more accurate and competitive bids to the Licensee. ADQ recommends that all contract documents be completed on AIA forms.
5. Consult with the Licensee to obtain the required permits from the state and local authorities. It is the Licensee's and/or contractors sole responsibility to obtain permits. It is also the responsibility of the Licensee or contractor to submit the application with proper fee and time allowance to obtain necessary permits on a timely basis. Failure to do so may delay construction.
6.
  - A. Scope of Services for freestanding locations:  
Review conditions and work progress with the Licensee and contractor to avoid non-compliance with plans, delays or additional costs. Means of review will be by actual on-site inspections conducted by ADQ personnel or a third party retained by ADQ that consist of a pre-construction inspection or an underground inspection at ADQ's discretion based on the project's needs, rough-in inspection and punch list inspection. Review will also include digital photos, phone conversations and e-mail communication with the general contractor, job superintendent, Licensee and field personnel on a regular basis.
  - B. Scope of Services for tenant improvements in multi-tenant structures:  
Review conditions and work progress with the Licensee and general contractor in an effort to avoid non-compliance with plans, delays or additional costs. Means of review will be by actual on-site inspections conducted by ADQ personnel or a third party retained by ADQ that consist of a rough-in inspection and a punch list inspection. Review will also include digital photos, phone conversations and e-mail communication with the general contractor, job superintendent, Licensee and field personnel on a regular basis.
  - C. Scope of Services for (Tier 1 of Tier 2) Remodel Locations:  
Review of conditions and work progress with the Licensee and contractor to avoid non-compliance with plans, delays or additional costs. Means of review will be by digital photos, phone conversations and e-mail communication with the general contractor, job superintendent, Licensee and field personnel on a regular basis. Review will also consist of up to three actual on-site inspections that consist of a pre-construction or an underground inspection at ADQ's discretion based on the project's needs, rough-in and punch list inspection conducted by ADQ personnel or a third party retained by ADQ.

7. Consult with the Licensee on handling payments to the general contractor when payment applications are made. Money should be disbursed per the construction contract guidelines. Owner must determine whether lien waivers have been obtained and is responsible for obtaining partial and final lien waivers.
8. Consult with the Licensee concerning the process of unloading equipment, initial equipment inspection and acceptance of equipment. The Licensee is solely responsible for determining if items are missing or damaged and for filing any and all claims with the appropriate parties.
9. The Licensee is responsible for the unloading, placement, installation and hook up of all approved equipment. This is to be accomplished through the general contractor, subcontractors and laborers. The ADQ construction consultant will consult with the Licensee concerning the supervision of the equipment installation process. The Licensee is solely responsible for requiring that the general contractor, subcontractor and laborers are available, as determined by the construction consultant, at the appropriate times to comply with the installation schedule. Failure to make such arrangements may delay the equipment installation.
10. For new locations (but not remodels) certain pieces of equipment require a breaking-in period of several days' running time. The Licensee acknowledges that he/she is solely responsible for the final adjustments to these pieces of equipment and is aware that this may require hiring local trade services. The Licensee is required to employ a qualified technician to make proper adjustments to the soft serve machine(s), shake machine(s), *Mr. Misty*® machine, ice machines, display freezers, walk-in cooler/freezers, fryers, chain broilers and other items. Final equipment adjustments should occur once the machines have been operated with actual product.
11. Provide a project final punch list of shortcomings and deficiencies in relation to approved construction plans, addenda, change orders, construction contract and workmanship. Consultant will review all punch list items with the Licensee, Operations field force and general contractor prior to leaving the job site. It is the Licensee's responsibility to ensure that the general contractor completes all punch list items prior to final payment.
12. Consult with the Licensee in obtaining the final approvals of the necessary agencies for building occupancy. The contractor is responsible for contacting the required agencies to make final inspections for the purpose of obtaining the occupancy permit.
13. Consult with the Licensee regarding construction warranty work the contractor may be required to provide. For equipment warranty, the Licensee must work with its equipment vendor.
14. Consult with the Licensee at the Licensee's request to verify that the proper documentation is received from the general contractor (i.e. lien releases, inspection reports) prior to project closeout.

#### **GENERAL NOTES:**

1. All design changes to the building and equipment must be made prior to ADQ final plan approval, obtaining final bids and signing of the construction contract. Changes made after signing the contract may result in additional costs to Licensee. **NO CHANGES ARE TO BE MADE WITHOUT NOTIFYING THE CONSTRUCTION CONSULTANT AND OBTAINING WRITTEN APPROVAL FROM ADQ.**
2. All locally furnished approved equipment should be made available to the general contractor to keep construction on schedule. No unapproved equipment will be installed.
3. Bids can be influenced by local governing regulations and requirements, developers' design criteria, and actual site as built conditions. The general contractor shall include all items in the bid. However, because of timing or unforeseen circumstances, some of these items may be added to the total construction cost via approved change orders and paid by the Licensee.

4. ADQ does not assume any responsibility for construction cost overruns or costs associated with opening delays. All construction costs, late fees, rental commencement charges, etc., associated with the project opening are the sole responsibility of the Licensee.

**EXHIBIT N**

**OLO PARTICIPATION AGREEMENT (DIGITAL ORDERING)**

## MASTER SERVICES AGREEMENT

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

### RECITALS

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

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

NOW, THEREFORE, the parties agree as follows:

### 1. Definitions

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

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

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

Party without reference to the discloser’s Confidential Information.

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

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

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

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

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

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

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

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

Olo MSA 04.18.2023

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

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

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

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

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

## 2. Services

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

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

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

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

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

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

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

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

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

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

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

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

### 3.3. Data.

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

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

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

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