

## FOOD SUPPLY AGREEMENT

This FOOD SUPPLY AGREEMENT ("Agreement") is made and entered into on the last signature below (the "Effective Date") by and between Hellz Hott dogs, a Colorado company. Email address of partner@hellz.dog ("Company", "we", "us" and "our"),

and

The Donut House\_\_ a Parker Colorado company, with an address of 9807 S. Parker road\_\_ ("you"). The parties agree to the following:

### 1. Operations.

a. You agree to produce and/or supply certain Products (as defined below) to be sold by our virtual restaurant or storefront ("Virtual Restaurants") to end users in accordance with the terms of this Agreement. The parties will agree on the food, beverages, and/or products ("Products") to be made available via the Hellz Virtual Restaurant based on your food preparation capabilities. You agree to prepare for sale, and facilitate the sale to the end user of, such Products out of your restaurant or kitchen facility, including handling any order changes or cancellations by end users. We agree to run Product promotions for the Hellz Virtual Restaurant from time to time at our discretion and to manage all pricing, brand and marketing operations associated with the Hellz Virtual Restaurant. Each Virtual Restaurant shall be associated with one or more online food, beverage, or product ordering platforms operated by third parties that provide Product order management and delivery (each a "Third Party Vendor"). The parties acknowledge that Virtual Restaurant revenue is generated as follows: (i) a Third Party Vendor collects the end user's payment (including sales taxes) for the end user's purchase of Products from a Virtual Restaurant and (ii) the party that controls the Third Party Vendor account associated with the Virtual Restaurant receives a payment from the Third Party Vendor for the sale of such Products, after deduction of applicable Third Party Vendor platform fees. This Agreement contemplates that either you or we may control the account with the Third Party Vendor associated with a given Virtual Restaurant.

b. You represent and warrant that you: (i) will comply with all Applicable Laws related to (i) Product food safety, including time or temperature controls, (ii) Product packaging and merchantability, including ensuring that Products are prepared with a consistent standard of the highest quality and are not adulterated or misbranded, (iii) will not violate any obligations to any third party by entering into and performing under this Agreement, and (iv) have the right to use, and allow our use of your authorized Third Party Vendor accounts, including the right to appoint us as your agent to access and use your accounts as described in this Agreement.

### 2. Fees and Payment

a. In exchange for your preparation of the Products, **we agree to pay you a % fee** for every product ("Supplier Fee") as mutually agreed during your onboarding process (or in email). We will determine the retail price paid by consumers for all Products, and the % Supplier Fee we pay to you will **not** increase or decrease based on the price paid by consumers. **For clarity, all applicable Third Party Vendor fees shall be our responsibility, and payments between the parties shall be adjusted accordingly during the reconciliation process. As the seller of the Products, you will be solely responsible for the payment of any taxes assessed in connection with the sale of the Products to end users and payments between the parties shall be adjusted accordingly during the reconciliation process.**

b. The parties agree to reconcile the amounts due under this Agreement on a weekly basis, including allowing for offsets against amounts payable by each party and their affiliates. At our request, you agree to make available to us Product order and sales data generated by Third Party Vendors as reasonably necessary to enable us to accurately complete the reconciliation. All amounts are due 30 days from the date of invoice. You agree that we may use a third party provider to process amounts paid hereunder. You are responsible for all refunds, credits, chargebacks, penalty charges, or any retrieval costs ("Refunds") due to your acts or omissions (including issues with the quality of the Products). We will be responsible for all Refunds due to our acts or omissions.

c. As the seller of the Products, you agree to pay all applicable taxes assessed on the sale of Products to end users (including, but not limited to, all sales, use, VAT or similar taxes against the full retail price of the Product), and, if we ask, you agree to provide us with reasonable evidence that you are collecting and paying such taxes. If we control the account with the Third Party Vendor associated with the given Virtual Restaurant, we will remit the taxes collected by the Third Party Vendor to you. A party shall be solely responsible for any taxes assessed on its income related to this Agreement.

### 3. Rights and Restrictions

a. Subject to your compliance with this Agreement, we hereby grant to you a limited, revocable and non-exclusive right, during the Term, to produce and/or supply Products to be sold to end users via our Virtual Restaurant(s). You agree to prepare Products consistent with the quality and appearance standards of the applicable Virtual Restaurant, as may be made available by us from time to time. As between you and us, we own all right, title, and interest, including all intellectual property rights, in and to the Products and related content and materials (including the recipes, photographs, and menu descriptions), the Virtual Restaurants, our technology and systems underlying such Virtual Restaurants, and our accounts with Third Party Vendors ("Company IP"). Any goodwill generated from the use of Company IP shall inure to the benefit of Company and its licensors. To the extent that you gain any ownership interest in

any Company IP or improvements or enhancements thereto, you hereby assign to Company all rights, title, and interest in and to such Company IP and agree to reasonably assist Company to perfect such rights during and after the Term. In addition, if you or your personnel provide any suggestions, enhancement requests, feedback, recommendations and/or other ideas or information relating to the Products or operation of Virtual Restaurants, you agree that we may freely use and share such ideas or information for any business purposes on a perpetual and royalty-free basis. All rights in Company IP not expressly granted herein are reserved by Company and its licensors.

b. In order to perform our obligations under the Agreement, we may need access to one or more of your accounts with Third Party Vendors for the Virtual Restaurant(s). As such, you hereby appoint us as your agent, and grant us permission to access your Third Party Vendor accounts solely to perform our obligations hereunder (including menu management, price adjustments, marketing and promotions, and accounting). You can revoke our rights in this Section by providing us with written notice (at which time the Agreement will automatically terminate 24 hours from your notice to us).

c. You understand that this is a nonexclusive agreement and that we may offer others the similar or same opportunity to produce food for a virtual restaurant that uses the same branding and/or menu items as the Virtual Restaurants under this Agreement (and such other business location may be in close proximity to your business location).

d. To help you collaborate on the Virtual Restaurants, you agree to use the kitchen technology platform- in kitchen tablet provided by our partner ("Kitchen Tech"), subject to separate terms available at <https://www.tryotter.com/documents-legal-us-tou-vra-073120>, and by signing this Agreement, you agree to these Kitchen Tech terms. You understand that the services of Third Party Vendors and the Kitchen Tech are provided by third parties and as such, we have no responsibility for the Third Party Vendors, Kitchen Tech, or the technology or services they provide. You agree that we will not be liable to you or to any third party for any modification, suspensions, or discontinuance of the Kitchen Tech. Notwithstanding anything to the contrary, if you materially breach the Kitchen Tech terms of use and such terms of use are terminated in accordance therein, we may also immediately terminate this Agreement without any further obligation or liability.

#### **4. Representations and Warranties**

a. Each party represents and warrants that it: (i) has full power and authority to enter into this Agreement, (ii) will comply with all applicable laws, rules and regulations ("Applicable Laws") in the performance of this Agreement, and (iii) the individual signing this Agreement has the right to bind their respective company.

b. YOU AGREE THAT WE ARE NOT LIABLE FOR ANY COSTS, EXPENSES, OR LOSSES FROM YOUR INABILITY TO DISTRIBUTE PRODUCTS THROUGH ANY PARTICULAR THIRD PARTY VENDOR. EXCEPT AS EXPRESSLY SET FORTH ABOVE, WE DO NOT MAKE ANY COMMITMENTS OR WARRANTIES ABOUT THE SERVICES OR

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ALL VIRTUAL HELLZ RESTAURANTS WE PROVIDE DO WE GUARANTEE THE ACTUAL OR POTENTIAL SALES, INCOME OR PROFIT OF A VIRTUAL RESTAURANT HEREUNDER. WE DO NOT PROVIDE ANY IMPLIED WARRANTIES, SUCH AS THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS REQUIRED UNDER APPLICABLE LAW.

#### **5. Indemnity; Limits of Liability**

a. Unless prohibited by Applicable Law, you agree to indemnify and defend (at our option) Company and our affiliates (including their respective officers, directors, employees and agents), and hold them harmless against any claims or legal proceedings (including actions by government authorities), liabilities, damages and costs (including reasonable attorney fees and final settlement amounts) arising out of or relating to: (i) the Products (including any claims relating to product and food safety or taxes owed in connection with the sale of the Products), (ii) of illness, injury, death, or damage as a result of the consumption or use of any Product, (iii) risks against which **you are insured or required to be insured** against pursuant to this Agreement, or (iv) that, if true, would constitute your breach of this Agreement.

b. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR SIMILAR DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, REGARDLESS OF THE CAUSE OF ACTION UPON WHICH THEY ARE BASED, INCLUDING CLAIMS FOR LOSS OF GOODWILL OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. THE TOTAL, AGGREGATE LIABILITY OF EACH PARTY IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE LESSER OF (i) 500 USD OR (ii) THE AMOUNTS PAID BY YOU DURING THE FIRST 12 MONTHS OF THIS AGREEMENT. NOTHING IN THIS SECTION WILL APPLY TO EITHER PARTY'S OBLIGATIONS TO INDEMNIFY OR HOLD HARMLESS IN THIS AGREEMENT. NOTHING IN THIS SECTION WILL LIMIT A PARTY'S LIABILITY FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR UNLAWFUL ACTIVITY.

**6. Term and Termination.** The term of this Agreement ("Term") will commence on the Effective Date and will continue until terminated by a party. A party may terminate this Agreement for any or no reason with 7 DAYS written notice. A party may immediately terminate this Agreement in the event of a material breach by the other party. Outstanding payment obligations and Sections 1, 4 – 10 of this Agreement will survive any termination of this Agreement. You understand and agree that if this Agreement is terminated, you will no longer be permitted to co-manage the Virtual Restaurant and agree to immediately remove the Virtual Restaurant from any Third Party Vendor account you may have

used to help co-manage the Virtual Restaurant. You agree that we may, with email notice you, require you to immediately stop using the Virtual Restaurant in the event of a regulatory issue or a dispute concerning the Virtual Restaurant or its branding.

7. **Insurance.** At your sole expense, during the Term, you agree to maintain commercial general liability insurance policy in the amount of at least \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate (which includes products-completed operations, spoilage, and food borne illness coverage). All policies must (i) name or cover Company and its affiliates as an additional insured and (ii) be primary insurance and any insurance carried by Company or its affiliates will be excess insurance only. If we ask, you agree to furnish us with a certificate of insurance in such coverage, such certificate to be in a form reasonably acceptable to us.

8. **Confidentiality.** Except as required by applicable law, each party ("Receiving Party") agrees that (a) it will use Confidential Information of the other party ("Disclosing Party") solely for the purpose of the Agreement and (b) it will not disclose the Confidential Information of the Disclosing Party to any third party other than the Receiving Party's employees or agents, on a need-to-know basis, who are bound by obligations of nondisclosure and restricted use at least as strict as those contained in this Agreement, provided that Receiving Party remains liable for any breach of the confidentiality provisions of the Agreement by its employees or agents. The Receiving Party will protect the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and Confidential Information, but in no event using less than a reasonable standard of care. In the event Receiving Party receives a subpoena or other administrative or judicial demand for any of the Disclosing Party's Confidential Information, then the Receiving Party will give the Disclosing Party prompt written notice of such subpoena or demand and allow Disclosing Party to assert any available defenses to disclosure. Upon request by the Disclosing Party, the Receiving Party will return or destroy all copies of any Confidential Information of the Disclosing Party. Confidential Information of the Disclosing Party will at all times remain the property of that Disclosing Party. The provisions of this Section will expire three (3) years after the expiration or termination of the Agreement, except with respect to Confidential Information that constitutes "trade secrets" under applicable law for which this Section will survive indefinitely. The existence of this Agreement will constitute Company's Confidential Information and must not be disclosed without Company's consent. The parties must mutually agree on all press related to this Agreement.

9. **Miscellaneous.** You agree that we may send any notices to the email address you provide us. All notices to us must be sent to the email address in the introductory paragraph above. **The parties are independent contractors.** The parties are not partners or joint venturers with each other and nothing herein shall be construed to make them partners or joint venturers or impose any liability as such on either of them. This Agreement contains the entire understanding of the parties regarding the subject matter herein, and supersedes all prior and related contemporaneous agreements and understandings with respect thereto (meaning prior agreements that may exist between Company and you related to virtual brands or restaurants are hereby superseded and terminated). Each party has certain rights under applicable laws that cannot be limited by this Agreement or any contract; this Agreement will not restrict those rights. If a party breaches this Agreement, and the other party does not take immediate action in response to such breach, the nonbreaching party is not waiving any rights they may have, including the right to take action in the future. If a portion of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement will remain in effect. This Agreement is between only you and us; this Agreement does not create any legal rights or obligations for any third party, even if others benefit from that relationship under this Agreement. This Agreement will be governed by Colorado law, excluding applicable conflict of laws rules.

10. **Arbitration.** Except for claims or disputes related to protecting a party's intellectual property, each party agrees that any claim or dispute arising out of or relating to this Agreement will be settled by binding confidential arbitration before a single arbitrator, and not in a court of law. The arbitration will be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. A party who desires to initiate arbitration must provide the other party with a written demand for arbitration as specified in such rules. Unless the parties agree in writing otherwise, the arbitration will be conducted in the state of Colorado. The award and decision of the arbitrator will be conclusive and binding upon all parties, and judgment upon the award may be entered in any court of competent jurisdiction. The arbitrator will have the right to include in the award any relief which they deem proper in the circumstances, only to the extent permitted by this Agreement, provided that the arbitrator will not have the authority to award exemplary or punitive damages. The arbitrator will award the prevailing party its reasonable attorneys' fees and expenses. Each party agrees that arbitration will be conducted on an individual, not a class-wide, basis and that any arbitration proceeding between you and us and/or our affiliates will not be consolidated with any other arbitration proceeding involving us or any other person or entity.

The parties agree to this Agreement as of the Effective Date

Company: Hellz Hott dogs

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

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

Gary Atencio

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

Account Executive

2/9/2021

Date: \_\_\_\_\_ VRA-STD-120120

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## DIRECT DEPOSIT FORM

Get your restaurant set up for direct deposit from Hellz Hott dogs  
(payments will come from G. Atencio dba Hellz).

Write VOID across one of your checks, and put in the rectangular space provided below:

You may choose to not provide a voided check & instead may provide your bank  
account information below.

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

Name On Account: \_\_\_\_\_

Account Number: \_\_\_\_\_

Routing Number: \_\_\_\_\_

I authorize Hellz to deposit payments for my corresponding payout  
to the above account and that all information is accurate. I certify  
that I am authorized to make this request on behalf of my  
restaurant and permit Future Foods to internally share my bank  
information for the sole purpose of remitting payment to this.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Mo

Name

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Restaurant Phone Number

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Email

1. **Virtual Merchant Services Agreement.** Restaurant Partner acknowledges that **Hellz** ("Merchant") set forth on above Agreement owns the Hellz brand ("Brand") and has entered into the Virtual Merchant Services Agreement ("Agreement")

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