

HelloFresh and City of Aurora Donation Agreement

This HelloFresh and City of Aurora Donation Agreement (the “**Agreement**”), dated as of August ____, 2024 (this “**Effective Date**”), is entered between Grocery Delivery E-Services USA Inc. dba HelloFresh, a Delaware corporation, with corporate offices located at 28 Liberty St., 10th Floor, New York, NY 10005 (“**Donor**”), and the City of Aurora, an Illinois municipal corporation, with offices located at 44 E. Downer Place, Aurora, IL, 60507 (“**Recipient**,” and together with Donor, the “**Parties**,” and each, a “**Party**”).

WHEREAS, Donor is an e-commerce provider of chef-prepared meals delivered to customers’ homes throughout the United States, sometimes utilizing its own branded vehicles to deliver the meals;

WHEREAS, Recipient is a local government entity that intends to deliver donated meals and other items to its residents (“**Donation Purpose**”) using a donated, branded delivery vehicle from Donor (the “**Vehicle**”); and

WHEREAS, Donor desires to donate one Vehicle to Recipient, and Recipient desires to accept the Vehicle for the benefit of the Donation Purpose.

NOW, THEREFORE, the Parties agree as follows:

1. Donation. Donor agrees to donate the Vehicle to Recipient as a one-time donation. Donor grants Recipient irrevocable ownership, rights, title, and interest in the Vehicle upon the terms and conditions set forth in this Agreement and without monetary payment to the Donor. The Vehicle will be transferred to Recipient free and clear of any liens, claims, or encumbrances.

1.1 Conditions of Use. The Parties shall mutually agree to place certain branding and/or artwork on the outside of the Vehicle prior to delivery of the Vehicle to Recipient.

2. No Resale. The Vehicle (and any meals donated pursuant to this Agreement) may not be sold by Recipient to consumer(s).

3. Delivery. Donor shall deliver the Vehicle to Recipient at _____ (the “**Delivery Point**”) using Donor's standard methods for delivery of the Vehicle. Donor shall deliver the Vehicle to the Delivery Point on a date mutually agreed upon by the Parties, subject to completion of transfer of ownership of the Vehicle from Donor to Recipient. Recipient shall take delivery of the Vehicle upon delivery to the Delivery Point. Title and risk of loss transfer to Recipient upon delivery of the Vehicle by Donor to the Delivery Point.

4. Limited Vehicle Warranty. Donor shall provide Recipient with the original owner 5-year, 100,000-mile powertrain warranty, effective from the date of delivery.

5. Warranty Disclaimer. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE VEHICLE IS DONATED "AS IS, WHERE IS" WITH ALL FAULTS, AND DONOR MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE VEHICLE, INCLUDING ANY WARRANTY OF**

CONDITION, QUALITY, OR SUITABILITY, WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF TITLE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

6. Waiver and Release. Recipient itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns hereby expressly releases, waives, and forever discharges Donor and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, permitted successors, and permitted assigns of and from any and all claims, actions, causes of action, suits, losses, expenses, liabilities, obligations, damages, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, or equity arising out of or in connection with this Agreement or the Vehicle, whether arising out of the negligence of Donor or Recipient or otherwise, except for any claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Agreement and any liabilities that cannot be released or waived under federal, state, or local law.

7. Indemnification. To the extent allowed by Illinois law, Recipient shall indemnify and defend Donor and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, that are incurred by Indemnified Party arising out of or related to any third-party claim alleging:

(a) breach or non-fulfillment of any provision of this Agreement by Recipient or Recipient's employees;

(b) any negligent or more culpable act or omission of Recipient (including any reckless or willful misconduct) in connection with the Vehicle;

(c) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Recipient (including any reckless or willful misconduct); or

(d) any failure by Recipient to comply with any applicable federal, state, or local laws, regulations, or codes.

8. Limitation of Liability. **IN NO EVENT SHALL DONOR BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THE GOODS, DONATION OF THE VEHICLE, OR ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT DONOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

9. Term, Termination, and Survival. The terms of this Agreement shall remain in effect, unless terminated earlier by the Parties. Either Party may terminate this Agreement by providing the other Party with thirty (30) days' advance Notice (as defined in Section 11). Any terms meant to survive the termination or expiration of this Agreement in order to give proper effect to its intent shall survive the termination or expiration of this Agreement, including but not limited to Sections 1, 2, 4, 5, 6, 7, 8, 11, 14 and 15.

10. Public Announcements. The Parties may make public announcements and communicate with news media regarding this Agreement and the Vehicle, including the donation of meals in the community, with the prior written consent of and notice to the other Party, and the Parties shall cooperate as to the timing and contents of any such announcement.

11. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email, or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

If to Donor:

28 Liberty St., 10th Floor
New York, NY 10005
Email: us-legal@hellofresh.com
Attention: Legal Department

If to Recipient:

44 E. Downer Place, Aurora, IL 60507
Email: cityclerk@aurora.il.us
Attention: City Clerk

12. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13. Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

14. Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction).

15. Confidential Information. To the extent permissible by Illinois law, all non-public, confidential, or proprietary information of the Parties, including, but not limited to, specifications, samples, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by either party, whether disclosed orally or disclosed or accessed in electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by the disclosing Party in writing. Upon either Party's request, the other Party shall promptly return all documents and other materials received. Either Party shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) independently developed by a Party without any use of or reference to the other Party's confidential information, as demonstrated by documents and other competent evidence in the such Party's possession; or (d) rightfully obtained by the receiving Party on a non-confidential basis from a third party. If a Party is required to disclose the other Party's confidential information pursuant to requirements of applicable law (including a subpoena, search warrant, FOIA or the rules and policies of any stock exchange) or the order or requirement of a court, administrative agency, or other governmental or regulatory body; then, if legally permissible, the Party required to disclose such confidential information shall first provide prompt notice of such court order or requirement to the other Party to enable such Party to seek a protective order or otherwise prevent or restrict such disclosure.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

17. Force Majeure. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; and (g) other similar events beyond the reasonable control of the Impacted Party.

The Impacted Party shall give Notice within five (5) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted

Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following Notice given by it under this Section, either Party may thereafter terminate this Agreement upon ten (10) days' Notice.

18. Entire Agreement. This Agreement, any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

City of Aurora

By: _____

Name: _____

Title: _____

Date: _____

Grocery Delivery E-Services USA Inc. dba
HelloFresh

By: _____

Name: _____

Title: _____

Date: _____