

## **PARTICIPATION AGREEMENT**

*Introduction: This document (the "**Participation Agreement**") sets out the understandings between you and Dunkin' Donuts Franchising LLC and its successors and assigns ("**Franchisor**") (and, for purposes of Sections 6(j), 6(k), and 6(l) only, Dunkin Brands, Inc.) regarding Dunkin' Brands, Inc.'s ("**DBI**") decision to share a significant portion of its net profits from the sale of the following products: Dunkin' Donuts packaged coffee; Dunkin' Donuts K-Cup, K-Mug, and K-Carafe single serve products, and any direct successor to the K-Cup technology; any Dunkin' Donuts licensed single-serve capsules for Keurig or any other brands' single-serve coffee system designed primarily for at-home consumption; and Dunkin' Donuts creamers (collectively, the "**Products**") in the Channels in the Territory described below.*

DBI's offer and sale of the Products in the Channels in the Territory in the manner specified in this Agreement is sometimes for the sake of convenience referred to as the "CPG Program".

*In order to memorialize their understandings and agreements, and for good and valuable consideration as specified below, the parties agree as follows:*

1. **REVENUE SHARING PAYMENTS**. During the Term, DBI will make cash payments ("**Revenue Sharing Payments**") twice each year to Qualified Franchisees of Qualified Restaurants in an aggregate amount equal to fifty percent (50%) of DBI's Net Profits derived from the sale of the Products in the Channels in the Territory during each of DBI's Fiscal Periods.
  - a) The Revenue Sharing Payments will be allocated by DBI amongst the Qualified Franchisees of Qualified Restaurants on a per-restaurant basis in proportion to the annual sales of "Dunkin' Donuts" approved products at each Qualified Restaurant for the immediately preceding Fiscal Period. References to "Fiscal Period" mean each six months of each Fiscal Year of DBI beginning with such Fiscal Period in which the Term begins.
  - b) For each semi-annual Revenue Sharing Payment during the Term, DBI agrees to make the Revenue Sharing Payment within ninety (90) days of such Fiscal Period (for example, payments resulting from the sale of the Products in the Channels in the Territory during a Fiscal Period that begins January 1, 2016 and ends June 30, 2016 will be made by September 30, 2016, and the last payment will be made not later than ninety (90) days following the end of the last Fiscal Period in which the end of the Term occurs). DBI anticipates making payments either directly or through a third party via ACH.

- c) You agree to incorporate the Revenue Sharing Payments as a separate line item in your restaurant's profit and loss statements; however, the Revenue Sharing Payments will not be part of your restaurant's Gross Sales and you will not be required to pay royalties (or make other payments to the Franchisor or its affiliates) on account of such revenue.
- d) For purposes of clarity, Revenue Sharing Payments that Franchisees do not receive because they are not Qualified Franchisees shall remain in the 50% franchisee Revenue Sharing Payments, and will be distributed to Qualified Franchisees of the Qualified Restaurants.
2. **DEFINITIONS.** In addition to the definitions found in the text of this Participation Agreement, the parties agree that the following terms have the following meanings:

Defined Term	Definition
<b>Channels</b>	<p>The term "Channels" or "Channel" means:</p> <p>A. One or more of the following: Grocery (e.g., Stop &amp; Shop), club stores (e.g., Sam's Club and Costco), mass merchandise (e.g., Wal-Mart and Target), drug stores (e.g., Walgreens), home improvement stores (e.g., The Home Depot), dollar stores, convenience stores, office supply superstores (e.g., Staples, Office Depot), specialty retailers (e.g., Bed Bath &amp; Beyond), and through properly sanctioned and Dunkin' approved internet websites (e.g., Amazon.com, Keurig.com and dunkindonuts.com); and</p> <p>B. In-room coffee provided by hotels in the Territory.</p> <p>For clarity, the definition of Channels excludes all other channels and lines of business, including without limitation "Dunkin' Donuts" restaurants, APODs and kiosks (regardless of the limited nature of the menu offering) and the sale or delivery of the Products or other products to addresses outside the Territory.</p>
<b>Fiscal Year</b>	All references to a "Fiscal Year" in this Participation Agreement are to DBI's fiscal year as it may change from time to time.
<b>Franchise Agreement</b>	The Franchise Agreement is the underlying franchise agreement for the Qualified Restaurant between you and DBI's affiliate (Dunkin' Donuts Franchising LLC).
<b>Franchisee</b>	The party that is the "franchisee" under the Franchise Agreement. (Sometimes also referred to as "you" in this Participation Agreement.)
<b>Franchisee</b>	The Franchisee (and, if the Franchisee is a corporation, LLC, or a

Defined Term	Definition
<b>Parties</b>	partnership, then all of its direct as well as indirect owners as well).
<b>Franchisor</b>	Dunkin' Donuts Franchising LLC, which is the "franchisor" under the Franchise Agreement.
<b>Net Profits</b>	<p data-bbox="570 443 1520 657">"Net Profits" means (i) all revenues of DBI from the sale or licensing for sale of the Products in the Channels in the Territory (including without limitation all royalties or other payments to DBI relating to such sale or licensing for sale) at any time received during the Term, less (ii) all the following expenses and types of expenses incurred after February 23, 2015:</p> <p data-bbox="570 678 1520 1623">(1) DBI's reasonable business expenses relating to the development, marketing, distribution and sale of the Products, including without limitation: where appropriate, a fair allocation of G&amp;A (G&amp;A shall be limited to the following general categories: compensation and benefits, travel and related expenses, paid to those DBI and or DBI affiliate employees, contractors, consultants and advisors, providing services to the CPG program), market research, marketing designed to direct consumers back to Dunkin' Donuts restaurants, product development costs, costs associated with product development (including without limitation, minimum volume guarantees or payments, artwork, packaging development, or capital investment in development/start-up production assets or production asset customization), related to the Products sold in the Channels in the Territory; (2) other appropriate costs incurred in administering the Revenue Sharing arrangement, including but not limited to the cost of compiling data, making payments to Qualified Franchisees, answering inquiries from franchisees, and defending claims raised or filed by franchisees relating to the CPG Program. For the avoidance of doubt, expenses for third parties retained by DBI for the CPG Program are deductible, but expenses for third parties retained by DBI for its own benefit, or for the benefit of the franchisees who are represented by the Franchisee CPG Sub-Committee Members, are not deductible; and (3) The funding of a 5% boomerang marketing fund (such 5% will be calculated based on revenues prior to deductions of the other expenses mentioned above).</p> <p data-bbox="570 1644 1520 1892">For the avoidance of doubt regarding distribution of the Products outside the Territory, the parties acknowledge and agree that: (a) DBI and its affiliates and authorized distributors, and franchisees or licensees located outside the Territory, now and in the future may have agreements for the distribution of the Products outside the Territory, and that the revenues from those agreements are outside the scope of this Agreement; and (b) some shipments of Products</p>

Defined Term	Definition
	<p>intended for distribution inside the Territory could ultimately end up distributed outside the Territory without the approval of our authorized distributors, and if DBI receives revenues from such unauthorized distribution outside the Territory, that revenue is within the scope of this Agreement and will be counted in calculating “Net Profits” hereunder.</p> <p>DBI will manage the CPG Program in collaboration with its vendors, and also with advice from the CPG Sub-Committee. The purpose of these programs will be to drive incremental transactions to “Dunkin’ Donuts” restaurants via coupons, media, messaging, and otherwise.</p>
<b>Qualified Franchisee</b>	The Franchisee under the Franchise Agreement for a Qualified Restaurant.
<b>Qualified Restaurant</b>	A “Qualified Restaurant” is a “Dunkin’ Donuts” or “Dunkin’ Donuts/Baskin-Robbins” restaurant: (a) that is located in the Territory; (b) that has been open to serve the public for a full Fiscal Period prior to the Fiscal Period as to which any Revenue Sharing Payment is to be made; (c) that, as of the time a Revenue Sharing Payment is due to be made, is neither the subject of (i) a Notice To Cure that was issued by the Franchisor for a default under the Franchise Agreement for the restaurant and that is beyond any applicable cure period; nor (ii) a Notice of Termination issued by the Franchisor; and (d) as to which the Franchisee and all Franchisee Parties have signed and delivered to DBI a Participation Agreement.
<b>Term</b>	This Participation Agreement shall have a term of twenty (20) years from the date of DBI’s launch of K-Cups in the CPG program. DBI will meet with franchisee members of the BAC CPG sub-committee (a new sub-committee to be created with respect to the CPG Program) in the year 2030 to discuss the possibility of extending the Term of the revenue sharing arrangement that is the subject of this Participation Agreement, but DBI makes no commitment that it ultimately will extend the Term, or the terms on which it would be willing to do so. DBI’s contracts with its vendors may extend beyond the Term; however, the Revenue Sharing Payments that are described in this Participation Agreement shall be limited to the Term.
<b>Territory</b>	The fifty states of the United States, plus the District of Columbia.

3. **FRANCHISEE'S CONFIRMATIONS:**

- a) Franchisee acknowledges and agrees that DBI will engage in the sale of Products as described in this Participation Agreement.
- b) Franchisee acknowledges and agrees that the Revenue Sharing arrangement is limited to the terms and conditions set forth in this Participation Agreement. Among other things, Franchisee agrees that the Revenue Sharing arrangement is limited in time (to the Term), limited as to participation (that is, only applicable if a restaurant is a "Qualified Restaurant" at the time a Revenue Sharing Payment is due to be paid), and limited as to scope (that is, only to Net Profits). Franchisee waives any statutory rights to the contrary (including but not limited to state franchise relationship laws) with respect to the CPG Program.
- c) Franchisee acknowledges and agrees that the Term of this Participation Agreement as it applies to you shall automatically terminate, with respect to any restaurant, if the Franchise Agreement for such restaurant expires or is terminated, or if you are no longer the "franchisee" of such restaurant under the Franchise Agreement and you shall no longer be entitled to any payments hereunder.
- d) Franchisee acknowledges and agrees that the Revenue Sharing Payments described in this Participation Agreement replace and are in lieu of all previous arrangements under which DBI, Franchisor, and/or their affiliates shared profits and/or revenue from the sale of the Products in the Channels or elsewhere.
- e) Franchisee acknowledges and agrees that as a condition of receiving each Revenue Sharing Payment during the Term, DBI requires the Franchisee to provide a release and waiver that is the same in substance as the one contained in Section 5 below.

4. **TRANSFERABILITY.** DBI has the right to transfer any of its rights and/or obligations under this Participation Agreement without the Franchisee's approval. The Franchisee Parties agree that without Franchisor's prior written approval, none of them shall transfer any rights or any obligations under this Participation Agreement to any party. You acknowledge and agree that we may withhold our consent to any proposed transfer of the rights under this Participation Agreement that is not made in conjunction with a simultaneous transfer of the Franchise Agreement to the same buyer.

5. **RELEASES, HOLD HARMLESS AND INDEMNIFICATION.** Each of the Franchisee Parties hereby releases and forever discharges the DD Parties from any and all CPG Claims (as those terms are defined below).

- a) Each of the Franchisee Parties represents, warrants, and agrees, that he/she/it may later discover facts that are different than the facts that he/she/it now knows or believes to be true, but that he/she/it still intends to fully, finally, and forever settle and release all of the CPG Claims released herein.
- b) Each of the Franchisee Parties have given their releases understanding the significance and consequence of their actions, and also understanding the terms of Calif. Civil Code Section 1542 (which states that “[a] general release does not extend to claims which the creditor does not know or suspect exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”).
- c) The term “**Claims**” means: (a) any and all claims, demands, liabilities, and causes of action of any kind or nature; (b) whether vested or contingent, whether known or unknown, and whether suspected or unsuspected; (c) which a party owns and holds, or has at any time owned or held, or may at any time own or hold against any one or more of the DD Parties; and (d) that arose at any time before (and including) the date of this Participation Agreement, whether arising in law, equity, or otherwise.
- d) The term “**CPG Claim**” means any Claim arising from facts or circumstances through the date hereof and that relate to the distribution of Products in the Channels. For clarity, it is acknowledged that the term “CPG Claim” does not include either: (i) the obligation to make future Revenue Sharing Payments during the Term, so long as the restaurant remains a Qualified Restaurant; or (ii) any of the matters or obligations described in Sections 6(j), (k) and (l) below.
- e) The Franchisee Parties further agree for themselves and for their successors and assigns, to indemnify and hold harmless forever the DD Parties, against any and all claims or actions which hereafter may be brought or instituted against any or all of them, or their successors and assigns, by or on behalf of anyone claiming under rights derived from the Franchisee Parties, or any of them, and arising out of or incidental to the CPG Claims to which this release applies.
- f) The term “**DD Parties**” means DBI, Franchisor, and their past, present, and future corporate predecessors, affiliates and successors, as well as their respective past, present, and future corporate parents, affiliates, officers, members, managers, directors, agents, and employees collectively, individually, and in any combination.

6. **GENERAL:**

- a) This Participation Agreement shall be binding upon, and inure to the benefit of, each party's respective successors, heirs, representatives, and assigns.
- b) The captions in this Participation Agreement are for the sake of convenience only, and neither amend nor modify the terms hereof.
- c) Each party represents and warrants to the other parties, and agrees, that: (i) there are no contracts, court orders, or other legal obligations that would prevent that party from negotiating, entering into, or carrying out its responsibilities under this Participation Agreement; (ii) the party did not, before signing this Participation Agreement, sell, transfer, or in any manner whatsoever assign to anyone else any claim, right, or cause of action released under this Participation Agreement; (iii) each entity is in good standing in the jurisdiction where it was formed, has all of the necessary power to enter into this Participation Agreement, and has taken all necessary actions to authorize such action; and (iv) the person signing below on its behalf is authorized to negotiate and sign this Participation Agreement on behalf of such party.
- d) This Participation Agreement shall take effect only when all of the parties have signed; and in particular, as a condition before this Participation Agreement will take effect, all of the Franchisee Parties must sign and deliver this Participation Agreement to DBI.
- e) The parties may sign and deliver this Participation Agreement in an electronic version and in counterparts, and each such counterpart, when taken together with all other copies of this Participation Agreement also signed in counterpart, shall be considered as one agreement. The parties agree that electronic versions of this Participation Agreement shall be given the same treatment and may be enforced in the same manner as if they had signed paper-and-ink copies of this Participation Agreement.
- f) This Participation Agreement is the entire, full, and complete contract among the parties concerning the subject matter hereof, and supersedes all prior agreements concerning the subject matter of this Participation Agreement. The parties confirm that no representations other than the words of this Participation Agreement have induced the parties to execute this Participation Agreement. The parties also confirm that they did not rely upon anything other than the words of this Participation Agreement in deciding whether or not to enter into this Participation Agreement.
- g) No amendment, change, or variance from this Participation Agreement shall be binding unless it is in writing and signed by all of the parties hereto.

- h) This Participation Agreement shall be governed and construed exclusively under the laws of the Commonwealth of Massachusetts without regard to (and without application of) Massachusetts conflicts-of-laws rules.
- i) The Franchisee Parties agree to cooperate with Franchisor with respect to the Products in the Channels and in-restaurant marketing efforts, and to cooperate with Franchisor in connection with any lawsuits filed by any third party or third parties related to the program.
- j) DBI does not presently contemplate launching or licensing bakery products into the Channels. DBI recognizes that entering bakery products into the Channels may not only impact franchisees' sales of those products, but could also impact consumers' perception of the high quality Dunkin' Donuts products they have come to expect. Therefore, before deciding whether to enter bakery products into CPG, DBI agrees that in conjunction with the CPG Sub-Committee, it will retain a duly qualified independent third party to conduct a study to test the potential impact at franchisee store level of any such product introduction, and based on the outcome of that study, DBI agrees to engage in good faith negotiations with the Franchisee CPG Sub-Committee Members regarding the issues of cannibalization and share of any net profits.
- k) DBI does not presently have a product for the category presently known as "ready-to-drink" ("RTD"), but recognizes the potential impact to both franchisees and the brand if RTD is introduced through the Channels. Therefore, before deciding whether to enter RTD into CPG, DBI agrees that in conjunction with the CPG Sub-Committee, it will retain an independent duly qualified third party to conduct a study to test the potential impact at franchisee store level, and based on the outcome of that study, DBI agrees to engage in good faith negotiations with the Franchisee CPG Sub-Committee Members regarding the issues of cannibalization and share of any net profits.
- l) For any claim or right of action that may arise on behalf of the Franchisee or any Franchisee Party against Franchisor for a breach of the "bakery products" or "ready to drink" provisions in Section 6(j) or Section 6(k) above (or in the corresponding provisions of the Memorandum of Understanding dated February 23, 2015 between the BAC Co-Chairs), the Franchisee and Franchisee Parties hereby assign their respective rights to negotiate, settle or bring any such claim or right of action, and the right to make all decisions regarding whether to bring, not bring, negotiate or settle any such claim or right of action, to the franchisee members of the CPG Sub-Committee (the "Franchisee CPG Sub-Committee Members") acting in their respective capacities as Franchisee CPG Sub Committee Members; provided, however, that



none of the Franchisee CPG Sub-Committee Members may bring suit or commence formal litigation against Franchisor or DBI on behalf of the undersigned Franchisee without the Franchisee's prior written approval. None of the Franchisee CPG Sub-Committee Members will have any responsibility or liability to Franchisee or Franchisee Parties hereunder by reason of such assignment, including without limitation any error in judgment or other act performed or omitted to be performed under, or in any way connected with, this Participation Agreement. Each Franchisee and Franchisee Party hereby jointly and severally agrees to indemnify each of the Franchisee CPG Sub-Committee Members against any and all actions, costs, damages, disbursements, expenses (including legal, accounting and other professional fees), liabilities, taxes, losses, obligations, penalties, fines, judgments or settlements of any kind or nature incurred by any of them under, or in any way connected with, this Participation Agreement. It is understood and agreed by all the parties to this Participation Agreement that the Franchisee CPG Sub-Committee Members have complete, absolute and unfettered discretion to act, or not act, as each may determine appropriate, with respect to the foregoing matters.

The parties agree that with the exception of the limited right granted in this section, Franchisor's and DBI's agreement to allow Franchisee CPG Sub-Committee Members to bring such an action on behalf of the Franchisee or Franchisee Parties does not constitute a waiver of Franchisor's or DBI's or any of their related entities' rights to bring a motion to dismiss or to raise any appropriate defenses in any court proceeding or otherwise on any legally permissible grounds. The parties further agree that Franchisor's and DBI's allowance of the Franchisee CPG Sub-Committee Members to act on behalf of Franchisee or Franchisee Parties is solely and exclusively granted with regard to the filing of an action with respect to the "bakery products" and "ready to drink" provisions in Section 6(j) and Section 6(k), above (or in the corresponding provisions of the Memorandum of Understanding dated February 23, 2015 between the BAC Co-Chairs), and for no other purpose. It is further agreed that neither Franchisor's nor DBI's grant of this very limited right will be referred to or used in any other matter or in any unrelated court or other proceeding.

- m) Except as the context requires above, this Participation Agreement does not amend or otherwise impact the parties' respective rights and obligations under the Franchise Agreement.

NOW THEREFORE, the parties, each intending to be legally bound, have signed, sealed, and delivered this Participation Agreement as of the Effective Date.

**Dunkin' Donuts Franchising LLC**

**Dunkin' Brands, Inc.**

(For purposes of Sections 6(j), 6(k) and 6(l) only)

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

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

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

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

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

**[ Franchisee]**

**[Owner 2]**

\_\_\_\_\_  
Owner 1, in her/his personal capacity

\_\_\_\_\_  
Owner 2, in her/his personal capacity

**[Owner 3]**

**[Owner 4]**

\_\_\_\_\_  
Owner 3, in her/his personal capacity

\_\_\_\_\_  
Owner 4, in her/his personal capacity