



THE GROWTH COLLECTIVE LIMITED

TGCL

Supplier

SUPPLY AGREEMENT
DATED:

PARTIES

1. The Growth Collective Limited ("TGCL" trading as ezlunch)
2. ("Supplier")

INTRODUCTION

- A. TGCL has entered into an agreement with the School whereby the School has agreed to provide a link between the School's website and TGCL's website, or otherwise advertise a way for parents to access the TGCL website, which will enable parents of children attending the School to place and pay for lunch orders using an on-line facility provided by TGCL to the School.
- B. Account Holders will place Orders in terms of the agreement between TGCL and the School.
- C. has agreed to prepare and the deliver the Orders to the School.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

"Account Holder" means the parent, guardian or such other person lawfully entitled to place an Order on behalf of a student of the School.

"Agreement" means this Agreement as varied from time to time.

"Confidential Information" means any product, business, marketing, strategic, technical or other information relating to customers or Suppliers, or data (including but not limited to information retained on all types of medium including written, diagrammatical, software, plans or other storage medium) relating to the Service, the Website or business or affairs of TGCL whether disclosed in writing, orally or by any other means, and whether or not that information is marked "confidential", to the Supplier by TGCL or its authorized agents, whether before or after the date of this Agreement.

"Deadline" means 9am on the day that the Order is to be delivered to the School as being the latest time an Order can be made for any Item or Items for delivery, unless specified otherwise in the attached Schedule.

"Intellectual Property" includes (without limitation) all current and future patents or patent applications, copyright, designs, registered or unregistered trademarks, trade names, goodwill rights, trade secrets, Confidential Information and any other intellectual property or like right or form of intellectual property pertaining to the Service, the Website or the business of TGCL.

"Item" means any products supplied by the Supplier.

"**Listing**" means a list of Items, available for purchase by the Account Holder from the Supplier.

"**Order**" means any order for one or more Items placed through the TGCL Website by an Account Holder.

"**Price**" means the price charged by the Supplier for an Item and will be inclusive of GST.

"**School**" means _____ and such other school as detailed in the attached Schedule as amended from time to time.

"**Service**" means the service of providing an electronic online interface or other platform by TGCL to facilitate interactions between Account Holders, the School, TGCL and the Supplier including but not limited to the ordering of, and paying for and delivery of, pre-packed lunches or any other Item.

"**Service Fee**" means the fee charged by TGCL to the Supplier for use of the Service by the Supplier and paid to TGCL as specified in the attached Schedule.

"**Supplier**" means _____

"**Term**" means the period from the date of this Agreement (the "**Commencement Date**"), until the Agreement is terminated as provided for in clause 18.

"**TGCL**" means The Growth Collective Limited and its successors and assigns trading as Ezlunch.

"**Website**" means the websites located at <http://shop.tgcl.co.nz> and <http://partner.tgcl.co.nz> or any related services (blogs, apps or SMS-based) and websites, through which the Service is offered.

1.2 The plural includes the singular, and vice versa.

2. AGREEMENT TO SUPPLY

2.1 The Supplier agrees:

2.1.1 to be advertised on the Website as a Supplier; and

2.1.2 prepare the Items and deliver the Orders to the School in accordance with this Agreement.

3. LISTINGS

3.1 On the signing of this Agreement, the Supplier will provide TGCL with the Listing and all other information required by TGCL to be placed on the Website.

3.2 The Supplier will regularly review its information and Listing and keep its information and Listing current and accurate.

- 3.3** The Supplier may, at TGCL discretion, be provided access to the Website for the purpose of amending its Listing, including without limitation, deleting unavailable Items, as necessary.
- 3.4** If the Supplier has not been provided with access to the Website under clause 3.3, it must give TGCL a minimum of two (2) working days' notice of any required changes to be made to the Listing by TGCL.
- 3.5** Any failure by the Supplier to amend the Listing or failure to provide the notice required under clause 3.4 within the timeframe specified may result in it being required to supply an Item on the basis of the information available on the Website to an Account Holder at the time they place an Order.
- 3.6** The above clauses do not apply to changes in the Price of an Item, which is governed by clause 6 of this Agreement.
- 3.7** All updates and amendments to the Listing are subject to TGCL's or the Schools final approval.

4. PRODUCTION, PACKAGING AND DELIVERY

- 4.1** The Supplier will purchase and maintain any technology and equipment reasonably required by it to receive, and deliver Orders.
- 4.2** The Supplier will, during the Term, fulfil an Order in accordance with the best industry practice relevant to any particular Item or Items within that Order.
- 4.3** Some Orders or Items will have particular requirements including without limitation production, handling, packaging, labelling or delivery requirements. These requirements will be mutually agreed between the Supplier and TGCL. Where such requirements are established they will be provided to the Supplier in writing and the Supplier agrees to produce, handle, package, label and deliver relevant Items strictly in accordance with those requirements.
- 4.4** Account Holders will have the ability to place Orders for particular Items in advance. On request, TGCL will provide a summary of any advanced Orders for Items the Supplier supplies to facilitate stock management and control.
- 4.5** From time to time, TGCL may alter the requirements, composition or specifications of any Orders requested by Account Holders. TGCL will provide ten (10) working days' notice of any proposed changes and the Supplier will take all reasonably practicable steps to meet such changes. The Supplier must immediately advise TGCL if these changes cannot be met. If the Supplier fails to do so the Supplier will be deemed to have accepted the changes and will be required to supply the relevant Item or Items on the new terms.
- 4.6** TGCL will process Orders continuously and the Supplier undertakes to login to the Website shortly after the Deadline on each day to check for Orders that it is required to fulfil.
- 4.7** The Supplier will not start fulfilling an Order until the Deadline has passed.

- 4.8** The Supplier will deliver Orders to the School in full, on time and in compliance with the highest standards of quality and safety. The Supplier acknowledges that this requirement is an essential requirement of this Agreement.
- 4.9** Where the Account Holder, or the School, has specified a time by which an Order must be delivered to the School, the Supplier will take all steps reasonably practicable to meet that Deadline.
- 4.10** Where the Supplier anticipates that it will not be able, for whatever reason, to comply with any of its obligations under clause 4, it must immediately advise TGCL of the same. The Supplier will then immediately contact the Account Holder or School to explain the reason for its inability to meet its obligations and to arrange for an alternative means of fulfilling the Order to the satisfaction of the Account Holder or School.
- 4.11** If an Order is placed after the Deadline, the Supplier will immediately advise TGCL as to whether it will be able to fulfill the Order.

5. COMPLIANCE

- 5.1** The Supplier is required to be knowledgeable of and comply with all applicable laws in relation to (where relevant) the manufacture, production, handling, assembly, sale, packaging and delivery of or any other requirement related to, any particular Item. These include but are not limited to the Commerce Act 1986, the Fair Trading Act 1986, the Privacy Act 1993, the Consumer Guarantees Act 1993, the Food Act 2014, and the Health and Safety at Work Act 2015 and any relevant regulations, advertising standards, bylaws and the lawful requirements of any government, local or other authority.
- 5.2** The Supplier will do all acts reasonably practicable to ensure that any third parties from whom it sources Items or components of Items also comply with clause 5.1.
- 5.3** The Supplier acknowledges that it is aware of and fully understands TGCL's requirement as to nutrition and health as advertised on the TGCL website <http://www.ezlunch.co.nz> and will ensure that it complies with such requirements in preparing the Listing and Items.

6. PRICE AND PAYMENT

- 6.1** On signing this Agreement, TGCL will provide the Supplier with access to the Website and the Supplier will provide TGCL with the current Price for all Items in its Listing.
- 6.2** Subject to clause 6.4, the Supplier may amend the Price for any Item at any time. If it fails to do so and an Order for an Item is placed at an out of date Price, the Supplier will be required to supply the Item at the out of date Price.
- 6.3** The Supplier undertakes to supply any Items in an advanced Order under clause 4.4 at the Price current at the time the advanced Order was placed.
- 6.4** The Service Fee will be automatically deducted from the payment received by TGCL from Account Holders for the Orders. The balance of the payments received, less any refunds to Account Holders, will be deposited into the Suppliers nominated bank account in full on or before midnight each Tuesday for Orders delivered in the preceding week.

6.5 TGCL will review the Service Fee every six (6) months at its discretion and any change in the Service Fee will be notified to the Supplier in writing or via email at least twenty (20) working days prior to any change.

6.6 From time to time TGCL will be entitled to run special promotions and otherwise discount the Items provided that no such promotion or price discounts shall be made without the Suppliers prior consent.

7. RECORDS AND REPORTING

7.1 The Supplier shall maintain complete and accurate records and accounts of all of the Orders placed with it and all transactions relating to such Orders including but not limited to the Suppliers monthly supply, sales, credits, customer complaints and returns.

7.2 The Supplier shall keep such records and accounts in safe and secure storage throughout the Term, and promptly provide the same to TGCL within five (5) working days of a request from TGCL.

8. INSURANCE

8.1 The Supplier will keep and maintain an insurance policy covering public liability of no less than NZD \$500,000.00. Upon request by TGCL, the Supplier shall supply a copy of the insurance policy and any evidence of its currency to TGCL.

9. PROMOTION

9.1 The Supplier undertakes to display TGCL signage in a form approved by TGCL in a prominent position in its premises.

9.2 TGCL agrees to display the Suppliers logo and contact details on the Website with your Listing.

9.3 From time to time, the Supplier undertakes to assist TGCL with any promotion, sale and demonstration in relation to the Service, subject to mutual agreement.

10. COMPLAINTS AND RETURN OF PRODUCTS

10.1 The Supplier acknowledges that it is solely responsible for any Items that it supplies to the School under this Agreement. This includes but is not limited to sole responsibility for an Item's delivery, quality, fitness for purpose and safety.

10.2 All complaints or other issues relating to any Items or the delivery of items will be directed to the Supplier and it will be solely responsible for any remedial action required to redress the complaint or issue as mutually agreed between the Supplier, TGCL, the Account Holder and, where relevant, the School.

10.3 Should the Supplier fail to address any complaints in clause 10.2 to what, in TGCL's sole opinion, is a satisfactory standard, TGCL may investigate and may remedy the subject of such complaints or issues at the Suppliers cost. Any such costs will be deducted from the

weekly payment made by TGCL to the Supplier in accordance with clause 6.4, at TGCL's sole discretion.

11. NO AGENCY

- 11.1 Nothing in this Agreement is intended to constitute a joint venture, partnership or employment relationship, and the parties acknowledge that neither party is authorised to act as an agent of the other party, unless otherwise provided by this Agreement.

12. NON EXCLUSIVITY

- 12.1 The Supplier acknowledges and agrees that it does not have the exclusive right to receive and deliver Orders from Account holders and acknowledges that other Suppliers will, at the discretion of the School and TGCL, be advertised on the Website, and that Orders may be placed with other Suppliers.

13. SUB-CONTRACTING AND ASSIGNMENT

- 13.1 TGCL may assign any of its rights or obligations under this Agreement without obtaining the Suppliers prior approval.
- 13.2 The Supplier must not sub-contract, assign or delegate any of its rights or obligations under this Agreement without TGCL's prior written consent.

14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 14.1 The Supplier acknowledges and agrees that all Intellectual Property rights relating to the Service and the Website are owned by TGCL and will not:
- (a) display, copy, print, reproduce, adapt, reverse-engineer, distribute, store, publish or create derivative works using the Intellectual Property or the Confidential Information; or
 - (b) challenge, nor assist any other party (directly or indirectly) to challenge TGCL's sole ownership of the Intellectual Property, nor to use the same in services to any other party.
- 14.2 Through its association with TGCL, it will come into possession of Confidential Information. All such Confidential Information will remain the exclusive property of TGCL.
- 14.3 The Supplier will treat Confidential Information as confidential and it will not disclose it to any other party (nor allow it to be disclosed to any other party) and shall take appropriate steps to ensure that such information cannot be accessed or used by any unauthorised party, including its employees other than on a "need-to-know" basis, or otherwise without TGCL's prior written consent.
- 14.4 On the termination of this Agreement for any reason, the Supplier will return to TGCL (or destroy, at TGCL's sole discretion) all books of accounts, records, papers, correspondence and any other documents or electronic data concerning and containing Confidential Information.
- 14.5 The obligations under this clause 14 shall survive termination of this Agreement

15. LIABILITY AND INDEMNITY

15.1 The Supplier indemnifies and keep indemnified TGCL, its officers, agents and employees from and against any loss, damage, liability and cost, (including legal costs on solicitor client basis) that TGCL may sustain or incur as a result, whether directly or indirectly, of any actual or alleged:

- (a) breach of this Agreement by the Supplier;
- (b) claim by an Account Holder, the School or any third party arising out of or in connection with the Suppliers obligations under this Agreement;
- (c) its failure to observe or comply with any applicable laws, bylaws or regulations; and
- (d) loss or damage to any property or injury to or death of any person caused by any act or omission being in breach of its obligations under this Agreement.

15.2 To the extent permitted by law, TGCL will not be liable for any consequential, incidental or indirect loss or expense incurred by the Supplier in connection with this Agreement, including without limitation any delay, increase in operating costs, liability to a third party, loss or contamination of or damage to any Item, loss of profit, production, income, business, data, contract, goodwill or anticipated savings except to the extent that such loss, damage or expense resulted from an intentional or wilful act or omission by TGCL in breach of its obligations under this Agreement.

16. RESTRAINT OF TRADE

16.1 Throughout the Term and for a period of two (2) years following the termination of this Agreement the Supplier will not, nor cause or allow any of its agents, shareholders, directors, officers or employees or any spouse of any of them to be interested, engaged or involved in any business or undertaking in New Zealand which:

- (a) Provides an electronic online interface connecting individuals, schools or organisations for the purpose of ordering and delivering items which are, in the reasonable opinion of TGCL, in competition with the Service; or
- (b) Approaches, solicits, procures, directs or is otherwise instrumental in the diversion of business relating to the provision of items to any individual, schools or organisation away from TGCL to any other party.

17. WARRANTY

17.1 The Supplier warrants that:

- (a) it has the power and authority to enter into this Agreement.
- (b) It has the necessary resources, personnel and operational capacity to carry out its obligations under this Agreement.
- (c) it holds all current statutory or regulatory licences required to perform its obligations under this Agreement.
- (d) It is in strict compliance with all applicable laws, regulations, advertising standards, bylaws and the lawful requirements of any government, local or other authority relating or connected to the fulfilment of its obligations under this Agreement.
- (e) Where it is a manufacturer or supplier of food or beverage items, it holds a grade "A" or higher rating in food premises assessed under the Food Hygiene

Regulations 1974 or any equivalent local Council requirements or regulations passed pursuant to the Food Act 2014, is registered and operates under the relevant Food Control Plan and/or National Programme pursuant to the Food Act 2014, and that it will provide TGCL and the School evidence of this as and when requested by TGCL and /or the School.

18. TERMINATION

18.1 TGCL may terminate the Agreement immediately by notice in writing if the Supplier is in breach of any term of this Agreement and, where a breach is capable of remedy, it has failed to remedy that breach within twenty-four (24) hours of receipt of a written notice from TGCL requiring immediate remedy.

18.2 Either party may terminate this Agreement immediately by notice in writing if:

- (a)** The other party commits a crime for which it is (or if an individual would be) liable for a term of imprisonment exceeding one year; or
- (b)** the other party is ordered or adjudged bankrupt or all or part of its assets are placed in the hands of a receiver or otherwise enters into any scheme or composition with its creditors, or an order or resolution is passed for its dissolution.

18.3 Either party may terminate this Agreement for any reason with 30 days written notice to the other party. If the termination date falls more than 30 days before the end of a school term, the Supplier's obligation to fulfil its obligations under this Agreement shall continue until the end of that school term, unless expressly waived in writing by TGCL.

18.4 Upon termination of this Agreement the parties shall pay each other all sums of money which may be due or owing in respect of the fulfilment of their respective obligations under this Agreement prior to the date of termination.

18.5 Upon termination of this Agreement for any reason, the Supplier will inform all relevant personnel that it is no longer authorised to continue to provide services under this Agreement.

19. DISPUTE RESOLUTION

19.1 If any dispute arises between the parties out of or in relation to this Agreement:

- (a)** the party claiming a dispute has arisen must give written notice to the other specifying the nature of the dispute;
- (b)** the parties will endeavour, in good faith, to negotiate a resolution of the dispute;
- (c)** if the parties have not resolved the dispute within fourteen (14) days after the date notice of the dispute was given, the dispute is to be mediated by a mediator jointly agreed by the parties, or, if the parties are unable to agree, selected by the President of the Auckland District Law Society at the time the dispute arises. The costs of the mediation shall be shared equally between the parties unless otherwise agreed in the course of the mediation;
- (d)** Should mediation fail to resolve the matter within 30 days, then the dispute may be referred to arbitration. The arbitration will be conducted by a single arbitrator, agreed between the parties or in default of Agreement, by an arbitrator selected by the President of the Auckland District Law Society. The arbitration will be

governed by the Arbitration Act 1996 (New Zealand) and the then current Arbitration Protocol. The law of New Zealand will apply, and judgment upon the award rendered by the arbitrators may be entered in any Court having jurisdiction thereof;

- (e) pending resolution of the dispute, this Agreement will remain in full force and effect without prejudice to either parties' rights and/or remedies.

20. PRIVACY

- 20.1 The Supplier acknowledges that it may receive personal information of an Account Holder submitted to TGCL for the purpose of fulfilling an Order.
- 20.2 The Supplier agrees to merely be in possession of such information and will not manipulate, alter, or disclose any such information without the express written consent of the Account Holder in question.
- 20.3 The Supplier agrees to comply with all obligations contained in the Privacy Act 1993, related regulations, guidelines and code of practice, and take all reasonable measures to ensure that such information is protected against loss, unauthorized access, use, modification, disclosure or other misuse and that only authorised personnel are allowed access to the same.

21. VARIATIONS OF AGREEMENT

- 21.1 From time to time the parties may negotiate terms and conditions that are different to those contained in this Agreement.
- 21.2 Any such additional terms and conditions will only be effective where they are recorded in a deed and signed by an authorised representative of both parties (a "deed").
- 21.3 Once the parties have agreed to the additional terms and conditions in accordance with clause 15.2 above, the deed will become a part of the Agreement. To the extent that any terms and conditions contained in the deed are inconsistent with any term or condition in this Agreement, the terms and conditions in the deed will apply.

22. MISCELLANEOUS

- 22.1 The parties shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 22.2 Failure by the parties to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations it has under this contract.
- 22.3 This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Courts of New Zealand have jurisdiction to hear any dispute in connection with this Agreement.

22.4 This Agreement contains the entire Agreement and undertaking between the parties and supersedes all prior discussions, representations, understandings and Agreements whether oral or in writing.

22.5 If any provision of this Agreement shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

EXECUTION

SIGNED by THE GROWTH COLLECTIVE LIMITED by its duly appointed attorney in the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

) _____
) _____
) Signature
) _____
) Print Full Name and Specify Description
) (Director/Secretary/Attorney/Authorised Signatory)
) _____
) Signature
) _____
) Print Full Name and Specify Description
) (Director/Secretary/Attorney/Authorised Signatory)

Note: This document must be executed by the company according to its Constitution. If two directors sign, no witnessing is necessary. If only one director or a director and secretary or authorised signatory(ies) or attorney sign, signatures must be witnessed. If the document is executed under seal, the seal should be witnessed in accordance with the Constitution – please note if only one director witnesses the seal that director’s signature should be witnessed.

SIGNED by its duly appointed attorney in the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

) _____
) _____
) Signature
) _____
) Print Full Name and Specify Description
) (Director/Secretary/Attorney/Authorised Signatory)
) _____
) Signature
) _____
) Print Full Name and Specify Description
) (Director/Secretary/Attorney/Authorised Signatory)

Note: This document must be executed by the company according to its Constitution. If two directors sign, no witnessing is necessary. If only one director or a director and secretary or authorised signatory(ies) or attorney sign, signatures must be witnessed. If the document is executed under seal, the seal should be witnessed in accordance with the Constitution – please note if only one director witnesses the seal that director’s signature should be witnessed.

SCHEDULE OF SCHOOLS ATTACHED.