

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

#### 4. Fees & Payments

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

#### 5. Confidentiality; Security; Privacy

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

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

#### 5.2. Security.

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

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

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

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

#### 6. Representations and Warranties

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

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

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

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

OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 7. Indemnification

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

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

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

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

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

terminate this Agreement with respect to the infringing Service.

#### 8. **Limitation of Liability**

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

#### 9. **Term and Termination**

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

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

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

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

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

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

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

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

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

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

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

9.5. Effect of Termination.

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

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

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

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

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

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

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

## 10. Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

## 11. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

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

*[signature page follows]*

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

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

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

**Digital Ordering Terms & Conditions Addendum**

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

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

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

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

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

## **Dispatch Services Terms & Conditions Addendum**

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

### **1. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3. Delivery**

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

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

### **4. Additional Obligations**

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

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

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

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

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

**6. Disclaimer.**

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

### **Rails Terms & Conditions Addendum**

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

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

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

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

**Support Services Addendum**

**1. Definitions**

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

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

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

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

**3. Platform Incident Escalations**

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

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

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

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

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

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

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

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

2. Representations; Warranties; and Obligations.

- a. Authorized Operator represents and warrants that:
  - i. Authorized Operator is a franchisee or licensee of Customer and Customer has authorized the Authorized Operator to use the Services;
  - ii. Authorized Operator has received a copy of the Agreement from Olo or Customer and is familiar with the terms and conditions therein;
  - iii. Authorized Operator (i) has the legal power and authority to enter into this Agreement; (ii) it will not violate, or use the Services in violation of any applicable Laws, including any applicable privacy laws, or any third party right; and (c) it will use the Services in compliance with its agreements with third parties; and
  - iv. these AO T&Cs are a legal, valid and binding obligation on Authorized Operator, Customer and Olo and are enforceable against Authorized Operator, Customer and Olo in accordance with its terms.
- b. Authorized Operator will promptly provide Olo with information Olo reasonably requires in connection with onboarding and deployment of the Services. In connection with its use of the Services under the Adopted Agreement, Authorized Operator agrees to facilitate the timely implementation and deployment of the Services in good faith, including complying with the following implementation requirements:
  - i. Update bank account name, routing number and account number through Olo Dashboard Portal for Electronic Funds Transfer (EFT) billing; and
  - ii. Activate necessary services with payment processor(s) to ensure stores are paid for orders.
- c. Authorized Operator is responsible for providing complete and accurate billing and contact information to Olo, and notifying Olo promptly of any changes to such information.

3. Termination.

- a. Subject to the termination provision of the Adopted Agreement, these AO T&Cs shall govern Authorized Operator's use of the Services until the earlier of:
  - i. the termination of the Agreement,
  - ii. the termination of the franchise agreement between Customer and Authorized Operator,
  - iii. Authorized Operator no longer owning or operating the franchised location, in which case these AO T&Cs shall terminate as to such franchised location only,
  - iv. Olo providing written notice of termination to Authorized Operator following three (3) months of non-payment; or
  - v. **Authorized Operator providing thirty (30) days' prior written notice of termination to Olo.**
- b. Upon termination:
  - i. **Authorized Operator's** right to use the Services will cease immediately with respect to all Customer franchised locations of Authorized Operator; and
  - ii. neither party will have any further obligations to the other, except for those obligations that either **expressly or by their nature survive such termination, including Authorized Operator's payment to Olo** of all fees accrued prior to the termination date.

4. Notices. All notices and other communications sent under these AO T&Cs must be in writing (including by email) and will be deemed effective when delivered.

5. Governing Law. These AO T&Cs are governed by and construed in accordance with the laws of New York, without regard to the conflicts of law rules thereof.

**EXHIBIT B**  
**OLO SECURITY POLICY**

The following Security Policy is available at <https://www.olo.com/security-policy/>. The parties **acknowledge and agree that the information set forth below reflects Olo's Security Policy on the Effective Date**, and the security program terms of the Security Policy may be updated by Olo from time to time during the Term. Olo agrees to provide written notice to Customer of any material updates and that any future updates to the Security Policy shall impose no less stringent security requirements on Olo than those set forth herein.

**Last Updated: September 8, 2020**

Unless otherwise defined herein, capitalized terms have the meanings ascribed to such terms in the Master Services Agreement (MSA).

A. Customer Responsibilities

1. **Customer will, at Customer's discretion, either (a) incorporate the Olo Privacy Policy into, or link to the Olo Privacy Policy from, Customer's digital ordering websites and/or applications; or (b) provide on Customer's digital ordering websites and applications Customer's own privacy policy which complies with applicable legal requirements and regulations and is consistent with the terms of the Olo Policy.**
2. **Customer will, at Customer's discretion, either (a) incorporate the Olo Terms of Use into, or link to the Olo Terms of Use from, Customer's digital ordering websites and applications; or (b) provide on Customer's digital ordering websites and applications Customer's own terms of use agreement to End Users, which terms of use shall require End Users to accept responsibility for safeguarding End Users' account credentials, and for any activity performed using the End User's account credentials (Customer's own user agreement, together with Customer's own privacy policy, the "Customer Policies") to release Olo from any activity performed using the End User's account credentials, and for any actions or inactions of its End Users .**
3. Customer Policies shall include provisions at least as protective of Olo as the provisions of the Olo Privacy Policy. Olo will notify Customer of any material changes to the Olo Privacy Policy that are reasonably likely to require a corresponding change in Customer Policies. Customer shall be responsible for any claims arising out of Customer Policies.
4. Customer may request that Olo make Customer Data available to Customer Third Party Providers in accordance with the process set forth in the Master Services Agreement. If Olo receives a request from a Customer Third Party Provider to share certain Customer Data with such Customer Third Party Provider, Olo will notify the Customer representative, as designated in the Order Form. Upon authorization, Olo will provide Customer Third Party Provider with access to such Customer Data.
5. Customer will not, will not attempt to, and will not assist or knowingly permit any third party to: (i) except as otherwise expressly permitted by Olo copy, reproduce, distribute, republish, download, display, modify, disassemble, decompile, reverse engineer, or create derivative works of any Licensed Application (or portion thereof); (ii) breach, break, decrypt, disable, interfere with, or develop or use any workaround for, or otherwise misuse or damage, any Licensed Application; (iii) copy, distribute, sell, resell, or exploit for any commercial purposes any portion of the Licensed Applications; (iv) use any manual or automated software, devices or other processes, including, without limitation, spiders, robots, scrapers, data mining tools, and the like, to "scrape" or download data from any web pages contained in the Licensed Applications; (v) use your access to the Licensed Applications to assist you or a third party, including, but not limited to, a Customer Third Party Provider, in building a competing or similar website, application or service; or (vi) provide access to the Licensed Applications to an unauthorized third party by any means,