

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## Rocky Mountain Chocolate Factory, Inc.

**Form: 8-K**

**Date Filed: 2019-12-23**

Corporate Issuer CIK: 1616262

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 20, 2019



ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

001-36865  
(Commission  
File Number)

47-1535633  
(IRS Employer  
Identification No.)

265 Turner Drive  
Durango, Colorado 81303  
(Address, including zip code, of principal executive offices)

Registrant's telephone number, including area code: (970) 259-0554

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class registered	Trading symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	RMCF	Nasdaq Global Market
Preferred Stock Purchase Rights	RMCF	Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## **Item 1.01. Entry into a Material Definitive Agreement.**

### **Strategic Alliance with Edible Arrangements**

On December 20, 2019, Rocky Mountain Chocolate Factory, Inc. (the “Company”) entered into a strategic alliance (the “Strategic Alliance”) with Edible Arrangements, LLC (“EA”) and Farids & Co. LLC (“Farids,” and together with EA and any permitted transferees, “Edible Arrangements”), pursuant to which, among other things, the Company will become the exclusive provider of certain branded chocolate products to EA, its affiliates and its franchisees. In connection with the Strategic Alliance, the Company entered into a strategic alliance agreement, an exclusive supplier operating agreement and a warrant agreement with EA and Farids, as applicable, and as described further below.

#### *Exclusive Supplier Agreement*

On December 20, 2019, the Company entered into an Exclusive Supplier Operating Agreement (the “Exclusive Supplier Agreement”) with EA, pursuant to which the Company will be EA’s exclusive supplier for chocolates, candies and/or other confectionery products. In addition, the Company granted to EA a non-exclusive, worldwide right to market, offer for sale, sell and distribute such products, including through (i) retail stores and (ii) on-line distribution channels such as Internet websites and applications for personal computing devices, as an authorized and independent distributor of such products.

The Exclusive Supplier Agreement has an initial term of five years (the “Initial Term”). After the Initial Term, the Exclusive Supplier Agreement will automatically renew for an additional term of three years, unless either party gives the other at least 24 months’ written notice of non-renewal prior to the end of the Initial Term. Thereafter, the Exclusive Supplier Agreement will continue until either party gives the other at least 24 months’ written notice of termination. Notwithstanding the foregoing, following any change of control of the Company, neither party will issue a notice of non-renewal within four additional years following such change of control. The Exclusive Supplier Agreement also contains customary representations, warranties and covenants, and the parties have also agreed to indemnify and hold each other harmless from claims and losses arising directly or indirectly from the Exclusive Supplier Agreement under certain circumstances.

#### *Strategic Alliance Agreement*

On December 20, 2019, the Company entered into a Strategic Alliance Agreement (the “Strategic Alliance Agreement”) with EA and Farids, pursuant to which, among other things, the Company will issue and sell 126,839 shares (the “Purchased Shares”) of the Company’s common stock to Farids at a price of \$7.884 per share, which represents a 10% discount to the 20-day volume-weighted average price of the Company’s common stock on the Nasdaq Global Market as of December 19, 2019. The issuance and sale of the Purchased Shares is required to close within 90 days, subject to the satisfaction of certain customary closing conditions. The Purchased Shares may not be transferred within the first two years following the date of the Strategic Alliance Agreement, subject to certain limited exceptions. In addition, the Company has certain rights of first offer and rights of first refusal with respect to the Purchased Shares or the Warrants Shares (as defined below), and the Company also granted certain registration rights to Edible Arrangements with respect to the Purchased Shares and the Warrants Shares. Subject to certain limited exceptions, Edible Arrangements is also prohibited from beneficially owning 19.99% or more of the fully diluted number of shares of Common Stock outstanding at any time.

Under the Strategic Alliance Agreement, the Company agreed to nominate Tariq Farid for election to the Board of Directors of the Company at the Company’s 2019 annual meeting of stockholders to be held on January 9, 2020. In addition, only at such time that Edible Arrangements owns more than 5% of the outstanding common stock of the Company, Edible Arrangements will have the right to nominate Tariq Farid, or in the event of Mr. Farid’s death or permanent disability, another individual that is reasonably acceptable to the Company, as director of the Company (the “Springing Nomination Right”). The Springing Nomination Right will terminate at such time that Edible Arrangements owns less than 5% of the outstanding common stock of the Company and if EA does not achieve certain revenue thresholds.

The Strategic Alliance Agreement also contains customary representations, warranties and covenants and includes the terms and conditions for, among other things, the sale of the Purchased Shares to Farids and the Springing Nomination Rights, indemnification and contribution obligations and other terms and conditions typical to agreements of this type.

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## Warrant

In consideration of EA entering into the Exclusive Supplier Agreement and the performance of its obligations therein, on December 20, 2019, the Company issued EA a warrant (the "Warrant") to purchase up to 960,677 shares of Common Stock (the "Warrant Shares") at an exercise price of \$8.76 per share, which represents the 20-day volume-weighted average price of the Company's common stock on the Nasdaq Global Market as of December 19, 2019. The Warrant Shares vest in annual tranches in varying amounts following each contract year under the Exclusive Supplier Agreement, subject to, and only upon, EA's achievement of certain revenue thresholds on an annual or cumulative five-year basis in connection with its performance under the Exclusive Supplier Agreement. The Warrant expires six months after the final and conclusive determination of revenue thresholds for the fifth contract year and the cumulative revenue determination in accordance with the terms of the Warrant. The vesting of the Warrant Shares will accelerate under certain circumstances upon a change of control of the Company.

### Amendment to Rights Agreement

On December 20, 2019, in order to permit the transactions contemplated in connection with the Strategic Alliance, the Company entered into an Amendment (the "Rights Amendment") to the Company's Rights Agreement, dated as of March 1, 2015 (the "Rights Agreement"), by and between the Company and Computershare Trust Company, N.A., as rights agent (the "Rights Agent"). The Company amended the Rights Agreement to add the defined term "Designated Holder" for the purpose of providing a limited exemption to Farids, together with all of its Affiliates and Associates (each as defined in the Rights Agreement) from the definition of "Acquiring Person" under the Rights Agreement, along with other conforming changes.

This limited exemption permits Farids, together with all of its Affiliates and Associates, to become the Beneficial Owner (as defined in the Rights Agreement) of up to 20% of the Common Stock of the Company then outstanding without becoming an Acquiring Person rather than the 15% threshold otherwise applicable. Farids, together with all of its affiliates and associates will be deemed a Designated Holder until the earliest of such time as (i) Farids, together with all of its affiliates and associates ceases to beneficially own 10% or more of the Common Stock, (ii) either Farids & Co. LLC or Edible Arrangements, LLC or any parent entity of either is subject to a change of control and either purchases or acquires any additional shares of common stock of the Company following such change of control or (iii) Farids, together with all of its affiliates and associates reports or is required to report on Schedule 13D (or any successor or comparable report) its beneficial ownership of common stock of the Company and discloses its intent to effect or promote a change in control of the Company.

The foregoing descriptions of the Exclusive Supplier Agreement, the Strategic Alliance Agreement, the Warrant and the Rights Amendment do not purport to be complete and are subject to, and are qualified in their entirety by reference to, the full text of such agreements, which are attached hereto as Exhibits 10.1, 10.2, 4.1 and 4.2, respectively, to this Current Report on Form 8-K, each of which is incorporated by reference herein.

### Item 3.02. Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference in this Item 3.02 of this Current Report on Form 8-K. The Purchased Shares and the Warrant Shares to be issued pursuant to the Strategic Alliance Agreement and the Warrant, as applicable, will be issued without registration under the Securities Act, in reliance upon the exemption provided in Section 4(a)(2) thereunder.

### Item 3.03. Material Modification to Rights of Security Holders

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference in this Item 3.03 of this Current Report on Form 8-K.

### Item 7.01. Regulation FD Disclosure.

#### *Strategic Alliance Letter of Intent - E-Commerce Management*

On December 20, 2019, the Company entered into a Strategic Alliance Letter of Intent related to e-commerce management (the "LOI") with EA, whereby the Company would license to EA certain rights related to the Company's domain name for purposes of EA selling certain products produced by the Company to end user customers through a dedicated webpage on EA's website ("RMCF Marketplace"). The parties agreed to work towards entering to a definitive license agreement to govern the relationship between the Company and EA under substantially the terms contemplated in the LOI. The LOI is non-binding, other than with respect to certain customary provisions, such as, among others, those related to confidentiality and expenses.

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Under the proposed license agreement, the Company would continue to operate a website that offers corporate information and information about its products (the "RMCF Website"). Although the exact digital architecture has not been defined or agreed, it is understood that the RMCF Website would contain a link that would seamlessly direct visitors seeking to purchase the Company's products to the RMCF Marketplace. Upon clicking the link, the visitor would be redirected to the EA-managed RMCF Marketplace where they could purchase the Company's products. The RMCF Website would provide information to visitors only and all e-commerce activity previously performed by the Company for its products would be managed by EA.

The foregoing description of the LOI does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the full text of the LOI, which is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K, which is incorporated by reference herein.

The information in this Item 7.01 of this Current Report shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), nor shall it be deemed incorporated by reference in any filing under the Securities Act, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

#### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
4.1†	<a href="#"><u>Common Stock Purchase Warrant, dated as of December 20, 2019, issued to Edible Arrangements, LLC.</u></a>
4.2	<a href="#"><u>Amendment to Rights Agreement, dated as of December 20, 2019, by and between Rocky Mountain Chocolate Factory, Inc. and Computershare Trust Company, N.A., as rights agent.</u></a>
10.1†	<a href="#"><u>Exclusive Supplier Operating Agreement, dated as of December 20, 2019, by and between Rocky Mountain Chocolate Factory, Inc. and Edible Arrangements, LLC.</u></a>
10.2†	<a href="#"><u>Strategic Alliance Agreement, dated as of December 20, 2019, by and among Rocky Mountain Chocolate Factory, Inc., Farids &amp; Co. LLC and Edible Arrangements, LLC.</u></a>
99.1	<a href="#"><u>Strategic Alliance Letter of Intent, dated as of December 20, 2019, by and between Rocky Mountain Chocolate Factory, Inc. and Edible Arrangements, LLC.</u></a>

† Certain portions of the exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is (i) not material and (ii) would likely cause competitive harm to the Company if publicly disclosed.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.**

Date: December 23, 2019

By: /s/ Bryan J. Merryman

Name: Bryan J. Merryman

Title: Chief Executive Officer, Chief Financial Officer and Chairman of the Board of Directors

PORTIONS OF THIS EXHIBIT MARKED BY [\*\*] HAVE BEEN OMITTED PURSUANT TO RULE 601(B)(10) OF REGULATION S-K. THE OMITTED INFORMATION IS (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

EXECUTION VERSION

NEITHER THIS WARRANT NOR THE SHARES OF COMMON STOCK ISSUABLE UPON ITS EXERCISE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, AND MAY NOT BE OFFERED, SOLD, OR OTHERWISE TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS (I) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) IN COMPLIANCE WITH AN EXEMPTION THEREFROM AND ACCOMPANIED, IF REQUESTED BY THE ISSUER, WITH AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH TRANSFER IS IN COMPLIANCE WITH AN EXEMPTION THEREFROM.

THIS WARRANT AND THE SHARES OF COMMON STOCK ISSUED UPON ITS EXERCISE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN ARTICLE II OF THIS WARRANT

Warrant No. W-1  
Date of Issuance: December 20, 2019

Number of Warrant Shares: Up to 960,677

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.**

**Common Stock Purchase Warrant**

THIS COMMON STOCK PURCHASE WARRANT (this "Warrant") certifies that, for value received, Edible Arrangements, LLC or its permitted assigns (collectively, the "Registered Holder") is entitled, upon the terms subject to the limitations on exercise and the conditions hereinafter set forth, to purchase from Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (the "Company"), at the place where the Warrant Office designated pursuant to Section 2.1 is located, at a purchase price per share of \$8.76 (as adjusted pursuant to the terms of this Warrant, the "Exercise Price"), up to 960,677 shares (as adjusted pursuant to the terms of this Warrant, the "Warrant Shares") of duly authorized, validly issued, fully paid and nonassessable shares of common stock, \$0.001 par value per share, of the Company (the "Common Stock"), and is entitled also to exercise the other appurtenant rights, powers and privileges hereinafter set forth. The number of shares of the Common Stock purchasable hereunder and the Exercise Price are subject to adjustment in accordance with Article III hereof. This Warrant shall expire at 5:00 p.m., New York time, on the sixth month after the final and conclusive determination of EA Revenue (as defined in Section 4.1(b)) for the fifth Contract Year and the Cumulative EA Revenue in accordance with Section 4.2 hereof (the "Expiration Date"). Receipt of this Warrant by the Registered Holder shall constitute acceptance of and agreement to the terms and conditions set forth herein.

This Warrant is issued in connection with that certain Exclusive Supplier Operating Agreement, dated as of December 20, 2019 (the "Agreement"), by and between the Company and the Registered Holder, and that certain Strategic Alliance Agreement, dated as of December 20, 2019 (the "SAA"), by and among the Company, Farids & Co. LLC and the Registered Holder. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Agreement or the SAA, as applicable.

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**ARTICLE I**  
**Exercise of Warrant**

- 1.1 **Method of Exercise.** The Vested Warrant Shares (as defined in Section 4.1(a)) pursuant to this Warrant may be exercised by the Registered Holder as a whole or in part at any time and from time to time subsequent to the date hereof and until the Expiration Date at which time this Warrant shall expire and be of no further force or effect. To exercise this Warrant, the Registered Holder shall deliver to the Company, at the Warrant Office designated in Section 2.1(a), a written notice in the form of the Purchase Form attached as Exhibit A hereto, stating therein the election of the Registered Holder to exercise this Warrant in the manner provided in the Purchase Form, along with payment in full of the Exercise Price (in the manner described below) for all Vested Warrant Shares purchased hereunder. This Warrant shall be deemed to be exercised on the date of receipt by the Company of the Purchase Form, accompanied by payment for the Vested Warrant Shares to be purchased and surrender of this Warrant, as aforesaid, and such date is referred to herein as the "Exercise Date." Upon such exercise, the Company shall promptly (and in any event within three Business Days (as defined in Section 1.1) following the Exercise Date) issue and deliver to the Registered Holder a certificate or statement evidencing ownership in book-entry form for the full number of the Vested Warrant Shares purchasable by the Registered Holder hereunder, against the receipt by the Company of the total Exercise Price payable hereunder for all such Vested Warrant Shares, (a) in cash or by certified or cashier's check or (b) pursuant to the net exercise provisions of Section 1.2. The person or entity in whose name the certificate(s) or book-entry statements for Common Stock is to be issued shall be deemed to have become a holder of record of such Common Stock on the Exercise Date. If the Company fails to deliver such certificate or statement during the time period specified above, then the Registered Holder will have the right to rescind such exercise; provided, that nothing herein shall limit the Registered Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance or injunctive relief with respect to the Company's failure to deliver such certificate or statement in accordance with the terms of this Warrant. "Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.
- 1.2 **Net Exercise.** In lieu of exercising the Vested Warrant Shares by delivering payment of the Exercise Price to the Company in cash, if the fair market value of one share of Common Stock is greater than the Exercise Price (at the date of calculation as set forth below), the Registered Holder of this Warrant may elect to receive a number of shares of Common Stock equal to the value of this Warrant (or of any portion of this Warrant being canceled) by surrender of this Warrant at the Warrant Office together with a properly completed and executed Purchase Form, in which event the Company shall issue the Registered Holder a number of shares of Common Stock computed as follows:

$$X = \frac{Y(A - B)}{A}$$

Where:

- X = the number of shares of Common Stock to be issued to the Registered Holder.
- Y = the number of shares of Common Stock purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being canceled (at the date of such calculation).
- A = the Current Market Price of one share of Common Stock (at the date of such calculation). “Current Market Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (as defined below), the volume-weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in The Pink Open Market published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Registered Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company, in each case, rounded to the nearest cent. “Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing). “Trading Day” means a day on which the principal Trading Market is open for trading.
- B = Exercise Price (as adjusted to the date of such calculation).
- 1.3 Fractional Shares. No fractional shares of Common Stock shall be issued in connection with any exercise of this Warrant. In lieu of any fractional shares that would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the Current Market Price of one share of Common Stock at the date of exercise.
- 1.4 Termination. Notwithstanding any other provision of this Warrant, the right to exercise this Warrant shall terminate upon the Expiration Date.

- 1.5 Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of the Registered Holder and upon surrender of this Warrant, at the time of delivery of the certificate or statement evidencing ownership in book-entry form for the Vested Warrant Shares purchased by the Registered Holder hereunder, deliver to the Registered Holder a new Warrant evidencing the rights of the Registered Holder to purchase the unpurchased Warrant Shares pursuant to this Warrant, which new Warrant shall in all other respects be identical to this Warrant.
- 1.6 Registered Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and the Registered Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 1 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Purchase Form, the Registered Holder (together with the Registered Holder's Affiliates (as defined in Section 2.3), and any other Persons (as defined in Section 2.3) acting as a group together with the Registered Holder or any of the Registered Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Registered Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised and/or unvested portion of this Warrant beneficially owned by the Registered Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Registered Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 1.6, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, it being acknowledged by the Registered Holder that the Company is not representing to the Registered Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Registered Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 1.6 applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Registered Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Registered Holder, and the submission of a Purchase Form shall be deemed to be the Registered Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Registered Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 1.6, in determining the number of outstanding shares of Common Stock, the Registered Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Securities and Exchange Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or its transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of the Registered Holder, the Company shall within one Business Day confirm orally and in writing to the Registered Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Registered Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 19.99% of the fully diluted number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1.6 to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

**ARTICLE II**  
**Warrant Office; Transfer**

- 2.1 **Warrant Office.** The Company shall maintain an office for certain purposes specified herein (the “ Warrant Office”), which office shall initially be the Company’s principal office, and may subsequently be such other office of the Company or of any transfer agent of the Common Stock in the continental United States of which written notice has previously been given to the Registered Holder. The Company shall maintain, at the Warrant Office, a register for the Warrant in which the Company shall record the name and address of the Registered Holder, as well as the name and address of each permitted assignee of the rights of the Registered Holder.
- 2.2 **Ownership of Warrant.** The Company may deem and treat the Registered Holder as the holder and owner hereof (notwithstanding any notations of ownership or writing hereon made by anyone other than the Company) for all purposes and shall not be affected by any notice to the contrary, until presentation of this Warrant for registration of transfer as provided in this Article II.
- 2.3 **Transfer of Warrants.** The Company agrees to maintain at the Warrant Office books for the registration and transfer of this Warrant. This Warrant may be transferred by the Registered Holder (including, for the avoidance of doubt, any subsequent transferee) in whole or in part only in compliance with applicable law and only to his, her or its Permitted Transferees. The Company, from time to time, shall register the transfer in whole or in part of this Warrant in such books upon surrender of this Warrant at the Warrant Office, properly endorsed, together with a written assignment of this Warrant, substantially in the form of the Assignment attached as Exhibit B hereto. Upon any such transfer, a new Warrant shall be issued to the transferee, and the Company shall cancel the surrendered Warrant. The Registered Holder shall pay all taxes and all other expenses and charges payable in connection with the transfer of Warrants pursuant to this Section 2.3. For purposes of this Warrant, “Permitted Transferees” shall mean (a) in the case of an individual, the individual’s spouse, child, estate, personal representative, heir or successor, a trust for the benefit of any of the foregoing persons, or a partnership or limited liability company the partners or members of which consist solely of any of the foregoing persons and (b) in the case of any Registered Holder that is not a natural person (other than a trust as described in clause (a) of this sentence, for whom transfers may be made to the persons described in such clause (a)), to a person or entity that is an Affiliate, direct partner, member or stockholder of such Registered Holder or a permitted successor or assignee of the Agreement. “Affiliate” shall mean any an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind (each, a “Person”) that, directly or indirectly through one or more intermediaries, “controls” or is “controlled” by or is under “common control” with a Person (as such terms are used in and construed under Rule 405 under the Securities Act).

- 2.4 No Rights as Shareholder Until Exercise. No holder of this Warrant, as such, shall be entitled to vote or receive dividends or be deemed to be a stockholder of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Registered Holder of this Warrant, as such, any rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action, receive notice of meetings, receive dividends or subscription rights, or otherwise. Upon the surrender of this Warrant and the payment of the aggregate Exercise Price, the Warrant Shares so purchased shall be and be deemed to be issued to the Registered Holder as the record owner of such shares as of the close of business on the later of the date of such surrender or payment.
- 2.5 Expenses of Delivery of Warrants. Except as provided in Section 2.3, the Company shall pay all reasonable expenses, taxes and other charges payable in connection with the preparation, issuance and delivery of Warrants and related Warrant Shares hereunder.
- 2.6 Compliance with Securities Laws. The Registered Holder (and its transferees and assigns), by acceptance of this Warrant, covenants and agrees that such Registered Holder is acquiring the Warrants evidenced hereby, and, upon exercise hereof, the Warrant Shares, for its own account as an investment and not with a view to distribution thereof in violation of applicable law. Neither this Warrant nor the Warrant Shares issuable hereunder have been registered under the Securities Act or any state securities laws and no transfer of this Warrant or any Warrant Shares shall be permitted unless the Company has received notice of such transfer in the form of the assignment attached hereto as Exhibit B, accompanied, if requested by the Company, by an opinion of counsel reasonably satisfactory to the Company that an exemption from registration of such Warrant or Warrant Shares under the Securities Act is available for such transfer, except that no such opinion shall be required after a registration for resale of the Warrant Shares has become effective. Upon any exercise of the Warrants prior to effective registration for resale or except as in accordance with Rule 144 under the Securities Act, certificates representing the Warrant Shares shall bear a restrictive legend substantially identical to that set forth as follows:

"The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended, or the securities laws of any state (collectively, the "Acts"). Neither the shares nor any interest therein may be offered, sold, transferred, pledged, or otherwise disposed of in the absence of an effective registration statement with respect to the shares under all of the applicable Acts, or an opinion of counsel reasonably satisfactory to the Company to the effect that such registrations are not required."

The legend set forth in this Section 2.6 shall be removed and the Company shall issue one or more certificates without such legend or any other legend to the holder of the Warrant Shares upon which it is stamped or issue to such holder by electronic delivery, if (i) such Warrant Shares are registered for resale under the Securities Act, (ii) such Warrant Shares are sold or transferred pursuant to Rule 144, or (iii) such Warrant Shares are eligible for resale under the Securities Act without regard to current public information, manner of sale or volume limitations. Any fees (with respect to the Company's transfer agent, Company counsel or otherwise) associated with the removal of such legend shall be borne by the Company.

Any purported transfer of the Warrant or Warrant Shares not in compliance with the provisions of this section shall be null and void. Stop transfer instructions have been, or will be, imposed with respect to the Warrant Shares so as to restrict resale or other transfer thereof, subject to this Section 2.6.

**ARTICLE III**  
**Anti-Dilution Provisions**

- 3.1 Adjustment of Exercise Price and Number of Warrant Shares. The number of shares of Common Stock for which this Warrant is exercisable and/or the Exercise Price shall be subject to adjustment from time to time upon the occurrence of certain events as follows:
- a) Subdivision or Combination of Common Stock. If at any time on or after the date of this Warrant the Company shall (i) subdivide its outstanding shares of Common Stock into a greater number of shares, or (ii) shall pay a dividend with respect to its outstanding shares of Common Stock in shares of Common Stock or any other equity or equity-equivalent securities, the Exercise Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of Warrant Shares receivable shall be proportionately increased so that the Registered Holder after such date shall be entitled to receive, upon payment of the same aggregate Exercise Price as would have been payable before such date, the aggregate number of shares of Common Stock that, if this Warrant had been exercised immediately prior to such date, the Registered Holder would have owned upon such exercise and been entitled to receive by virtue of such dividend or subdivision; and, conversely, if at any time on or after the date of this Warrant the outstanding number of shares of Common Stock shall be combined into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall be proportionately increased and the number of shares receivable upon exercise of the Warrant shall be proportionately decreased so that the Registered Holder after such date shall be entitled to receive, upon payment of the same aggregate Exercise Price as would have been payable before such date, the aggregate number of shares of Common Stock that, if this Warrant had been exercised immediately prior to such date, the Registered Holder would have owned upon such exercise and been entitled to receive by virtue of such combination. Any adjustment under this subsection (a) shall become effective when the applicable dividend, subdivision or combination becomes effective.

- b) Reclassification, Reorganization, Consolidation or Merger. In case of any reclassification or change of outstanding securities of the class issuable upon exercise of this Warrant (other than as a result of a subdivision or combination pursuant to Section 3.1(a)), or in case of any reorganization, consolidation or merger of the Company with or into another entity, the Company, or such successor entity, as the case may be, shall execute a new Warrant, providing that the holder of this Warrant shall have the right to exercise such new Warrant and procure upon such exercise in lieu of each Warrant Share theretofore issuable upon exercise of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, reorganization, consolidation or merger by a holder of one share of Common Stock. Such new Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 3. The provisions of this subsection shall similarly apply to successive reclassifications, changes, reorganizations, consolidations and mergers.
- c) Adjustment of Number of Shares. Upon each adjustment in the Exercise Price, the number of shares of Common Stock purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of shares of Common Stock purchasable immediately prior to such adjustment in the Exercise Price by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment and the denominator of which shall be the Exercise Price immediately thereafter.
- d) Rounding of Calculations; Minimum Adjustment. All calculations under this Section 3.1(a) and under Section 3.1(b) shall be made to the nearest cent. Any provision of this Section 3.1 to the contrary notwithstanding, no adjustment in the Exercise Price shall be made if the amount of such adjustment would be less than one percent, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate one percent or more.

- e) Other Distributions; Certain Repurchases of Common Stock. In case the Company or any Affiliate thereof shall (i) make a distribution to holders of its Common Stock of securities, evidence of indebtedness, assets, cash, rights or warrants (excluding Ordinary Cash Dividends (as defined below) and dividends of shares of Common Stock on its Common Stock referred to in Section 3(a)(ii) or (ii) effects a purchase of shares of Common Stock pursuant to a tender or exchange offer or other offer available to substantially all holders of Common Stock, then the Company and the Registered Holder shall in good faith negotiate an equitable adjustment in Exercise Price in effect immediately prior thereto and an equitable adjustment in the number of Warrant Shares. "Ordinary Cash Dividends" means a regular quarterly cash dividend on shares of Common Stock out of surplus or net profits legally available therefor to extent that the aggregate per share dividends paid on the outstanding Common Stock in any quarter do not exceed \$0.25 per share, as adjusted for any stock split, stock dividend, reverse stock splits reclassification or similar transaction.
- 3.2 Statement Regarding Adjustments. Whenever the Exercise Price shall be adjusted as provided in Section 3.1, and upon each change in the number of shares of the Common Stock issuable upon exercise of this Warrant, the Company shall forthwith file, at the office of any transfer agent for this Warrant and at the principal office of the Company, a statement showing in detail the facts requiring such adjustment and the Exercise Price and new number of shares issuable that shall be in effect after such adjustment, and the Company shall also cause a copy of such statement to be given to the Registered Holder. Each such statement shall be signed by the Company's chief financial or accounting officer.
- 3.3 Costs. The Company shall pay all documentary, stamp, transfer or other transactional taxes attributable to the issuance or delivery of the Warrant Shares or any certificate or other document evidencing such Warrant Shares upon exercise of this Warrant. The Company shall, upon request, reimburse the Registered Holder for any such documented taxes assessed against the Registered Holder.
- 3.4 Reservations of Shares. The Company shall reserve at all times so long as this Warrant remains outstanding, free from preemptive rights, out of its treasury Common Stock or its authorized but unissued shares of Common Stock, or both, solely for the purpose of effecting the exercise of this Warrant, sufficient shares of Common Stock to provide for the exercise hereof. The Company shall cause to be executed and issued the necessary certificate or statement evidencing ownership in book-entry form for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Registered Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (c) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

3.5 Valid Issuance. All shares of Common Stock which may be issued upon exercise of this Warrant will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof attributable to any act or omission by the Company, and the Company shall take no action which will cause a contrary result (including without limitation, any action which would cause the Exercise Price to be less than the par value, if any, of the Common Stock).

#### ARTICLE IV

##### Vesting

4.1 Vesting. The number of shares of Common Stock purchasable upon the exercise of this Warrant shall be subject to vesting in accordance with the following provisions:

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- a) EA Revenue. For purposes of this Warrant, “EA Revenue” shall mean, with respect to the applicable Contract Year, [\*\*].
- b) Adjustments. The number of Warrant Shares subject to vesting set forth in Section 4.1(a) above shall be adjusted to the extent and in the same manner as the aggregate number of shares of Common Stock is adjusted under the provisions of Section 3 hereof.
- c) Operating Covenants. The Company hereby covenants that, from the date hereof until the earlier to occur of termination or expiration of the Agreement; (i) the Company shall, within sixty (60) days following the end of each of its fiscal quarters, provide the Registered Holder with a report of EA Revenue for such fiscal quarter (for the avoidance of doubt, such quarterly reports shall not require the same level of detail as the EA Revenue Statement (as defined in Section 4.2)); and (ii) neither the Company nor any of its Affiliates will take or fail to take any action that is intended to reduce the EA Revenue during any Contract Year or shift the EA Revenue from one Contract Year to another Contract Year.

- 4.2 Determination of Vesting. On or before sixty (60) days following the applicable Contract Year, the Company shall deliver to the Registered Holder a statement setting forth in reasonable detail the Company's calculation, made in good faith, of the amount of EA Revenue for such Contract Year and the number of corresponding Vested Warrant Shares in accordance with Section 4.1 (the "EA Revenue Statement"). The EA Revenue Statement shall include a breakdown of the source of EA Revenue among: (a) the Registered Holder; (b) Affiliates of the Registered Holder; (c) each franchisee of the Registered Holder and its Affiliates; and (d) the Website. The EA Revenue Statement for the fifth Contract Year shall also include the EA Revenue for the Cumulative vesting period and the number of corresponding Vested Warrant Shares. Following such time, the Company shall provide the Registered Holder and its representatives reasonable access to the records, properties, personnel and (subject to the execution of customary work paper access letters if requested) auditors of the Company and its subsidiaries relating to the preparation of the EA Revenue Statement and shall cause the personnel of the Company and its subsidiaries to reasonably cooperate with the Registered Holder in connection with its review of the EA Revenue Statement. If the Registered Holder in good faith disagrees with the calculation of EA Revenue set forth in the EA Revenue Statement, the Registered Holder may, within 30 days after receipt of the EA Revenue Statement, deliver written notice of its disagreement to the Company, in which event, the Registered Holder and the Company shall negotiate in good faith to resolve any such disagreement. If the Company and the Registered Holder are unable to resolve any such disagreement within thirty (30) days after the Company's receipt of notice of the Registered Holder's objection, the Registered Holder and the Company shall submit the dispute to a mutually acceptable firm of independent accountants (the "Neutral Accountant"). If the Company and the Registered Holder are unable to mutually agree on the Neutral Accountant, an accounting firm will be selected by lot from a list of four nationally recognized firms (excluding Plante & Moran PLLC and Smith & Howard). The Company and the Registered Holder shall use reasonable efforts to cause the Neutral Accountant to resolve all disagreements over the EA Revenue as soon as practicable, but in any event within thirty (30) days after submission of the disputes to the Neutral Accountant. The Company and the Registered Holder shall instruct the Neutral Accountant to resolve all disagreements over an item used in computing the EA Revenue at an amount determined by the Registered Holder or at an amount determined by the Company or at any amount between such amounts. The resolution of such disagreements and the determination of the EA Revenue and the number of corresponding Vested Warrant Shares by the Neutral Accountant shall be final and binding on the Company and the Registered Holder. The Company shall pay one half and the Registered Holder shall pay one half of the fees and expenses of the Neutral Accountant.
- 4.3 Expired Warrant Shares. To the extent any Warrant Shares subject to this Warrant do not vest in accordance with the terms of Section 4.1(a) and (b) above, such Warrant Shares shall be deemed "Expired Warrant Shares" and shall automatically expire, be canceled and shall not be exercisable under any circumstances.

4.4 Change in Control. In each case, with respect to unvested Warrant Shares that are not Expired Warrant Shares:

- a) in the event of the consummation of a Change in Control of any kind described in the definition thereof before the final and conclusive determination of the EA Revenue for the fifth Contract Year and the acquiror terminates the Agreement in accordance with the terms thereof in connection with such Change in Control, all Warrant Shares that are not already Vested Warrant Shares and are not Expired Warrant Shares, shall vest immediately prior to consummation of such Change in Control as first Contract Year Change in Control Vested Warrant Shares, second Contract Year Change in Control Vested Warrant Shares, third Contract Year Change in Control Vested Warrant Shares, fourth Contract Year Change in Control Vested Warrant Shares, fifth Contract Year Change in Control Vested Warrant Shares or cumulative vesting period Change in Control Vested Warrant Shares, as applicable, and be deemed Vested Warrant Shares upon such Change in Control; provided, however, that under no circumstances shall the Change in Control Vested Warrant Shares issued pursuant to this Section 4.4(a) be equal to or greater than 720,507; provided, further, that under no circumstances shall the Change in Control Vested Warrant Shares issued pursuant to this Section 4.4(a) cause the total number of Vested Warrant Shares to be equal to or greater than 960,677; or
- b) in the event of the consummation of a Change in Control of any kind described in the definition thereof before the final and conclusive determination of the EA Revenue for the fifth Contract Year and the acquiror does not terminate the Agreement in accordance with the terms thereof in connection with such Change in Control, all Warrant Shares that are not already Vested Warrant Shares and are not Expired Warrant Shares, shall vest immediately prior to consummation of such Change in Control, in each case, as 50% of the amount of first Contract Year Change in Control Vested Warrant Shares, second Contract Year Change in Control Vested Warrant Shares, third Contract Year Change in Control Vested Warrant Shares, fourth Contract Year Change in Control Vested Warrant Shares, fifth Contract Year Change in Control Vested Warrant Shares or cumulative vesting period Change in Control Vested Warrant Shares, as applicable, and be deemed Vested Warrant Shares upon such Change in Control; provided, however, that under no circumstances shall the Change in Control Vested Warrant Shares issued pursuant to this Section 4.4(b) be equal to or greater than 360,254; provided, further, that under no circumstances shall the Change in Control Vested Warrant Shares issued pursuant to this Section 4.4(b) cause the total number of Vested Warrant Shares to be equal to or greater than 960,677; provided, further, that notwithstanding anything in this Warrant to the contrary, any Warrant Shares that are not already Expired Warrant Shares that do not vest in accordance with the terms hereof in connection with such Change in Control shall not become Expired Warrant Shares but shall continue to be eligible for vesting in accordance with the terms of Section 4.1(a) and (b) above as if no Change in Control Vested Warrant Shares were vested (provided that any Vested Warrant Shares in a Contract Year determined in accordance with the terms of Section 4.1(a) and (b) above shall be reduced by the number Change in Control Vested Warrant Shares that became vested in accordance with this Section 4.4(b) for such Contract Year).

- c) A "Change in Control" shall have the meaning set forth in the SAA.
- d) The Company agrees that it will not consummate or permit to occur a Change in Control unless it has provided the Registered Holder with the Change in Control Notice. All Vested Warrant Shares, including those that become vested in accordance with Section 4.4(a) immediately prior to such Change in Control, shall be deemed to be exercised immediately prior to the closing of the Change in Control on a net exercise basis pursuant to Section 1.2 so that the Registered Holder receives in connection with such Change in Control the same securities, cash and property as would be payable for each share of Common Stock that would be issuable to the Registered Holder upon such net exercise immediately prior to the Change of Control; provided further, if the Change in Control Notice specifies that acquiror has elected to not terminate the Agreement, then notwithstanding anything in this Warrant to the contrary, all Warrant Shares that vest in accordance with the terms of Section 4.1(a) and (b) above after consummation of the Change in Control as set forth in the final proviso of Section 4.4(b) shall be deemed to be exercised immediately upon vesting for a cash amount per Vested Share immediately payable by the Company to the Registered Holder equal to the difference between (a) the Change in Control Market Value and (B) the Exercise Price. The "Change in Control Market Value" shall be equal to the cash paid or payable, market value of marketable equity securities or interests and fair value of unmarketable equity securities or other property (including in each case any amounts into escrow) per share of Common Stock in connection with such Change in Control. If the market value of such marketable equity securities or interests is specified in the definitive Change in Control agreement (or binding agreement for related transactions occurring prior to the Change in Control Closing Date) ("Specified Market Value"), then the market value will be the Specified Market Value. If there is no such Specified Market Value, then the market value of such marketable equity securities or interests shall be the Current Market Price. The fair value of unmarketable equity securities and interests shall be the fair market value thereof as of the date the definitive Change in Control agreement (or binding agreement for related transactions occurring prior to the Change in Control Closing Date) is entered into by the Company as determined in good faith by the board of directors of the Company.
- 4.5 Notice of Vesting. Within five Business Days after the final determination of EA Revenue and the number of corresponding Vested Warrant Shares pursuant to Section 4.2 for each Contract Year, or the immediate vesting of Warrant Shares pursuant to Section 4.4, the Company will prepare and make available at the Warrant Office for the Registered Holder a computation of the number of Vested Warrant Shares; provided, however, that the number of Vested Warrant Shares set forth on each EA Revenue Statement shall constitute Vested Warrant Shares upon delivery of the EA Statement to the Registered Holder (notwithstanding the submission of a notice of disagreement by the Registered Holder as to such number).

**ARTICLE V**  
**Miscellaneous**

- 5.1 Entire Agreement. This Warrant contains the entire agreement between the Registered Holder and the Company with respect to the Warrant Shares that it can purchase upon exercise hereof and the related transactions and supersedes all prior arrangements or understanding with respect thereto.
- 5.2 Governing Law. This Warrant shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to its conflict of law provisions.
- 5.3 Submission to Jurisdiction. Each of the parties hereto hereby irrevocably and unconditionally submits in any suit, action or proceeding arising out of or related to this Agreement or any of the transactions contemplated hereby to the jurisdiction of the courts of the State of Delaware, the courts of the United States of America for the District of Delaware (each, a "Delaware Court") and any appellate courts from any thereof and irrevocably waives any immunity from the jurisdiction of such courts and any claim of improper venue, forum non conveniens or any similar objection which it might otherwise be entitled to raise in any such suit, action or proceeding. Each of the parties hereto irrevocably agrees that service of process upon such party by first-class mail to the address of such party pursuant to Section 5.7 shall be deemed, in every respect, effective service of process upon such party. The parties further agree that any suit, action or proceeding instituted by a party to this Warrant against another party to this Warrant shall be initially instituted exclusively in a Delaware Court, and each of the parties hereby voluntarily and irrevocably waives all its rights, whether granted by statutory, constitutional or common law, to seek a trial before a jury with respect to such claim.
- 5.4 Waiver and Amendment. Any term or provision of this Warrant may be waived at any time by the party which is entitled to the benefits thereof, and any term or provision of this Warrant may be amended or supplemented at any time by the written consent of the parties (it being agreed that an amendment to or waiver under any of the provisions of Article III of this Warrant shall not be considered an amendment of the number of Warrant Shares or the Exercise Price). No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence.
- 5.5 Illegality. In the event that any one or more of the provisions contained in this Warrant shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in any other respect and the remaining provisions of this Warrant shall not, at the election of the party for whom the benefit of the provision exists, be in any way impaired.

- 5.6 Copy of Warrant. A copy of this Warrant shall be filed among the records of the Company.
- 5.7 Notice. Any notice or other document required or permitted to be given or delivered to the Registered Holder shall be delivered at, or sent by certified or registered mail to such Registered Holder at, the last address shown on the books of the Company maintained at the Warrant Office for the registration of this Warrant or at any more recent address of which the Registered Holder shall have notified the Company in writing. Any notice or other document required or permitted to be given or delivered to the Company, other than such notice or documents required to be delivered to the Warrant Office, shall be delivered at, or sent by certified or registered mail to, the principal office of the Company, or any other address within the continental United States of America as shall have been designated in writing by the Company delivered to the Registered Holder.
- 5.8 Limitation of Liability; Not Stockholders. Until the exercise of this Warrant, the Registered Holder shall not have or exercise any rights by virtue hereof as a stockholder of the Company, including, without limitation, the right to vote, to receive dividends and other distributions, or to receive notice of, or attend meetings of stockholders or any other proceedings of the Company. Until the exercise of this Warrant, no provision hereof, and no mere enumeration herein of the rights or privileges of the Registered Holder, shall give rise to any liability of such Registered Holder for the purchase price of any shares of Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.
- 5.9 Exchange, Loss, Destruction, etc. of Warrant. Upon receipt of evidence reasonably satisfactory to the Company (provided, that an affidavit of the Registered Holder shall be deemed reasonably satisfactory evidence) of the loss, theft, mutilation or destruction of this Warrant or any certificate relating to the Warrant Shares, and, in the case of any such loss, theft or destruction, upon delivery of indemnity or security in such form and amount as shall be reasonably satisfactory to the Company, or, in the event of such mutilation upon surrender and cancellation of this Warrant, the Company will make and deliver a new Warrant of like tenor, in lieu of such lost, stolen, destroyed or mutilated Warrant; provided, however, that the original Registered Holder of this Warrant shall not be required to provide any bond of indemnity and may in lieu thereof provide their agreement of indemnity. Any Warrant issued under the provisions of this Section 5.9 in lieu of any Warrant alleged to be lost, destroyed or stolen, or in lieu of any mutilated Warrant, shall constitute an original contractual obligation on the part of the Company. This Warrant shall be promptly canceled by the Company upon the surrender hereof in connection with any exchange or replacement. The Registered Holder of this Warrant shall pay all taxes (including securities transfer taxes) and all other reasonable expenses and charges payable in connection with the preparation, execution and delivery of replacement Warrant(s) pursuant to this Section 5.9.
- 5.10 Headings. The Article and Section and other headings herein are for convenience only and are not a part of this Warrant and shall not affect the interpretation thereof.
- 5.11 Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and permitted assigns of Registered Holder. The provisions of this Warrant are intended to be for the benefit of all Registered Holders from time to time of this Warrant and shall be enforceable by any such Registered Holder.

- 5.12 Remedies. The parties hereto, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of their respective rights under this Warrant. Each party agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate. The rights and remedies provided in this Warrant are cumulative and are not exclusive of, and are in addition to and not in substitution for, any other rights or remedies available at law, in equity or otherwise. In the event of a dispute between the parties concerning the terms and provisions of this Warrant, subject to Section 4.2, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.
- 5.13 Counterparts. This Warrant 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 Warrant delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant.
- 5.14 Further Assurances. The Company and the Registered Holder will take such actions as may be reasonably required or desirable to carry out the provisions of this Warrant.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Warrant as of the date first set forth above.

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.**

By: /s/ Bryan J. Merryman

Name: Bryan J. Merryman

Title: Chief Executive Officer and Chief Financial Officer

[SIGNATURE PAGE TO WARRANT]

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**Accepted and Agreed,**

**EDIBLE ARRANGEMENTS, LLC**

By: /s/ Tariq Farid

Name: Tariq Farid

Title: Chief Executive Officer

Street Address:

980 Hammond Drive, Suite 1000  
Atlanta, GA 30328

[SIGNATURE PAGE TO WARRANT]

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**EXHIBIT A**

PURCHASE FORM

TO: Rocky Mountain Chocolate Factory, Inc. (the "Company")

1. The undersigned hereby elects to purchase \_\_\_\_\_ shares of the Common Stock of the Company pursuant to the terms of the attached Warrant by:
  - A cash payment or cancellation of indebtedness, and tenders herewith payment of the purchase price for such shares in full, together with all applicable transfer taxes, if any.
  - The net exercise provisions of the attached warrant.
  
2. Please issue a certificate(s) or statement evidencing ownership in book-entry form representing said shares of Common Stock in the name of the undersigned.

Signature of Holder

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

A-1

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**EXHIBIT B**

ASSIGNMENT

For value received, \_\_\_\_\_, hereby sells, assigns and transfers unto \_\_\_\_\_ [all of] [\_\_\_\_\_ shares of] the within Warrant, together with all right, title and interest therein and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Warrant on the books of the Company, with full power of substitution.

Dated: \_\_\_\_\_, 202

**AMENDMENT TO RIGHTS AGREEMENT**

This Amendment (the "Amendment") to Rights Agreement is entered into as of December 20, 2019, by and between Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (the "Company"), and Computershare Trust Company, N.A., a federally chartered trust company, as rights agent (the "Rights Agent"). All capitalized terms used herein and not otherwise defined herein shall have the meaning(s) ascribed to them in that certain Rights Agreement dated as of March 1, 2015, by and between the Company and the Rights Agent (the "Rights Agreement").

**RECITALS**

**WHEREAS**, the Company and the Rights Agent are parties to the Rights Agreement;

**WHEREAS**, pursuant to Section 27 of the Rights Agreement, the Company and the Rights Agent may, in accordance with the terms of the Rights Agreement, supplement or amend any provision of the Rights Agreement in any manner without the approval of any holder of the Rights in accordance with the terms of such Rights Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual agreements hereinafter set out and of other consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto desire to amend the Rights Agreement as follows:

1. Amendment of Section 1. The definition of the term "Acquiring Person" set forth in Section 1 of the Rights Agreement is hereby amended and restated in its entirety to read as follows:

"Acquiring Person" shall mean any Person who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of 15 percent or more of the Common Shares of the Company then outstanding, but shall not include (i) the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any entity holding Common Shares of the Company for or pursuant to the terms of any such plan or (ii) any Designated Holder, unless and until such time as such Designated Holder shall become the Beneficial Owner of 20 percent or more of the Common Shares of the Company then outstanding. Notwithstanding the foregoing, no Person shall become an Acquiring Person as the result of an acquisition of Common Shares of the Company by the Company which, by reducing the number of such shares outstanding, increases the proportionate number of shares beneficially owned by such Person to 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the Common Shares of the Company then outstanding; provided, however, that if a Person shall become the Beneficial Owner of 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the Common Shares of the Company then outstanding by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner of any additional Common Shares of the Company, then such Person shall be deemed to be an Acquiring Person. Notwithstanding the foregoing, if the Board of Directors of the Company, within 10 days after the first date on which the Company shall become aware that any Person, together with all Affiliates and Associates of such Person, is the Beneficial Owner of shares of Common Stock of the Company such that such person (but for this sentence) would be an Acquiring Person, determines in good faith that such Person has inadvertently exceeded the thresholds set forth in this definition of Acquiring Person, and such Person divests as promptly as practicable a sufficient number of Common Shares of the Company so that such Person would no longer be an Acquiring Person, as defined pursuant to the foregoing provisions of this definition, then such Person shall not be deemed to be an Acquiring Person for any purposes of this Agreement. No Person who is the Beneficial Owner of 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the Common Shares of the Company on the date of this Agreement shall be deemed to be an Acquiring Person unless and until such Person becomes the Beneficial Owner of any additional Common Shares of the Company and, immediately after the acquisition of such additional shares, is the Beneficial Owner of 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the Common Shares of the Company."

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2. Amendment of Section 1. The definition of the term "Designated Holder" is hereby added to Section 1 of the Rights Agreement in alphabetical order to read as follows:

""Designated Holder" shall mean Farids & Co, Inc., together with all of its Affiliates and Associates ("Farids") until the earliest of (i) such time as Farids ceases to beneficially own 10% or more of the Common Shares of the Company, (ii) such time as either Farids & Co, Inc. or Edible Arrangements, LLC or any Parent (as defined in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement) of either is subject to a change of control as determined by the Board in its sole discretion and either purchases or acquires any additional Common Shares following such change of control, or (iii) such time as Farids reports or is required to report on Schedule 13D (or any successor or comparable report) its beneficial ownership of Common Shares of the Company and discloses its intent to effect or promote a change in control of the Company."

3. Amendment of Section 3(b). The first sentence of Section 3(b) of the Rights Agreement is hereby amended and restated in its entirety to read as follows:

"Until the earlier of (i) the tenth day after the Shares Acquisition Date and (ii) the tenth Business Day (or such later date as may be determined by action of the Board of Directors of the Company prior to such time as any Person becomes an Acquiring Person) after the date of the commencement by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any entity holding Common Shares of the Company for or pursuant to the terms of any such plan) of, or of the first public announcement of the intention of any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any entity holding Common Shares of the Company for or pursuant to the terms of any such plan) to commence, a tender or exchange offer the consummation of which would result in any Person becoming the Beneficial Owner of Common Shares aggregating 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the then outstanding Common Shares (including any such date which is after the date of this Agreement and prior to the issuance of the Rights; the earlier of such dates being herein referred to as the "Distribution Date"), (x) the Rights will be evidenced (subject to the provisions of Section 3(c) hereof) by the certificates for Common Shares (or by Book Entry Common Shares) registered in the names of the holders thereof (which certificates shall also be deemed to be Right Certificates) and not by separate Right Certificates or Book Entry, and (y) the Rights, including the right to receive Right Certificates, will be transferable only in connection with the transfer of Common Shares."

4. Amendment of Exhibit C (Summary of Rights to Purchase Preferred Shares). Exhibit C to the Rights Agreement is hereby amended in that the second paragraph thereof is hereby amended and restated in its entirety to read as follows:

"Until the earlier to occur of (i) 10 days following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has acquired beneficial ownership of 15 percent (or, in the case of a Designated Holder (as defined in the Rights Agreement), 20 percent) or more of the outstanding Common Shares and (ii) 10 business days (or such later date as may be determined by action of the Board of Directors of the Company prior to such time as any person or group of affiliated or associated persons becomes an Acquiring Person) following the commencement of, or first public announcement of an intention to commence, a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of affiliated or associated persons of 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the outstanding Common Shares (the earlier of such dates being herein referred to as the "Distribution Date"), the Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the Record Date, by such Common Share certificate with a copy of this Summary of Rights attached thereto. No person who is the beneficial owner of 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the Common Shares of the Company on the date of the Rights Agreement shall be deemed to be an Acquiring Person unless and until such person becomes the beneficial owner of any additional Common Shares of the Company and, immediately after the acquisition of such additional shares, is the beneficial owner of 15 percent (or, in the case of a Designated Holder, 20 percent) or more of the Common Shares of the Company."

5. Agreement as Amended. The term "Agreement" as used in the Rights Agreement shall be deemed to refer to the Rights Agreement, as amended hereby. Except as expressly modified hereby, the Agreement remains in full force and effect. Upon the execution and delivery hereof, as of the day and year first above written, the Agreement shall thereupon be deemed to be amended and supplemented as hereinabove set forth as fully and with the same effect as if the amendments and supplements made hereby were originally set forth in the Agreement, and this Amendment and the Agreement shall henceforth be read, taken and construed as one and the same instrument, but such amendments and supplements shall not operate so as to render invalid or improper any action heretofore taken under the Agreement.

6. Severability. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, that if such excluded terms, provisions, covenants or restrictions shall adversely affect the rights, immunities, liabilities, duties, responsibilities or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately.

7. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts made and to be performed entirely within such State.

8. Counterparts. This Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Amendment executed and/or transmitted electronically shall have the same authority, effect and enforceability as an original signature.

9. Descriptive Headings. Descriptive headings of the several Sections of this Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

10. Officer's Certificate. By executing this Amendment below, the undersigned duly appointed officer of the Company certifies that this Amendment is in compliance with the terms of Section 27 of the Rights Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.**

By: /s/ Bryan J. Merryman  
Name: Bryan J. Merryman  
Title: Chief Executive Officer and Chief Financial Officer

**COMPUTERSHARE TRUST COMPANY, N.A.**

By: /s/ Patrick Hayes  
Name: Patrick Hayes  
Title: Vice President & Manager

PORTIONS OF THIS EXHIBIT MARKED BY [\*\*] HAVE BEEN OMITTED PURSUANT TO RULE 601(B)(10) OF REGULATION S-K. THE OMITTED INFORMATION IS (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

ROCKY MOUNTAIN CHOCOLATE FACTORY

EXCLUSIVE SUPPLIER OPERATING AGREEMENT

This EXCLUSIVE SUPPLIER OPERATING AGREEMENT (this "**Agreement**") is made and entered into on this 20th day of December, 2019 (the "**Effective Date**") by and between Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (" **RMCF**") and Edible Arrangements, LLC, a Delaware limited liability company ("**EA**"). RMCF and EA may be referred to herein individually as a "**Party**" or collectively as the "**Parties**". In consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** The following terms used herein have the following meanings:

(a) "**Action**" means any demand, complaint, action, suit, countersuit, arbitration, inquiry, proceeding or investigation.

(b) "**Affiliate**" of any Person means a Person that controls, is controlled by, or is under common control with such Person. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership or voting securities or other interests, by contract or otherwise.

(c) "**Change of Control**" means the occurrence of any of the following:

(i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of RMCF; or

(ii) any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of voting stock of the Company.

(d) "**Contract Year**" will mean [\*\*].

(e) "**EA Group**" means EA, its Affiliates and their respective franchisees.

(f) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(g) "**Governmental Authority**" means any nation or government, any state, municipality or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, court, tribunal or other instrumentality, whether federal, state, local, domestic, foreign or multinational, exercising executive, legislative, judicial, regulatory, administrative or other similar functions of, or pertaining to, government and any executive official thereof.

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(h) **"Intellectual Property"** means all intellectual property throughout the world, including all U.S. and foreign (i) patents, patent applications, invention disclosures, and all related continuations, continuations-in-part, divisionals, provisionals, renewals, reissues, re-examinations, additions, extensions (including all supplementary protection certificates), (ii) trademarks, service marks, names, corporate names, trade names, domain names, logos, slogans, trade dress, design rights, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (iii) copyrights and copyrightable subject matter, (iv) rights in computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing, (v) trade secrets and all other confidential information, ideas, know-how, inventions, proprietary processes, formulae, models, and methodologies, and (vi) all applications and registrations for the foregoing.

(i) **"Law"** means any United States or non-United States federal, national, supranational, state, provincial, local or similar law (including common law), statute, ordinance, regulation, rule, code, order, treaty, license, permit, authorization, registration, approval, consent, decree, injunction, judgment, notice of liability, request for information, binding judicial or administrative interpretation or other requirement, in each case, enacted, promulgated, issued, entered or otherwise put into effect by a Governmental Authority.

(j) **"Indemnitee"** means any Person that is seeking indemnification pursuant to the provisions of this Agreement.

(k) **"Indemnitor"** means any Party to this Agreement from which any Indemnitee is seeking indemnification pursuant to the provisions of this Agreement.

(l) **"Liabilities"** means any and all indebtedness, claims, debts, liabilities, demands, causes of actions, Actions and obligations, whether accrued, fixed or contingent, mature or inchoate, known or unknown, reflected on a balance sheet or otherwise, including those arising under any Law, Action or any judgment of any court of any kind or any award of any arbitrator of any kind, and those arising under any contract, commitment or undertaking.

(m) **"Losses"** means any and all damages, losses, deficiencies, Liabilities, taxes, obligations, penalties, judgments, settlements, claims, payments, fines, charges, interest, costs and expenses resulting from third party claims, including the costs and expenses of any and all Actions and demands, assessments, judgments, settlements and compromises relating thereto and the costs and expenses of attorneys', accountants', consultants' and other professionals' fees and expenses incurred in the investigation or defense thereof or the enforcement of rights hereunder.

(n) **"Person"** means an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

(o) **"Product"** means all chocolates, candies and other confectionery products produced by RMCF in a RMCF factory that bear the Rocky Mountain Chocolate Factory brand. EA will be notified in writing of new Products after the Effective Date in accordance with RMCF's standard processes.

(p) "**SAA**" means the Strategic Alliance Agreement dated the Effective Date between RMCF and EA.

(q) "**Territory**" means anywhere in the world except for Canada; provided that the Territory will include Canada if any current or future prohibitions in existence on the Effective Date against RMCF authorizing an independent distributor of Products in Canada are no longer effective (in which case RMCF agrees to give EA written notice thereof).

(r) "**Warrant**" means the Common Stock Purchase Warrant dated the Effective Date issued by RMCF to EA.

## 2. **Appointment and Exclusivity.**

( a ) **Appointment.** Subject to the terms and conditions of this Agreement, during the Term (as defined below), RMCF hereby grants to EA a non-exclusive, worldwide, non-sublicensable (except as set forth in this Section 2(a)), nontransferable right to market, offer for sale, sell and distribute the Products in the Territory, including through (i) retail stores and (ii) on-line distribution channels such as Internet websites and applications for personal computing devices ("**E-Commerce Distribution Channel**"), as an authorized and independent distributor of the Products. Except to members of the EA Group, EA will not appoint any sub-distributors, dealers or other representatives to sell, market, offer for sale or distribute the Products without RMCF's express prior written approval.

( b ) **Exclusivity.** EA will not (and EA will cause the members of the EA Group to not) purchase for resale any chocolates, candies and/or other confectionery products in the same categories or subcategories as the Products ("**Competitive Products**") during the Term (by way of example and not limitation, if RMCF offers for sale peanut brittle that is produced in the RMCF factory under its Rocky Mountain Chocolate Factory brand, EA may not purchase peanut brittle from a third party); provided that in no event shall any chocolate covered or dipped fruit products (including any of the chocolate or fruit components thereof) be considered Competitive Products. Notwithstanding the foregoing, EA may continue to purchase Competitive Products from third parties with which EA had a commercial agreement prior to the Effective Date or, with respect to new Products that would be deemed Competitive Products, the date upon which EA is notified in writing after the Effective Date of such new Product ("**Competitive Product Agreement**") provided that (i) EA will use commercially reasonable efforts to wind down the Competitive Product Agreement and (ii) upon expiration or termination of such Competitive Product Agreement, EA will cease to purchase any Competitive Products from such third party and will purchase Products that would otherwise be deemed Competitive Products from RMCF (by way of example and not limitation, if EA is party to a Competitive Product Agreement with a vendor of peanut brittle, EA may continue to purchase such peanut brittle from such vendor so long as the Competitive Product Agreement is in effect, but upon termination or expiration of the Competitive Product Agreement, EA would purchase the peanut brittle from RMCF). In the event EA provides RMCF written notice of nonrenewal pursuant to Section 11(a), subject to the terms and conditions of this Agreements. EA will order no less than **[\*\*]**% of the Products ordered in the Contract Year in which such notice is given in the final two Contract Years of the Term (by way of example and not limitation, if EA purchased **[\$\*\*]** of Products in the third Contract Year, and provided a termination notice at the end of such Contract Year, EA would purchase a minimum of **[\$\*\*]** of Products in the fourth Contract Year and **[\$\*\*]** of Products in the fifth Contract Year).

(c) E-Commerce Distribution Channel. RMCF agrees that it will not offer for sale, sell or distribute any Product through any E Commerce Distribution Channel with any Person without the prior written consent of EA, which will not be unreasonably withheld or delayed if EA in good faith believes that such new E Commerce Distribution Channel customer would not reasonably be expected to have a material adverse effect on the sale of Products by EA. Notwithstanding the foregoing, (i) RMCF may continue to market, offer for sale, sell or distribute the Products through E-Commerce Distribution Channels pursuant to a commercial agreement or purchase order between RMCF and a Person in effect prior to the Effective Date; and (ii) until the transition of the e-commerce activities contemplated by the Definitive Agreement (defined below) has been completed in accordance with the terms of the Definitive Agreement, RMCF may continue to sell Products on the domain <https://www.rmcf.com>. The Parties agree to as promptly as practicable after the Effective Date to negotiate in good faith a definitive agreement with respect to the E-Commerce Distribution Channel managed by EA ("**Definitive Agreement**").

### 3. Forecasts, Orders, Acceptance; Returns.

(a) Orders. Members of the EA Group may order Products by submitting written purchase orders to RMCF in accordance with the then current ordering procedures specified in writing by RMCF from time to time (each an "**Order**"). Orders will contain, at a minimum: (i) Product type, (ii) Product quantity, (iii) requested shipment window, (iv) delivery address, and (v) the Delivery Method (defined below). RMCF may, in its sole discretion, reject any Orders in whole or in part; provided that it shall notify EA in writing as promptly as reasonably practicable after its receipt of an Order if any portion of the Order is rejected (and the balance of the Order shall be deemed to be accepted). The terms and conditions of this Agreement, and no others, will apply to all Orders. Each Party hereby expressly rejects any and all different, conflicting, or additional terms appearing on any Order or any other document, and such terms will have no force or effect, whether through acceptance of such Order by RMCF in writing or by performance. Neither Party may cancel all or any portion of an accepted Order, without the other Party's prior written consent, which, may be withheld in the other Party's reasonable discretion.

(b) Acceptance and Returns. Members of the EA Group will use commercially reasonable efforts to inspect Products upon receipt thereof to identify any defects reasonably discoverable through visual inspection as promptly as practicable; provided, however, if (i) the Products are delivered to EA and EA does not provide a written notice of rejection to RMCF within thirty (30) days after delivery or (ii) the Products are delivered to a member of the EA Group other than EA and such member of the EA Group does not provide written notice of rejection to RMCF within fourteen (14) days after delivery, such Products will be deemed accepted by EA or such member of the EA Group, as applicable. The EA Group may reject any Products delivered by RMCF, only if such Products (A) exceed the number or type of units Ordered by the EA Group in the applicable Order, (B) are not shipped within the mutually agreed upon shipping window, (C) have been damaged during storage or handling prior to being shipped from RMCF's facilities, or (D) do not otherwise comply with the provisions of this Agreement ("**Properly Rejected Product**"). The EA Group will not return any Products for any reason unless it obtains prior authorization from RMCF and all Products so returned have been marked with a return authorization number supplied by RMCF. The EA Group will maintain all returns in their original packaging. All return shipping charges and any other expenses associated with the return or other disposition of Properly Rejected Products shall be the responsibility of RMCF. Notwithstanding the foregoing, EA may request a credit for any Products that are not satisfactory for sale in accordance with, and subject to, RMCF's then-current non-saleable product policy.

4. **Delivery, Prices, Taxes and Payment.**

(a) Title; Delivery. RMCF will use commercially reasonable efforts to make Products available to the EA Group in accordance with delivery method selected on the applicable Order ("**Delivery Method**") on or before the delivery date set forth in such Order that has been accepted by RMCF in writing. All charges and costs related to shipment and delivery will be invoiced to EA. Title to the Products and all risk of loss or damage thereto will pass to the applicable member of the EA Group when such Product is deemed "delivered" in accordance with the following Delivery Method selected by such member of the EA Group:

(i) RMCF Delivery. If the delivery address is in the continental United States and the member of the EA Group requests that RMCF deliver the Products using RMCF delivery network, the Products are deemed "delivered" when the Products are delivered to the delivery address set forth in the applicable Order.

(ii) Third Party Delivery and International Delivery. If the member of the EA Group requests that RMCF deliver the Products using a third party carrier or if the delivery address set forth in the Order is located outside of the continental United States, the Products are deemed "delivered" when the Products are made available at the loading dock to such third party carrier at RMCF's then-current manufacturing facility. For clarity, EA is responsible for transporting the Products to their final destination, including, without limitation, loading the Products, all export procedures and costs, shipping and freight, and any other costs arising after RMCF has made such Products available at the RMCF loading dock.

(b) Prices. The prices for the Products ("**Prices**") will be: [\*\*]. All Orders will be invoiced by RMCF at the Price in effect at the time of shipment; provided that RMCF will use commercially reasonable efforts to give EA at least [\*\*] days prior written notice of any increase in the prices. Notwithstanding any suggested retail pricing or guides provided by RMCF to EA or published by RMCF, the EA Group is permitted to establish the prices EA will charge to their customers for Products.

(c) Taxes. All Prices are exclusive of, and EA is responsible for all taxes, charges, fees, levies, imposts, duties, tariffs or other assessments imposed by or payable to any federal, state, local or foreign tax or governmental authority, including without limitation sales, use, goods, services, value added, transfer, customs, personal property, stamp duty, excise, withholding and other obligations of the same or similar nature (individually and collectively, "**Taxes**"); provided, however, that EA will not be responsible for any Taxes due on the net income of RMCF. If RMCF is required by Law to collect Taxes from EA, RMCF may add any such Taxes to invoices submitted to EA by RMCF.

( d ) Payment. Members of the EA Group will pay all invoices for actual quantities of Product delivered within [\*\*] days from receipt of the invoice; provided that the invoices for the first two Orders of Products from a franchisee of EA will not be due and payable by such franchisee until [\*\*] days from receipt of the invoice. If a member of the EA Group in good faith believes that a portion of an invoice relates to Properly Rejected Products, such member may withhold the disputed amount until such dispute is resolved. Payment by EA will not constitute a waiver of any of its rights under this Agreement. If any member of the EA Group is late with payments that are not disputed in good faith, and such member of the EA Group fails to cure such failure to pay or provide RMCF assurances of payment that are acceptable to RMCF within [\*\*] days after receipt of written notice from RMCF, RMCF may in its sole discretion, until such payment that is not disputed in good faith is paid in full, undertake any or any combination of the following: (i) stop all shipments under this Agreement to such member of the EA Group until such member of the EA Group provides RMCF such assurances of payments and pays any past due amounts; (ii) demand prepayment for new Orders from such member of the EA Group; or (iii) delay shipments of any new Orders.

## 5. Intellectual Property.

( a ) Marketing Materials. RMCF will provide EA, from time to time, certain marketing materials, instruction books, technical pamphlets, catalogues, photographs, support information, form contracts and other materials and documentation that are useful to EA in performance of EA's obligations hereunder ("**RMCF Materials**").

(b) License to Marks. Subject to this Section 5(b), RMCF hereby grants EA and the other members of the EA Group the non-exclusive and fully paid up right to use and display the RMCF name and any other trade name or trademark of RMCF, and such other designations (individually and collectively, such marks and designations, the "**Marks**") and the RMCF Materials, solely during the Term (and any period following the termination thereof where the EA Group is expressly permitted by RMCF in writing to use the Marks and the RMCF Materials) in the Territory solely in the performance of its rights and obligations under this Agreement. The EA Group will display the Marks solely in connection with the marketing, sale or support of Products and with an appropriate trademark or other notice (such as ® or ™) or other notice of proprietary rights in the Marks as instructed in writing by RMCF. The EA Group will use the Marks and RMCF Materials in advertising or other materials only in accordance with RMCF's then current written guidelines and any other written guidance made available to EA, which RMCF may change from time to time, or with RMCF's prior written consent, which will not be unreasonably withheld or delayed. The EA Group will immediately change or discontinue any use of any Marks, RMCF Materials or promotional materials bearing such items as requested by RMCF. The EA Group will not use any Mark in a way that implies any member of the EA Group is an employee, agency, branch, affiliate or franchisee of RMCF.

(c) Quality Control. The EA Group will use commercially reasonable efforts to ensure that (i) the services rendered by the EA Group in connection with the Marks, and (ii) all advertising, promotional or other uses of the Marks will at all times (A) conform to the written quality standards and guidelines specified by RMCF from time to time and (B) be in full compliance with all applicable Laws; provided that the EA Group shall not be responsible for the contents of the RMCF Materials that are incorporated into such advertising, promotions or other uses. RMCF has the right, at all reasonable times, to inspect the manner in which EA uses the Marks and the RMCF Material in its advertising and promotional materials. Such inspection will be conducted, at the election of RMCF, by personal visit to EA or by written request for information, which EA will provide at no charge. EA will cooperate with such inspections at its expense.

(d) Ownership. The EA Group will not take or encourage any action, during or after the Term, that will in any way impair the rights of RMCF in and to the Marks or the goodwill inherent therein. The EA Group use of the Marks and all goodwill therein inures solely to the benefit of RMCF. The EA Group will not acquire or claim any title to the Marks adverse to RMCF by virtue of the license granted herein, or through their use of the Marks. To the extent any member of the EA Group acquires any right, title or interest in and to the Marks or RMCF Materials or any derivatives thereof, other than the limited license granted to the EA Group in Section 5(a), EA hereby assigns such right, title or interest to RMCF. EA will sign any lawful documents, make any lawful declaration or provide any lawful declarations reasonably requested by RMCF in connection with any trademark application or registration for the Marks, or the enforcement or defense thereof.

(e) EA Marks. RMCF acknowledges EA's exclusive right, title and interest in and to all of its trademarks, trade names, service marks, logos, assignees, program and event names, identifications and other proprietary rights and privileges (the "**EA Marks**"). This Agreement and its various provisions are not a license or assignment of any right, title or interest in the EA Marks by EA to RMCF. RMCF will not in any manner represent that it has any ownership in the EA's Marks and will not do or cause to be done anything impairing EA's exclusive ownership of the EA Marks. RMCF will not use, print or duplicate the EA Marks except and only if RMCF has obtained EA's prior written approval.

6. Confidentiality. "**Confidential Information**" means all of the trade secrets, business and financial information, business methods, procedures, know-how and other information of every kind that relates to the business of either Party and is marked or identified as confidential at the time of disclosure, or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. The Party receiving Confidential Information ("**Recipient**") from the other Party ("**Discloser**") will not use such Confidential Information for any purpose other than in connection with this Agreement, and will disclose such Confidential Information only to the employees or contractors of the Recipient who have a need to know such Confidential Information for purposes of this Agreement and who have signed a written agreement imposing a duty of confidentiality no less restrictive than the Recipient's duty hereunder. The Recipient will protect the Discloser's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Recipient protects its own confidential or proprietary information of a similar nature and with no less than a reasonable degree of care. The Recipient will be liable to the Discloser for breaches of this Section 6 by its employees and contractors as if such breaches were those of the Recipient. Confidential Information excludes any information that (a) was already lawfully known to the Recipient at the time of disclosure by the Discloser as shown by contemporaneous documentation; (b) is disclosed to the Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; or (c) is, or through no fault of the Recipient has become, generally available to the public. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser pursuant to a subpoena or other court process only (a) after having given the Discloser prompt notice of the Recipient's receipt of such subpoena or other process and (b) after the Recipient has given the Discloser a reasonable opportunity to oppose such subpoena or other process or to obtain a protective order. Confidential Information of the Discloser in the custody or control of the Recipient will be promptly returned or destroyed upon the earlier of (i) the Discloser's written request or (ii) termination of this Agreement.

7. **Certain Obligations of the Parties.**

(a) **Promotional Materials.** EA will obtain RMCF's advanced written approval of the form, manner, extent and wording of all advertising materials related to the Products (not previously approved by RMCF in accordance with this Section 7(a)). If EA creates any promotional literature, brochures, descriptions, specifications, manuals and other materials relating to any Products (the "**EA Materials**"), EA will ensure such EA Materials comply with RMCF's then current written guidelines and any other written guidelines made available to EA, which RMCF may change from time to time.

(b) **Information.** No less than quarterly during the Term, the respective senior management of the Parties will meet to discuss and exchange information relating to production, promotional and sales activities with respect to the Products, including, but not limited to, (i) market trends and developments of competing products, development of market prices, upcoming marketing initiatives, and production and marketing activities expenditures and related figures; (ii) the special situation of franchisees and any customer complaints; and (iii) any other information mutually agreed to by the Parties in regard to the sale and distribution of the Products.

(c) **Flow Down Terms.** EA will cause its franchisees to abide by the terms set forth in this Agreement that apply to the use of the Marks and/or sale or distribution of the Products (the "**Flow Down Terms**"). EA represents and warrants that it will promptly notify RMCF of any known or suspected violations of the Flow Down Terms by any franchisee.

(d) **Complaint Resolution.** The Parties will cooperate in dealing with customer complaints concerning any of the Products and will take all reasonable actions to resolve such complaints as mutually agreed.

(e) **Insurance.** Each Party will maintain insurance coverage in amounts (appropriate for and as otherwise would be suitable for similarly situated companies).

(f) **Compliance.** Each Party will obtain and maintain in effect at all times during the Term the necessary registrations with any and all governmental agencies, commercial registries, chambers of commerce and other offices which are required under any applicable Law in order for each Party properly to conduct its commercial business generally and in connection with this Agreement in particular. Each Party will, at its own expense, comply, and ensure compliance of its franchisees, with all applicable Laws, orders and regulations of any Governmental Authority with jurisdiction over its activities in connection with this Agreement and/or the Products, including, without limitation, any privacy Laws.

(g) Certain Prohibitions. EA will refrain (and will prohibit all franchisees, if any) from: (i) removing or altering, or permitting the removal or altering of, any trade names, trademarks, trade dress, labels, tags or other identifying marks affixed to any of the Products or their containers, including, without limitation, modifying or altering the Products unless otherwise agreed by RMCF or required by applicable Law; (ii) making any false representation regarding RMCF or the Products in promoting sales of the Products (provided that the EA Group will not be responsible for the representations included in the RMCF Materials); and (iii) participating in any promotion, marketing or sale of any imitation of any Product. Neither Party will engage in any trade practice which would injure the reputation of the other Party or the Products.

(h) Recall. In the event that RMCF is required to recall or, on its own initiative, recalls any of the Products, EA will assist RMCF with such recall. RMCF will pay all shipping charges and reasonable notification costs arising from such recall. Each Party will keep the other fully and promptly informed of any notification, event or other information, whether received directly or indirectly, which market affect the marketability or safety of the Products or might result in a recall of Products requested by any Governmental Authority.

(i) Storage of Products. The EA Group will ensure that all Products under its control will be stored and handled in a manner that is commercially reasonable and otherwise would be suitable for similarly situated companies.

## 8. Warranties and Disclaimers.

(a) General Warranties. Each Party represents and warrants that: (i) it has the power to enter into this Agreement and to exercise its rights and perform its obligations hereunder; (ii) all corporate or other actions required to authorize its execution of this Agreement and its performance of its obligations hereunder have been duly taken; and (iii) its execution of this Agreement and its exercise of its rights and performance of its obligations hereunder do not constitute and will not result in any breach of any agreement.

(b) RMCF Warranties. RMCF represents, warrants and covenants that:

(i) the Products (A) comply with all applicable Laws and (B) will not adulterated, misbranded, or otherwise prohibited from introduction into interstate commerce;

(ii) it will comply in all material respects with all applicable Laws related to the performance of its obligations under this Agreement.

(c) EA Warranties. EA represents, warrants and covenants that it will comply in all material respects with all applicable Laws related to the performance of its obligations under this Agreement.

(d) Disclaimer. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8 ARE IN LIEU OF AND RMCF HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND WARRANTIES IMPLIED FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE.

9. Indemnification.

(a) Indemnification by RMCF. RMCF will defend each member of the EA Group, each of their Affiliates, each of their respective directors, officers, employees and agents, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "**EA Indemnitees**") and indemnify and hold harmless the EA Indemnitees from and against any and all Losses of the EA Indemnitees to the extent arising out of any of the following items:

(i) any Action alleging that the Products, the Marks or the RMCF Materials violate, infringe or misappropriate any third party Intellectual Property rights or applicable Laws; however, RMCF will not have any obligation to defend any claim or indemnify EA against any Loss if such claim arises from EA's modification or alteration of the Products, the Marks or the RMCF Materials;

(ii) any Action alleging illness, injury, death or damage as a result of the, consumption or use of any Products; provided, however, that RMCF will not be responsible for, and will not be required to defend any claim or provide indemnification against, any such Loss attributable to defects in the Products that independent investigation discloses originated solely after the Products were delivered to the EA Group and was not attributable to any act or omission of RMCF prior to such Products being so delivered.

(b) Indemnification by EA. EA will defend RMCF, its Affiliates, each of their respective directors, officers, employees and agents, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "**RMCF Indemnitees**") and indemnify and hold harmless the RMCF Indemnitees from and against any and all Losses of the RMCF Indemnitees to the extent arising out of any of the following items:

(i) any Action alleging that the advertising or promotional materials used by the EA Group in connection with the marketing and sale of the Products violate, infringe or misappropriate any third party Intellectual Property Rights or applicable Laws to the extent that RMCF is not obligated to indemnify EA for such infringement under Section 9(a)(i);

(ii) any Action alleging illness, injury, death or damage as a result of the consumption or use of any Products attributable to defects in the Products that independent investigation discloses originated solely after the Products were delivered to the EA Group.

(c) Indemnification Procedures.

(i) If an Indemnitee receives notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a Person in the EA Group or RMCF of any claim or of the commencement by any such Person of any Action with respect to which an Indemnitor may be obligated to provide indemnification to such Indemnitee pursuant to Section 9(a) or Section 9(b) (collectively, a "**Third Party Claim**"), such Indemnitee will give such Indemnitor written notice thereof as promptly as practicable (and in any event within thirty (30) days) after becoming aware of such Third Party Claim. Any such notice will describe the Third Party Claim in reasonable detail. Notwithstanding the foregoing, the failure of any Indemnitee or other Person to give notice as provided in this Section 9(c) will not relieve the related Indemnitor of its obligations under this Article 9, except to the extent, and only to the extent, that such Indemnitor is materially prejudiced by such failure to give notice.

(ii) An Indemnitor may elect (but will not be required) to defend, at such Indemnitor's own expense and by such Indemnitor's own counsel, any Third Party Claim, provided that the Indemnitor will not be entitled to defend and will pay the reasonable fees and expenses of one separate counsel for all Indemnitees if the claim for indemnification relates to or arises in connection with any criminal action, indictment or allegation. Within thirty (30) days after the receipt of notice from an Indemnitee in accordance with Section 9(c) (or sooner, if the nature of such Third Party Claim so requires), the Indemnitor will notify the Indemnitee of its election whether the Indemnitor will assume responsibility for defending such Third Party Claim, which election will specify any reservations or exceptions to its defense. After notice from an Indemnitor to an Indemnitee of its election to assume the defense of a Third Party Claim, such Indemnitee will have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, but the fees and expenses of such counsel will be the expense of such Indemnitee; provided, however, in the event that (A) the Indemnitor has elected to assume the defense of the Third Party Claim but has specified, and continues to assert, any reservations or exceptions in such notice or (B) the Third Party Claim involves injunctive or equitable relief, then, in any such case, the reasonable fees and expenses of one separate counsel for all Indemnitees will be borne by the Indemnitor.

(iii) If an Indemnitor elects not to assume responsibility for defending a Third Party Claim, or fails to notify an Indemnitee of its election as provided in Section 9(c)(ii), such Indemnitee may defend such Third Party Claim at the cost and expense of the Indemnitor.

(iv) Unless the Indemnitor has failed to assume the defense of the Third Party Claim in accordance with the terms of this Agreement, no Indemnitee may settle or compromise any Third Party Claim without the consent of the Indemnitor. If an Indemnitor has failed to assume the defense of the Third Party Claim within the time period specified in clause (b) above, it will not be a defense to any obligation to pay any amount in respect of such Third Party Claim that the Indemnitor was not consulted in the defense thereof, that such Indemnitor's views or opinions as to the conduct of such defense were not accepted or adopted, that such Indemnitor does not approve of the quality or manner of the defense thereof or that such Third Party Claim was incurred by reason of a settlement rather than by a judgment or other determination of liability.

(v) In the case of a Third Party Claim, no Indemnitor will consent to entry of any judgment or enter into any settlement of the Third Party Claim without the consent of the Indemnitee if the effect thereof is (i) to permit any injunction, declaratory judgment, other order or other non-monetary relief to be entered, directly or indirectly, against any Indemnitee or (ii) to ascribe any fault on any Indemnitee in connection with such defense.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCEPT FOR LIABILITY ARISING UNDER (A) SECTION 6 (CONFIDENTIALITY), (B) SECTION 9 (INDEMNIFICATION), (C) USE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY EXCEPT AS PERMITTED UNDER THIS AGREEMENT, OR (D) GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR DAMAGE TO PROPERTY, OR PERSONAL INJURY OR DEATH CAUSED BY EITHER PARTY'S ACTS OR OMISSIONS, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, IN NO EVENT WILL (I) EITHER PARTY OR ANY OF ITS AFFILIATES BE LIABLE FOR DAMAGES FOR LOSS OF PROFIT, GOODWILL, OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES SUFFERED BY EA OR ITS FRANCHISEES, OR (II) EITHER PARTY OR ANY OF ITS AFFILIATES TOTAL AND CUMULATIVE LIABILITY FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT EXCEED THE GREATER OF (X) \$2,000,000 AND (Y) THE TOTAL AMOUNTS PAID BY EA HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE FIRST EVENT GIVING RISE TO THE CLAIM UNDER THE AGREEMENT. Each Party acknowledges that the Product prices and limitations of liability set forth in this Agreement reflect the allocation of risk negotiated and agreed to by the Parties and that the other Party would not enter into this Agreement without these limitations on its liability. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

11. **Term and Termination.**

(a) **Term.** Unless otherwise terminated in accordance with its terms, this Agreement will commence on the Effective Date and will continue until the end of the fifth Contract Year (the "**Initial Term**"); thereafter, the Agreement will continue for an additional term of three (3) years (the "**Second Term**") unless either Party gives the other at least twenty four (24) months' written notice of non-renewal prior to the end of the Initial Term; and thereafter the Agreement will continue until either Party gives the other Party at least twenty four (24) months' written notice of termination ("**Renewal Term**"). The Initial Term, Second Term and Renewal Term constitute the "**Term**" of this Agreement.

(b) **Extension upon Change of Control.** Notwithstanding Section 11(a), neither EA nor RMCF will, following a Change of Control of RMCF, issue a notice of non-renewal that is effective to terminate this Agreement within four (4) additional years following such Change of Control.

(c) **Bankruptcy.** This Agreement will terminate automatically in the event either Party becomes bankrupt or insolvent, or in the event that any agreement or court proceeding is initiated relating to such Party's financial instability.

(d) Material Breach. In the event of a material breach of any provision hereof that is not cured within thirty (30) days of written notice of such breach (a "**Material Breach**"), the non-breaching Party has the right to terminate this Agreement immediately upon written notice to the breaching Party.

(e) Termination Upon Change of Control. RMCF will provide EA with at least thirty (30) days written notice prior to consummating a Change of Control of RMCF (a "**Change of Control Notice**"). The Change of Control Notice will indicate whether the acquiror wishes to terminate this Agreement effective upon consummation of such Change of Control. If RMCF delivers a Change of Control Notice that includes an election by the acquirer to terminate the Agreement, then this Agreement will terminate upon consummation of such Change of Control. Upon termination of this Agreement in accordance with this Section 11(e), the Warrant will vest in accordance with its terms.

(f) Effects of Termination. Upon termination or expiration of this Agreement, (i) the rights granted to EA in this Agreement, including the right to act as RMCF's distributor will immediately cease; provided, however, the EA Group may continue selling those Products that are in the inventory of the EA Group at the time of termination of this Agreement or are delivered to the EA Group after such termination for a period not to exceed ninety (90) days and one hundred eighty (180) days, respectively, from the date of such termination or expiration; (ii) EA will (and will cause the members of the EA Group) within ninety (90) days from the date of such termination or expiration remove from its advertising literature (in any medium) all reference to RMCF, the Marks and the Products and such references to EA's acting as a distributor with respect to the Products or on behalf of RMCF; and (iii) in the event this Agreement is terminated by EA due to an uncured Material Breach by RMCF of Section 2(c), in addition to any other remedies available at Law or in equity, all shares of common stock of RMCF underlying the Warrant will immediately vest and become exercisable in accordance with its terms. The termination of this Agreement for any reasons will not release any Party hereto of any liability which at the time of termination had already accrued to the other Party in respect to any act or omission prior thereto. The following Sections will in all events survive the expiration or termination of this Agreement: 6, 7(h), 9, 10, 11(e) and 12.

## 12. Miscellaneous.

(a) This Agreement will be governed by and construed in accordance with the laws of Delaware, without regard to conflict of laws principles and the provisions of the U.N. Convention on Contracts for the International Sale of Goods.

(b) Except for the payment of monies due hereunder, neither Party will be liable for any breach of this Agreement caused by an act of God, labor dispute, unavailability of transportation, goods, services or labor, governmental restrictions or actions, war (declared or undeclared), terrorism or other hostilities, or by any other event, condition or cause beyond the reasonable control of such Party ("**Force Majeure Event**"). In the event of a Force Majeure Event, the Party prevented from or delayed in performing will promptly give notice to the other Party and will use commercially reasonable efforts to avoid or minimize the delay.

(c) If any provision (or any part thereof) is unenforceable under or prohibited by any present or future law, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law, while preserving to the maximum extent possible the intent of the original provision. Any provision (or part thereof) that cannot be so amended will be severed from this Agreement; and, all the remaining provisions of this Agreement will remain unimpaired.

(d) Failure by a Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of the duration of such default, will not constitute a waiver of rights hereunder.

(e) This Agreement, together with the SAA and the Warrant, is the complete agreement between the Parties regarding the subject matter hereof and may be modified only by a writing duly executed by the Parties. Any notices given under this Agreement must be in writing and may be delivered by hand or sent by internationally-recognized courier service, e-mail or fax to the physical address, e-mail address or facsimile number for each Party set forth below or at such other address as such Party may hereafter designate as the appropriate address for the receipt of such notice.

(f) Any such notice will be deemed successfully given:

(i) if delivered personally, at the time of delivery;

(ii) in the case of an internationally-recognized courier service, at the time such notice is provided to such service for delivery; or,

(iii) in the case of e-mail or facsimile, at the time of successful transmission.

(g) Neither Party may assign this Agreement or any of their respective rights or obligations hereunder, whether voluntarily or by operation of law, without the prior written consent of the other Party; provided that either Party may assign or transfer, directly, indirectly or by operation of law, this Agreement in its sole discretion and without the consent of the other Party in the event of or through a Change of Control of such Party.

(h) This Agreement will be binding and inure to the benefit of such assignees, transferees and other successors in interest of the Parties, in the event of an assignment or other transfer made consistent with the provisions of this Agreement. The Parties are independent contractors, and nothing herein will be construed to create a partnership, agency, joint venture, or employer-employee relationship, and neither Party may bind or incur obligations on behalf of the other.

(i) In any Action with respect to this Agreement, the prevailing Party will be entitled to recover, in addition to any other amounts awarded, reasonable attorney's fees and all costs of proceedings incurred in enforcing this agreement.

(j) This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of the Effective Date set forth above.

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.:**

By: /s/ Bryan J. Merryman  
Name: Bryan J. Merryman  
Title: Chief Executive Officer and Chief Financial Officer  
Address: 265 Turner Drive, Durango, Colorado  
81303

**EDIBLE ARRANGEMENTS, LLC:**

By: /s/ Tariq Farid  
Name: Tariq Farid  
Title: Chief Executive Officer  
Address: 980 Hammond Dr., Suite 1000, Atlanta,  
GA 30328

*[Signature Page to Exclusive Supplier Operating Agreement]*

PORTIONS OF THIS EXHIBIT MARKED BY [\*\*] HAVE BEEN OMITTED PURSUANT TO RULE 601(B)(10) OF REGULATION S-K. THE OMITTED INFORMATION IS (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

EXECUTION VERSION

### STRATEGIC ALLIANCE AGREEMENT

STRATEGIC ALLIANCE AGREEMENT, dated as of December 20, 2019 (as amended, supplemented or otherwise modified from time to time, this "**Agreement**"), by and among Farids & Co. LLC, a Delaware limited liability company ("**Farids**"), Edible Arrangements, LLC, a Delaware limited liability company ("**EA**"), and Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (the "**Company**").

#### WITNESSETH:

WHEREAS, the Company is an international franchisor, confectionery manufacturer and retail operator;

WHEREAS, Farids is a holding company and, together with TF (as defined below), indirectly controls EA;

WHEREAS, EA is a US-based franchisor that specializes in fresh fruit arrangements and specialty fruit gift items;

WHEREAS, the Company desires to issue and sell, and Farids desires to purchase, 126,839 shares (the "**Purchased Shares**") of the Company's common stock, \$0.001 par value per share (the "**Common Stock**"), on the terms set forth herein;

WHEREAS, substantially concurrently with the execution and delivery of this Agreement, the Company and EA shall execute and deliver the Warrant (as defined below);

WHEREAS, substantially concurrently with the execution and delivery of this Agreement, the Company and EA shall execute and deliver the Exclusive Supplier Operating Agreement (as defined below); and

WHEREAS, in connection with the foregoing, the Company, Farids and EA agree and acknowledge that the cooperation between the Company and EA is an important component to achieve their respective strategic objectives, and they desire to continue and further enhance the strategic cooperation alliance between them as contemplated under this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

#### ARTICLE I **DEFINITIONS**

##### Section 1.1 Defined Terms.

(a) "**144 Sale**" means (i) a Transfer of Shares (including in any broker assisted cashless exercise) pursuant to Rule 144 under the Securities Act and (ii) for purposes of Article VII only, any Transfer of Shares pursuant to a Resale Shelf Registration Statement.

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(b) "**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "**Amendment**" means the Amendment, dated the date hereof, to the Rights Agreement by and between the Company and Computershare Trust Company, N.A., as Rights Agent, attached as Exhibit E hereto.

(d) "**Board of Directors**" means the Board of Directors of the Company.

(e) "**Bylaws**" means the Second Amended and Restated Bylaws of the Company, as in effect as of the date hereof.

(f) "**Certificate of Incorporation**" means the Company's Amended and Restated Certificate of Incorporation, as amended, as in effect as of the date hereof.

(g) "**Change in Control**" means the occurrence of any of the following:

(i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Company to any Person other than a Permitted Holder; or

(ii) at any time, the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the Voting Stock of the Company.

(h) "**Eligible Registration Statement**" means any registration statement (other than (i) a registration statement on Form S-4 or Form S-8 or any similar or successor form or (ii) with respect to any corporate reorganization or transaction under Rule 145 of the Securities Act or other business combination or acquisition transaction, any registration statement related to the issuance or resale of securities issued in such a transaction) filed by the Company under the Securities Act in connection with any primary or secondary offering of Common Stock for the account of the Company and/or any shareholder of the Company, whether or not through the exercise of any registration rights.

(i) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(j) "**Exclusive Supplier Operating Agreement**" means the Exclusive Supplier Operating Agreement, dated as of the date hereof, by and between EA and the Company, attached as Exhibit B hereto.

(k) "**Family Member**" means, with respect to any natural person, (i) any child, stepchild, grandchild or more remote issue, parent, stepparent, grandparent, spouse, domestic partner, sibling, child of sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, cousin and adoptive relationships (each, a "**family member**") or estate of such family member or (ii) any foundation, trust, family limited partnership, family limited liability company or other entity created and used for estate planning purposes, so long as any such foundation, trust, family limited partnership, family limited liability company or other entity is controlled by, for the benefit of, or owned by such natural person or one or more persons described in clause (i) (such entities referred to in this clause (ii), the "**Permitted Estate Vehicles**").

(l) "**Farids Group**" means Farids, EA and each and every Farids Transferee. Unless the Company is otherwise notified in writing by Farids or EA, TF shall at all times serve as the designated representative to act on behalf of the Farids Group for purposes of this Agreement and shall have the sole power and authority to bind the Farids Group with respect to all provisions of this Agreement; provided, however, that if TF ceases to serve as the designated representative of the Farids Group, then TF (or his designated legal representative in the case of his death or permanent disability) shall have the power to designate a new designated representative of the Farids Group, which designee (and any successor thereafter designated and appointed) shall have the sole power and authority to bind the Farids Group with respect to all provisions of this Agreement. The Company shall be entitled to rely on all actions taken by TF or such designee on behalf of the Farids Group.

(m) "**Farids Transferee**" means each and every direct and indirect transferee of Farids (including transferees of Shares from any member of the Farids Group so long as such Shares were originally held by the Farids Group) pursuant to Transfer set forth in clause (i) or (ii) of the definition of Permitted Transfer.

(n) "**FINRA**" means the Financial Industry Regulatory Authority, Inc.

(o) "**GAAP**" means U.S. generally accepted accounting principles.

(p) "**Holder**" means any Person owning of record Common Stock or any security convertible into or exercisable or exchangeable for, with or without consideration, any Common Stock.

(q) "**Indemnification Agreement**" means the Indemnification Agreement, dated as of the date hereof, by and between the Company and TF, attached as Exhibit D hereto.

(r) "**Investors**" means (i) Farids, (ii) EA and (iii) TF and his Family Members.

(s) "**Law**" means any domestic or foreign, U.S. Federal, state, municipality or local law, statute, ordinance, code, rule, or regulation or common law.

- (t) "**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, including any agreement to give any of the foregoing.
- (u) "**Lock-Up Securities**" means (i) any Common Stock or Preferred Stock of the Company, (ii) any security convertible into or exercisable or exchangeable for, with or without consideration, any Common Stock or Preferred Stock of the Company (including any option to purchase such a security), (iii) any security carrying any option, warrant or right to subscribe to or purchase any Common Stock or Preferred Stock of the Company or other security referred to in clause (ii), or (iv) any such option, warrant or right.
- (v) "**Nasdaq**" means The Nasdaq Stock Market LLC.
- (w) "**Order**" means any decree, order, judgment, writ, award, injunction, rule or consent of or by a Governmental Entity.
- (x) "**Permitted Holders**" means each of (i) the Investors and their respective Affiliates and members of management of the Company and (ii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that in the case of such group, without giving effect to such group, Persons specified in clause (i) must collectively beneficially own a majority of the total voting power of the Voting Stock of the Company beneficially owned by such group.
- (y) "**Permitted Transfer**" means (i) any Transfer to one or more entities that are, directly or indirectly, wholly owned by Farids or any Family Member of TF, (ii) any Transfer to one or more entities that are members of the Farids Group and (iii) Transfer made following a Change in Control of Farids or EA or made pursuant to a Change in Control that constitutes a sale of the Company as a whole; provided, with respect to each of clause (i)-(iii), so long as the transferee (other than a transferee that already is party to this Agreement) agrees to be subject to the terms of this Agreement (subject to any limitation on the assignment of rights by such Person to the transferee in connection with such Transfer) by executing and delivering a joinder agreement, substantially in the form of Exhibit A hereto.
- (z) "**Person**" means an individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture, government agency, or other entity.
- (aa) "**Prospectus**" means the prospectus included in the Eligible Registration Statement, including any form of prospectus or any preliminary prospectus, as amended or supplemented by any prospectus supplement and by all other amendments or supplements to such prospectus, including all post-effective amendments and all material, if any, incorporated by reference or deemed to be incorporated by reference into such prospectus.
- (bb) "**Registrable Securities**" means all Purchased Shares and Warrant Shares and any securities into which Common Stock may be converted or exchanged pursuant to any merger, consolidation, sale of all or any part of the Company's assets, corporate conversion or other extraordinary transaction of the Company held by the Farids Group, other than any Common Stock or securities into which Common Stock may be converted or exchanged that (i) have been sold by the Farids Group to the public either pursuant to a registration statement or Rule 144 or another exemption from the registration requirements of the Securities Act, (ii) except in connection with a Demand Request by the Farids Group for a registration pursuant to a Resale Shelf Registration Statement, in the hands of the Farids Group is eligible to be resold pursuant to Rule 144 without any volume limitation or (iii) shall have ceased to be outstanding; provided, that when determining the amount of Registrable Securities, only the Purchased Shares, any Vested Warrant Shares and the remaining Warrant Shares eligible for vesting into Vested Warrant Shares shall be included in such calculation.

(cc) "**Registration Expenses**" means all expenses incurred by the Company in complying with Article VI hereof, including, without limitation, (i) all SEC and other registration and filing fees (including, without limitation, fees and expenses with respect to (A) filings required to be made with FINRA and (B) securities or "blue sky" laws, including, without limitation, any fees and disbursements of counsel for the underwriters in connection with any filing and application made to or with (and clearance by) FINRA and any "blue sky" qualifications of the Registrable Securities pursuant to Section 6.6(d)), (ii) preparation, printing, messenger and delivery expenses, (iii) fees and disbursements of counsel for the Company, (iv) fees and disbursements of independent certified public accountants and any other persons, including special experts retained by the Company, (v) expenses related to any special audits incident to or required by any such registration, in each case, whether or not any Eligible Registration Statement is filed or becomes effective, (vi) all fees and expenses related to the listing of the Registrable Securities on any securities exchange, (vii) all internal expenses of the Company, including the compensation of officers and employees of the Company and the fees and expenses in connection with any annual audit and (viii) the fees and expenses of one counsel for the Farids Group in connection with the review of any registration statement, not to exceed \$10,000 for each registration. For the avoidance of doubt, any stamp, transfer or similar taxes or duties payable by the Farids Group in connection with any registration, sale or distribution of Registrable Securities shall be borne by the Farids Group and not by the Company.

(dd) "**Resale Shelf Registration Statement**" means a "shelf" registration statement on Form S-3 pursuant to Rule 415 under the Securities Act; provided that any sales of securities thereunder will not (i) require a prospectus supplement, (ii) require any additional cooperation from the Company (except as set forth in Section 6.4(b)) or (iii) be made pursuant to an underwritten offering.

(ee) "**Rights Agreement**" means the Rights Agreement dated March 1, 2015 between the Company and Computershare Trust Company, N.A., as Rights Agent.

(ff) "**SEC**" or "**Commission**" means the Securities and Exchange Commission.

(gg) "**Securities Act**" means the Securities Act of 1933, as amended.

(hh) "**Shares**" means, collectively, the Purchased Shares or shares of Common Stock issued or issuable upon exercise of the Warrants.

(ii) "**Significant Block**" means five percent (5%) or more of the Company's issued and outstanding Common Stock.

(jj) "**Subsidiary**" means, any Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by the Company or by one or more of its Subsidiaries.

(kk) "**TF**" means Tariq Farid, an individual.

(ll) "**Threshold Block**" means one percent (1%) or more of the Company's issued and outstanding Common Stock.

(mm) "**Transaction Documents**" means, collectively, this Agreement, the Exclusive Supplier Operating Agreement, the Warrant, the Indemnification Agreement and the Amendment.

(nn) "**Transfer**" means any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise or descent, entry into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership (whether to be settled by delivery of the Purchased Shares, in cash or otherwise) or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors whether voluntary or by operation of law, directly or indirectly, of any Purchased Shares.

(oo) "**Vested Warrant Shares**" means the shares of Common Stock into which the Warrant shall vest and for which the Warrant shall become exercisable.

(pp) "**Voting Stock**" of the Company as of any date means the shares of capital stock of the Company that is at the time entitled to vote in the election of the Board of Directors of the Company.

(qq) "**Warrant**" means the common stock purchase warrant, dated the date hereof, issued to the EA, providing for the purchase at a purchase price per share of \$8.76 of up to 960,677 Warrant Shares, attached as Exhibit C hereto.

(rr) "**Warrant Shares**" means the shares of Common Stock issuable upon exercise of the Warrant.

## **ARTICLE II**

### **ISSUANCE OF THE PURCHASED SHARES**

Section 2.1 **Share Purchase.** Upon the terms and subject to the conditions set forth in this Agreement, Farids hereby agrees to purchase, and the Company hereby agrees to issue and sell to Farids, at the Closing (as defined below), the Purchased Shares (the "**Share Purchase**"), in consideration of the payment by Farids to the Company of \$999,998.68 (the "**Purchase Price**") and Farids assistance in developing the strategic alliance contemplated hereby. The Purchase Price shall be paid by Farids by the Company by wire transfer of immediately available funds, to one or more bank accounts designated in writing by the Company, on the Closing Date (as defined below).

Section 2.2 Closing. The closing of the Share Purchase (the "**Closing**") shall take place at the offices of Perkins Coie LLP, 1900 Sixteenth Street Suite 1400, Denver, Colorado 80202, at 11:00 a.m. Mountain Time or before 90 days after the date hereof (such , the "**Closing Date**").

Section 2.3 Transactions to be Effected At or Prior to the Closing. At or prior to the Closing, the transactions below shall take place (except (i) to the extent such day is not a business day, (ii) the transactions set forth in clauses (a) through (e) below shall take place on or prior to the date hereof and (iii) the transactions set forth in clauses (f) through (h) shall take place as promptly as practicable on or after the date hereof, but in no event later than the Closing Date):

(a) The Board of Directors shall have taken all necessary action related to the nomination of TF for election to the Board of Directors at the Company's annual meeting of stockholders to be held on January 9, 2020 (the "**Annual Meeting**"), provided that the mailing and filing of proxy materials reflecting the nomination of TF to the Board of Directors shall be completed no later than two (2) business days following the date hereof.

(b) The Company and Farids shall execute and deliver this Agreement.

(c) The Company and EA shall execute and deliver the Exclusive Supplier Operating Agreement and, in consideration of EA entering into the Exclusive Supplier Operating Agreement and the performance of EA's obligations therein, the Company shall issue the Warrant to EA. Each of the Exclusive Supplier Operating Agreement and the Warrant is effective as of the date hereof in accordance with the terms of such document.

(d) The Company and TF shall execute and deliver the Indemnification Agreement.

(e) The Company and Computershare Trust Company, N.A. shall execute and deliver the Amendment.

(f) The Company shall receive the approval of Nasdaq with respect to the supplemental listing of the Purchased Shares and the reservation for issuance on the Nasdaq Global Market of the Warrant Shares.

(g) The Company shall issue to Farids the Purchased Shares in electronic book-entry form.

(h) The Company shall deliver to Farids the irrevocable letter of instructions addressed to the Company's transfer agent, relating to the issuance of the Purchased Shares.

### **ARTICLE III** **REPRESENTATIONS AND WARRANTIES**

Section 3.1 Representations and Warranties of the Company.

The Company represents and warrants to each of Farids and EA as of the date hereof and as of the Closing Date that:

(a) Existence and Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has all power and authority, corporate and otherwise, and all governmental licenses, franchises, permits, authorizations, consents and approvals required to own and operate its properties and assets and to carry on the business as presently conducted and as proposed to be conducted, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole (a "**Company Material Adverse Effect**").

(b) Capitalization. The authorized capital stock of the Company consists of (i) 46,000,000 shares of Common Stock and (ii) 250,000,000 shares of preferred stock, \$0.001 par value per share (the "**Preferred Stock**"), of which 50,000 shares are designated as "Series A Junior Participating Preferred Stock". As of December 19, 2019, there were 6,004,229 shares of Common Stock issued and outstanding and no shares of Preferred Stock outstanding. As of December 19, 2019, no shares of Common Stock or Preferred Stock were reserved for issuance, except for an aggregate of 258,888 shares of Common Stock reserved for issuance upon the exercise of outstanding stock options and the settlement of restricted stock units issued under the Company's equity incentive plans and stock incentive plans. All of the issued and outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(c) Authority: Approvals. The Company has full corporate power and authority to execute and deliver each of the Transaction Documents to which it is a party and to consummate the transactions contemplated thereby. The execution and delivery of each of the Transaction Documents to which it is a party and the consummation by the Company of the transactions contemplated thereby, including, without limitation, the issuance of the Purchased Shares, the Warrant and the underlying Warrant Shares, have been duly and validly approved by all necessary corporate action of the Company, and no other corporate and no shareholder proceedings on the part of the Company are necessary to approve such Transaction Documents or to consummate the transactions contemplated thereby. The Board of Directors has taken all actions so that the restrictions contained in Section 203 of the Delaware General Corporation Law, as amended (the "**DGCL**"), applicable to a "business combination" (as defined in Section 203 of the DGCL) do not and will not apply to the execution, delivery or performance of any Transaction Document and the transactions contemplated hereby and thereby. Each of the Transaction Documents to which it is a party has been duly and validly executed and delivered by the Company and (assuming due execution and delivery by Farids and EA, as applicable) constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally (collectively, the "**Enforceability Exceptions**").

(d) Non-Contravention. The execution, delivery and performance of the Transaction Documents to which it is a party, and the consummation by the Company of the transactions contemplated hereby and thereby, does not and will not (i) contravene or conflict with the Certificate of Incorporation or the Bylaws, (ii) contravene or conflict with or constitute a violation of any provision of any Law or Order binding upon the Company, (iii) constitute a default under or breach of (with or without the giving of notice or the passage of time or both) or violate or give rise to any right of termination, cancellation or acceleration of any material contract or other instrument or obligations binding upon the Company or by which any shares of the Common Stock or the Preferred Stock or any of the Company's assets is or may be bound or (iv) result in the creation or imposition of any Lien on any of the shares of Common Stock or Preferred Stock or any of the Company's assets.

( e ) Consents and Approvals. Assuming the accuracy of the representations and warranties of each of Farids and EA as set forth in this Agreement and EA as set forth in the Exclusive Supplier Operating Agreement, as of the Closing Date, no consents or approvals of, or filings or registrations with, any federal, state or local court, governmental, legislative, judicial, administrative or regulatory authority, agency, commission, body or other governmental entity or self-regulatory organization (each, a "**Governmental Entity**") or of or with any other third party by or on behalf of the Company or any of its Subsidiaries are necessary for the execution and delivery by the Company of any Transaction Document to which it is a party and the consummation by the Company of the transactions contemplated thereby, except for (A) those already obtained or made, (B) the filing of any Eligible Registration Statement with the Commission pursuant to Article VI, (C) the supplemental listing application to Nasdaq with respect to the supplemental listing of the Purchased Shares and the reservation for issuance on the Nasdaq Global Market of the Warrant Shares and (D) any securities or "blue sky" filings of any state. The transactions contemplated by the Transaction Documents do not require the consent or approval by the holders of a majority of the outstanding shares of Common Stock pursuant to Nasdaq Listing Rule 5635.

( f ) Valid Issuance of Purchased Shares. As of the Purchase Date, the Purchased Shares shall be, and the Warrant Shares, when issued and delivered to EA in accordance with the terms of the Warrant will be, validly issued, fully paid, non-assessable and free of preemptive rights and will be delivered free and clear of all Liens. Except for the transactions contemplated in the Transaction Documents, the issuance and delivery of the Purchased Shares and the Warrant does and will not cause the vesting of any securities of the Company to accelerate, or trigger or create in any Person the right to acquire, purchase, exercise, exchange or convert any securities of the Company into Common Stock.

( g ) SEC Filings: Financial Statements. All forms, reports, schedules, statements and documents required to be filed with the SEC by the Company (including all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein, the "**SEC Reports**") during the twelve (12) months prior to the date hereof were prepared in accordance and complied as of their respective filing dates, in all material respects, with the requirements of the Securities Act and Exchange Act and the rules promulgated thereunder and did not at the time they were filed (or if amended or superseded by a later filing prior to the date hereof, then on the date of such later filing) contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as otherwise disclosed in an SEC Report, each of the audited and unaudited consolidated financial statements (including, in each case, any related notes and schedules thereto) contained in the SEC Reports (or if amended or superseded by a later filing prior to the date hereof, then on the date of such later filing) (i) complied in all material respects with applicable accounting requirements and the published regulations of the SEC with respect thereto, (ii) were prepared in accordance with GAAP (except, in the case of unaudited financial statements, to the extent otherwise permitted by the rules and regulations of the SEC) applied on a consistent basis throughout the periods involved (except as may be indicated therein or as described in the notes thereto) and (iii) fairly present in all material respects the financial position of the Company as of the respective dates thereof and the consolidated results of operations and cash flows for the periods indicated (subject in the case of unaudited financial statements to normal year-end adjustments and to any other adjustments described therein, including the notes thereto). Other than certain non-recurring expenses, no material adverse changes have occurred in the financial condition or business of the Company since the date of the most recent financial statement included in the SEC reports.

(h) Application to Takeover Protections. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, fair price, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation, the Bylaws or the laws of its jurisdiction of incorporation that is or could become applicable to the Farids Group or any Person in the Farids Group as a result of Farids, EA and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Purchased Shares, the Warrants and the underlying Warrant Shares and the ownership of such securities by the Farids Group or any Person in the Farids Group.

Section 3.2 Representations and Warranties of Farids and EA.

Each of Farids and EA, severally with respect to itself and not jointly, hereby represents and warrants to the Company, as of the date hereof and as of the Closing Date that:

(a) Existence and Power. Farids is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Farids has all power and authority, limited liability company and otherwise, and all governmental licenses, franchises, permits, authorizations, consents and approvals required to own and operate its properties and assets and to carry on the business as presently conducted and as proposed to be conducted, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of Farids and its subsidiaries, taken as a whole. EA is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. EA has all power and authority, limited liability company and otherwise, and all governmental licenses, franchises, permits, authorizations, consents and approvals required to own and operate its properties and assets and to carry on the business as presently conducted and as proposed to be conducted, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of EA and its subsidiaries, taken as a whole.

(b) Authorization; Approvals. Each of Farids and EA has full power and authority to execute and deliver each of the Transaction Documents to which it is party, as applicable, and to consummate the transactions contemplated thereby and the consummation by Farids and EA of the transactions contemplated thereby have been duly and validly approved by all necessary limited liability company action of each of Farids and EA, and no other limited liability company and no member proceedings on the part of either Farids or EA are necessary to approve such Transaction Documents or to consummate the transactions contemplated thereby. Each of the Transaction Documents that has been executed and delivered by Farids or EA (assuming due authorization, execution and delivery by the Company), as applicable, constitutes a valid and binding obligation of Farids or EA, as applicable, enforceable against Farids or EA, as applicable, in accordance with its terms, subject to Enforceability Exceptions.

(c) Non-Contravention. The execution, delivery and performance of the Transaction Documents and the consummation by Farids and EA of the transactions contemplated hereby and thereby, does not and will not (i) contravene or conflict with (A) Farids' certificate of formation or operating agreement or (B) EA's certificate of formation or operating agreement, (ii) contravene or conflict with or constitute a violation of any provision of any Law or Order binding upon EA or Farids, (iii) constitute a default under or breach of (with or without the giving of notice or the passage of time or both) or violate or give rise to any right of termination, cancellation or acceleration of any material contract or other instrument or obligations binding upon Farids or by which any shares of the capital stock of Farids or EA or EA or any of Farids' or EA's assets is or may be bound or (iv) result in the creation or imposition of any Lien on any of the shares of capital stock of Farids or EA any of Farids' or EA's assets.

(d) Consents and Approvals. Assuming the accuracy of the representations and warranties of the Company as set forth in this Agreement and the Exclusive Supplier Operating Agreement, as of the Closing Date, no consents or approvals of, or filings or registrations with, any Governmental Entity or of or with any other third party by or on behalf of Farids or EA is necessary for the execution and delivery by Farids and EA, as applicable, of the Transaction Documents and the consummation by Farids and EA, as applicable, of the transactions contemplated thereby.

(e) Ownership of the Company; Control of EA. Except for the transactions contemplated in the Transaction Documents, none of Farids or any of its Affiliates holds or has any rights to acquire, whether directly or indirectly, any Common Stock or any other voting or equity securities of the Company, or any securities convertible into, exchangeable for or exercisable for Common Stock or any other voting or equity securities of the Company. EA is controlled by Farids.

(f) Accredited Investor; Experience. Farids is an "accredited investor" (as defined in Rule 501 under the Securities Act) and is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests.

(g) Acquisition for Own Account. Farids is acquiring the Purchased Shares for its own account for investment purposes, and not with a view to, or for the sale in connection with, any distribution thereof in violation of the Securities Act, and the rules and regulations of the SEC promulgated thereunder, or that would require the issuance of the Purchased Shares pursuant to this Agreement to be registered under the Securities Act.

(h) No Reliance. Farids has relied upon the representations and warranties set forth herein and its own investigations and diligence, including a review of the Company's annual, quarterly and current reports and other documents filed with or furnished to the SEC, and not upon any other information provided by or on behalf of the Company in making the decision to purchase the Purchased Shares. Farids understands and acknowledges that neither the Company nor any of the Company's representatives, agents or attorneys is making or has made at any time any warranties or representations of any kind or character, express or implied, with respect to any matter or the Common Stock, except as expressly set forth herein.

**ARTICLE IV**  
**BOARD NOMINATION RIGHTS**

Section 4.1 Springing Nomination Right. Subject to, and only upon the satisfaction of the conditions set forth in, this Section 4.1 and Section 4.5, (i) the Farids Group shall have the right to designate TF or, in the event of the death or permanent disability of TF, another individual that is reasonably acceptable to the Company to be a director of the Company (TF or its designee in such capacity, the "**Director Designee**"), and (ii) the Company shall cause the Director Designee to be nominated as a director of the Company unless and until such Director Designee is unwilling or unable to serve as a director. The rights and obligations of the Farids Group and the Company (including, without limitation, the right of the Farids Group to appoint the Director Designee and the obligation of the Company to cause the Director Designee to be nominated for election to the Board of Directors (other than with respect to the Annual Meeting)) set forth in this Article IV shall only be effective immediately after, and only upon, the date the Farids Group owns 5.0% or more of the issued and outstanding Common Stock. Subject to, and only upon the satisfaction of the conditions set forth in, this Section 4.1 and Section 4.5, it is understood and agreed that in the event that a vacancy is created at any time as a result of (i) the death or permanent disability of any Director Designee or (ii) the retirement, resignation or removal (with or without cause) of any Director Designee other than TF, then the Farids Group shall have the right to designate a replacement director (who shall be reasonably acceptable to the Company and shall satisfy the eligibility requirements in Section 4.3) to fill such vacancy.

Section 4.2 Obligations of the Company.

(a) Nomination: Insurance. On or prior to the date of this Agreement or TF's election to the Board of Directors at the Annual Meeting, as applicable, the Company shall have (x) nominated TF for election to the Board of Directors at the Annual Meeting, (y) entered into an Indemnification Agreement with TF as the Director Designee and (z) taken all necessary action for TF to be covered by the Company's existing directors' liability insurance policy.

(b) Nomination. Subject to, and only upon the satisfaction of the conditions set forth in, this Section 4.1 and Section 4.5, the Company shall cause the Director Designee to be (x) nominated for election to the Board of Directors and included in the Board of Director's slate of nominees recommended to the shareholders of the Company for each election of directors, and recommend to the shareholders of the Company that the Director Designee be elected to the Board of Directors and (y) included in the proxy statement (if any) prepared by management of the Company in connection with soliciting proxies for every meeting of the shareholders of the Company called with respect to the election of members of the Board of Directors, and at every adjournment or postponement thereof, and on every action or approval by written consent of the shareholders of the Company or the Board of Directors with respect to the election of members of the Board of Directors. When applicable pursuant to Section 4.1 and Section 4.5, the Company shall use its commercially reasonable efforts to cause the election of the Director Designee and otherwise support the Director Designee for election in a manner no less rigorous and favorable than the manner in which the Company supports, and has historically supported, its other nominees in the aggregate. Except as otherwise required by applicable Law, the Company shall not take any action to cause the removal without cause of the Director Designee, unless it is directed to do so by the Farids Group.

Section 4.3 Eligibility of Director Designee. Notwithstanding the other provisions of this Article IV, the Company shall not be obligated to cause to be nominated for election to the Board of Directors (or to be included in the Board of Directors' slate of nominees to the Company's stockholders or any proxy statement prepared by management of the Company in connection with soliciting proxies for meetings of the stockholders of the Company called with respect to the election of members of the Board of Directors) or recommend to the Company's stockholders the election of the Director Designee in the event that (i) the Director Designee fails to satisfy all applicable requirements (other than those relating to independence) regarding qualifying as a director of the Company under (A) Nasdaq rules (or the rules of the principal market on which shares of Common Stock are then listed) regarding service as a director and (B) applicable Law; (ii) the Director Designee has been involved in any of the events enumerated in Item 2(d) or (e) of Schedule 13D under the Exchange Act, (iii) the Director Designee is currently the target of an investigation by any governmental authority or agency relating to felonious criminal activity or is subject to any order, decree, or judgment of any court or agency prohibiting service as a director of any public company or providing investment or financial advisory services or (iv) the Director Designee has declared or otherwise indicated (whether publicly or to the Company or the Board of Directors) that she or he is unwilling or unable to serve as a director or otherwise takes actions inconsistent with her or his election. If any event described in clause (i) through (iv) of the preceding sentence occurs, (x) if the Director Designee is TF, then the Farids Group shall forfeit its rights under this Agreement to designate the Director Designee as a member of the Board of Director and shall not have any right to a replacement designee and (y) if the Director Designee is an individual other than TF, then the TF Group shall designate a replacement designee who shall be reasonably acceptable to the Company and shall satisfy the eligibility requirements set forth in this Section 4.3 and such replacement designee shall thereafter constitute a "Director Designee" under this Agreement. The Company shall promptly notify the Farids Group in writing of any objection to the Director Designee in advance of the date on which proxy materials are mailed by the Company in connection with such election of directors.

Section 4.4 Resignation. If Farids' Nomination Right set forth in this Article IV is currently applicable and is terminated pursuant to Section 4.5, at the request of the Company, the Director Designee shall offer to resign as a director effective immediately.

Section 4.5 Termination. Subject to Section 4.1, the rights and obligations of the Farids Group and the Company (including, without limitation, the right of the Farids Group to appoint the Director Designee and the obligation of the Company to cause the Director Designee to be nominated for election to the Board of Directors) set forth in this Article IV (if applicable, the "**Nomination Right**") shall terminate immediately after the date the Farids Group owns less than 5.0% of the issued and outstanding Common Stock of the Company, and the Director Designee shall no longer be deemed to be a "Director Designee"; provided further, that, even if the Farids Group owns 5.0% or more of the issued and outstanding Common Stock, such rights and obligations shall terminate on the earliest to occur of: (A) for purposes of determining the Nomination Right for the third Contract Year (as defined in the Exclusive Supplier Operating Agreement), the EA Revenue (as defined in the Warrant) for the second Contract Year is less than \$[\*\*], (B) for purposes of determining the Nomination Right for the fourth Contract Year, the EA Revenue for the third Contract Year is less than \$[\*\*]; (C) for purposes of determining the Nomination Right for the fifth Contract Year, the EA Revenue for the fourth Contract Year is less than \$[\*\*]; or (D) for purposes of determining the Nomination Right for the 12-month period following the fifth Contract Year, the EA Revenue for the fifth Contract Year is less than \$[\*\*].

**ARTICLE V**  
**RESTRICTIONS ON TRANSFER**

Section 5.1 Restrictions on Transfer.

(a) Until the second anniversary of the Closing Date, the Farids Group agrees not to make any Transfer of all or any portion of the Purchased Shares, except that the Farids Group shall be permitted to make Permitted Transfers.

(b) Notwithstanding anything to the contrary in this Agreement, the Farids Group agrees that it will not effect any Transfer of Purchased Shares unless such Transfer is made pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and, in either case, in compliance with all applicable state securities laws and all applicable securities laws of any other jurisdiction. The Company agrees, and the Farids Group understands and consents, that the Company will not take any action to cause or permit the Transfer of any Purchased Shares to be made on its books (or on any register of securities maintained on its behalf) unless the Transfer is permitted by and has been made in accordance with the terms of this Agreement and all applicable securities laws. The Farids Group agrees that in connection with any Transfer of Purchased Shares that is not made pursuant to a registration statement, the Company may, in its sole discretion, request an opinion, certifications and other information in form and substance reasonably satisfactory to the Company and from counsel reasonably satisfactory to the Company stating that such transaction is exempt from registration under the Securities Act.

(c) The Purchased Shares shall be stamped or otherwise imprinted with legends substantially similar to the following (in addition to any legend required under applicable state securities laws) or if held in electronic form, shall be held in an account by the Company's stock transfer agent subject to restrictions on Transfer substantially consistent with the following legend, which shall be furnished in accordance with applicable Law:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT COVERING ANY SUCH TRANSACTION OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER, SUBJECT TO THE COMPANY'S RIGHT TO RECEIVE AN OPINION OF COUNSEL, CERTIFICATIONS AND OTHER INFORMATION IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY AND FROM COUNSEL REASONABLY SATISFACTORY TO THE COMPANY STATING THAT SUCH TRANSACTION IS EXEMPT FROM SUCH REGISTRATION REQUIREMENTS.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN STRATEGIC ALLIANCE AGREEMENT DATED AS OF DECEMBER 20, 2019, AMONG FARIDS & CO. LLC, EDIBLE ARRANGEMENTS, LLC AND THE COMPANY (AS THE SAME MAY BE AMENDED AND IN EFFECT FROM TIME TO TIME). NO SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH STRATEGIC ALLIANCE AGREEMENT. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

(d) The Farids Group acknowledges and agrees that any Transfer of the limited liability company interests, partnership interests, shares or other similar equity interests in any member of the Farids Group or a parent entity of such member will be deemed to constitute a Transfer of Purchased Shares, and any proposed Transfer of all or any portion of any such interests in any member of the Farids Group or a parent entity of such member shall be subject to compliance with the terms of this Agreement as such terms apply to the Farids Group.

(e) The Company acknowledges and agrees that the Farids Group may from time to time pledge, and/or grant a security interest in, some or all of the legended Purchased Shares in connection with applicable securities laws, pursuant to a bona fide margin agreement in compliance with a bona fide margin loan. Such a pledge would not be subject to approval or consent of the Company and no legal opinion of legal counsel to the pledgee, secured party or pledgor shall be required in connection with the pledge, but such legal opinion shall be required in connection with a subsequent transfer or foreclosure following default by the Farids Group transferee of the pledge. No notice shall be required of such pledge, but the Farids Group's transferee shall promptly notify the Company of any such subsequent transfer or foreclosure. The Farids Group acknowledges that the Company shall not be responsible for any pledges relating to, or the grant of any security interest in, any of the Purchased Shares or for any agreement, understanding or arrangement between the Farids Group and its pledgee or secured party. At the Farids Group's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Purchased Shares may reasonably request in connection with a pledge or transfer of the Purchased Shares, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

(f) The legend set forth in Section 5.1(c) above shall be removed and the Company shall issue one or more certificates without such legend or any other legend to the holder of the Purchased Shares upon which it is stamped or issue to such holder by electronic delivery, if (i) such Purchased Shares are registered for resale under the Securities Act, (ii) such Purchased Shares are sold or transferred pursuant to Rule 144, or (iii) such Purchased Shares are eligible for resale under the Securities Act without regard to current public information, manner of sale or volume limitations. Any fees (with respect to the Company's transfer agent, Company counsel or otherwise) associated with the removal of such legend shall be borne by the Company.

Section 5.2 Remedy for Prohibited Transfer. In the event that any member of the Farids Group Transfers any Purchased Shares in contravention of Section 5.1, such Transfer shall be null and void, and the Company agrees it will not take any action to effect such a Transfer nor will it treat any alleged transferee as the holder of such Purchased Shares.

## **ARTICLE VI**

### **REGISTRATION RIGHTS**

#### Section 6.1 Demand Registration.

(a) If the Company shall receive a written request (a "**Demand Request**") from the Farids Group that the Company file a registration statement under the Securities Act covering the registration of all or a portion of the Registrable Securities owned by the Farids Group, then the Company shall, subject to the limitations of this Section 6.1, effect, as expeditiously as reasonably possible, the registration under the Securities Act of all Registrable Securities in accordance with the intended method of distribution thereof that the Farids Group requests to be registered, subject to the provisions of Section 6.1(c); provided, however, that any Eligible Resale Registration Statement shall be filed within 90 days following receipt of such Demand Request and any Resale Shelf Registration Statement shall be filed within 30 days following receipt of such Demand Request, as applicable. The Farids Group shall have the right to make two (2) Demand Requests on or after the date that is the second anniversary of the date of this Agreement; provided, that the Farids Group shall not make more than one (1) Demand Request within any six-month period.

(b) If the Farids Group intends to distribute the Registrable Securities covered by its request by means of an underwritten public offering, it shall so advise the Company as a part of their request made pursuant to this Section 6.1. The Farids Group shall have the right to select the investment bank or banks and managers to administer any offering made in connection with a Demand Request, including the lead managing underwriter; provided that such investment banks or managers shall be reasonably acceptable to the Company; provided, further, that if the Farids Group declines to exercise such right, the Company shall select the investment bank or banks and managers to administer the offering, but the Farids Group shall continue to have such right pursuant to this Section 6.1(b) in any subsequent underwritten public offering.

(c) Notwithstanding anything herein to the contrary, the Company shall not be obligated to (i) effect a registration pursuant to Section 6.1 unless the Registrable Securities requested to be registered by the Farids Group, together with all other shares of Common Stock requested to be registered by any other holder of piggyback registration rights (each, an "**Other Piggyback Holder**") pursuant to any agreement containing similar registration rights as those contained in this Article VI (such other shares, the "**Other Registrable Securities**"), are reasonably expected to result in aggregate gross cash proceeds in excess of (x) in the case of a Resale Shelf Registration Statement, three (3) million dollars (\$3,000,000) and (y) in the case of any other form of registration statement, one (1) million dollars (\$1,000,000) or (ii) prepare, file, effect or maintain a shelf registration statement on Form S-3 (or any successor to Form S-3) or any similar shelf registration statement (other than a Resale Shelf Registration Statement) under the Securities Act for the purposes of compliance with any Demand Right pursuant to this Section 6.1.

(a) From and after the second anniversary of the date of this Agreement, the Company shall notify the Farids Group (unless the Farids Group has demanded such registration pursuant to Section 6.1) in writing at least five (5) business days prior to the initial public filing of any Eligible Registration Statement. Such notice from the Company shall state the intended method of distribution of the Registrable Securities included in such Eligible Registration Statement. The Company shall afford the Farids Group the opportunity to include Registrable Securities in such Eligible Registration Statement so long as it agrees to sell its Registrable Securities pursuant to the same method of distribution. If the Farids Group desires to include Registrable Securities held by it in any such Eligible Registration Statement, it shall, within four (4) business days after the above-described notice from the Company, so notify the Company in writing. Any such notice from the Farids Group shall (i) specify the amount of Registrable Securities that the Farids Group would like to include in such Eligible Registration Statement and (ii) include the agreement of the Farids Group to participate in any related underwritten offering on the same terms as the other participating Holders. Upon such written notice from the Farids Group, the Company will use its best efforts to effect the registration under the Securities Act of all Registrable Securities which the Farids Group has requested to be registered. If the Farids Group decides not to or is unable to include all of its Registrable Securities in any Eligible Registration Statement filed by the Company, the Farids Group shall nevertheless continue to have the right to include Registrable Securities in any subsequent Eligible Registration Statement as may be filed by the Company, all upon the terms and conditions set forth herein. Prior to the effectiveness of the applicable Eligible Registration Statement, the Farids Group may withdraw from such Eligible Registration Statement any of the Registrable Securities at any time upon written notice to the Company.

(b) Underwriting. If the Eligible Registration Statement under which the Company gives notice under this Section 6.2 is for an underwritten offering, the Company shall so advise the Farids Group. In such event, the right of the Farids Group to be included in an Eligible Registration Statement pursuant to this Section 6.2 shall be conditioned upon the Farids Group's participation in such underwriting by executing and delivering a custody agreement and power of attorney in form and substance reasonably satisfactory to the Company with respect to such Registrable Securities (the "**Custody Agreement and Power of Attorney**"), which Custody Agreement and Power of Attorney shall permit the Farids Group to, prior to the effectiveness of such Eligible Registration Statement, withdraw any of the Registrable Securities at any time from such Eligible Registration Statement upon written notice to the Company and the custodian. The Custody Agreement and Power of Attorney will provide, among other things, that (i) the Farids Group will, to the extent applicable, deliver to and deposit in custody with the custodian and attorney-in-fact named therein one or more certificates representing such Registrable Securities, accompanied by duly executed stock powers in blank, and irrevocably appoint said custodian and attorney-in-fact with full power and authority to act under the Custody Agreement and Power of Attorney on the Farids Group's behalf with respect to the matters specified therein, including, but not limited to, the entry into an underwriting agreement (the "**Underwriting Agreement**") in customary form with the underwriter(s) and such other documents and agreements reasonably required in connection with such registration or offering and (ii) the Farids Group will perform its obligations under such Underwriting Agreement and any other agreement entered into in connection with such registration and/or offering. The Farids Group also agrees to execute such other documents and agreements as the Company may reasonably request to effect the provisions of this Section 6.2 and any transactions contemplated hereby.

Section 6.3 Priority on Registrations. Notwithstanding any other provision of this Article VI, if the lead managing underwriter or underwriters advise, in the case of a requested registration pursuant to Section 6.1, the Farids Group or, in all other cases, the Company that marketing factors (including, but not limited to, an adverse effect on the per share offering price) require a limitation of the number of shares to be included in an underwritten offering (including Registrable Securities), then the Farids Group or the Company, as the case may be, shall so advise all holders of Registrable Securities and all Other Piggyback Holders who have requested to participate in such offering, that (i) if the requested registration is pursuant to Section 6.1, the number of shares that may be included in the underwriting shall be allocated first to the Farids Group for its own account, and second to the Company (to the extent it is selling shares of Common Stock in such offering) and the Other Piggyback Holders who have duly requested shares to be included therein on a pro rata basis based on the number of shares proposed to be sold by the Company and the number of Other Registrable Securities requested to be included by such Other Piggyback Holders, and (ii) if the requested registration is not pursuant to Section 6.1, the number of shares that may be included in the underwriting shall be allocated first to the Company for its own account (to the extent such registration was initiated by the Company) or to such Holder of Other Registrable Securities who demanded such registration pursuant to demand rights similar to those set forth in this Agreement, and second to the Company (to the extent such registration was not initiated by the Company), the Farids Group and the Other Piggyback Holders who have duly requested shares to be included therein on a pro rata basis based on the number of shares proposed to be sold by the Company (to the extent such registration was not initiated by the Company), the number of Registrable Securities requested to be included by the Farids Group and the number of Other Registrable Securities requested to be included by all such Other Piggyback Holders. For any Other Piggyback Holder which is a partnership, limited liability company or corporation, the partners, members or shareholders, as applicable, of such Other Piggyback Holder and the estates and Family Members of any such partners, members and shareholders and any trusts for the benefit of any of the foregoing Person(s) shall be deemed to be a single "Other Piggyback Holder," and any pro rata reduction with respect to such "Other Piggyback Holder" pursuant to this Section 6.3 shall be based upon the aggregate amount of shares carrying registration rights owned by all Persons deemed to constitute such "Other Piggyback Holder" (as defined in this sentence).

Section 6.4 Termination, Effectiveness, Postponement and Suspension of Registration.

(a) Right to Terminate Registration. If the Farids Group determines for any reason not to proceed with any proposed registration requested pursuant to Section 6.1, the Farids Group shall promptly notify the Company in writing. Upon receipt of such notice, the Company shall withdraw or terminate such registration whether or not any Other Piggyback Holder has elected to include any Other Registrable Securities in such registration. In addition, the Company shall have the right to withdraw or terminate any proposed registration initiated by it and a Holder of Other Registrable Securities shall have the right to withdraw or terminate any proposed registration initiated by it, whether or not the Farids Group or any Other Piggyback Holder has elected to include Registrable Securities or Other Registrable Securities, as the case may be, in such registration. The Company shall promptly give notice of the withdrawal or termination of any registration to the Farids Group, to the extent the Farids Group has elected to participate in such registration. The Registration Expenses of any such withdrawn or terminated registration shall be borne by the Company in accordance with Section 6.5.

(b) Effectiveness of the Registration Statement. The Company shall maintain the effectiveness of the Eligible Registration Statement until the earlier of (i) the date on which all Registrable Securities included in such Eligible Registration Statement have actually been sold and (ii) the date that is (x) 180 days (in respect of a Resale Shelf Registration Statement) or (y) 90 days (in respect of any Eligible Registration Statement other than a Resale Shelf Registration Statement) from the effective date of such Eligible Registration Statement.

(c) Postponement or Suspension of Registration. If the filing, initial effectiveness or continued use of an Eligible Registration Statement in respect of a registration pursuant to this Agreement at any time would require the Company to make a public disclosure of material non-public information, (1) which disclosure in the good faith judgment of the Board of Directors (after consultation with external legal counsel) (x) would be required to be made in any registration statement so that such registration statement would not contain a material misstatement or omission, (y) would not be required by applicable Law to be made at such time but for the filing, effectiveness or continued use of such Eligible Registration Statement and (z) would reasonably be expected to have a Company Material Adverse Effect or a material adverse effect on the Company's ability to effect a material proposed acquisition, disposition, financing, business opportunity, reorganization, recapitalization or similar transaction or (2) during a customary "blackout" period of the Company, then the Company may, upon giving prompt written notice of such determination to the Farids Group, delay the filing or initial effectiveness of, or suspend the use of, such Eligible Registration Statement; provided, that the Company shall not be permitted to do so pursuant to clause (1) above (x) more than two times during any twelve (12) month period or (y) for a period exceeding thirty (30) days on any one occasion (unless a longer period is consented to by the Farids Group) (the "**Suspension Period**"). In the event the Company exercises its rights under the preceding sentence, the Farids Group agrees to suspend, promptly upon its receipt of the notice referred to above, its use of any prospectus relating to such registration in connection with any sale or offer to sell Registrable Securities. If so requested by the Company, the Farids Group shall use its reasonable best efforts to deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Farids Group's possession, of the prospectus relating to such Registrable Securities at the time of receipt of such notice. The Company agrees that, in the event it exercises its rights under this Section 6.4(c), it shall (i) promptly notify the Farids Group of the termination or expiration of any Suspension Period, (ii) within thirty (30) days after delivery of the notice referred to above (unless a longer period is consented to by the Farids Group), resume the process of filing or request for effectiveness, or update the suspended registration statement, as the case may be, as may be necessary to permit the Farids Group to offer and sell its Registrable Securities in accordance with applicable Law and (iii) if an Eligible Registration Statement that was already effective had been suspended as result of the exercise of such rights by the Company, promptly notify the Farids Group after the termination or expiration of any Suspension Period of the applicable time period during which the Eligible Registration Statement is to remain effective, which shall be extended by a period of time equal to the duration of the Suspension Period.

Section 6.5 Expenses of Registration. Except as specifically provided herein, all Registration Expenses incurred in connection with any registration under Sections 6.1 and 6.2 shall be borne by the Company. All underwriting fees and selling commissions relating to the distribution of the Registrable Securities and all taxes, if any, on the transfer and sale, respectively, of the Registrable Securities being sold that are incurred in connection with any registrations hereunder shall be borne by the Farids Group. For the avoidance of doubt, all underwriting fees, selling commissions and taxes incurred in connection with any registration hereunder relating to securities sold by the Company shall be borne by the Company.

Section 6.6 Obligations of the Company. If and whenever the Company is required to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 6.1 and 6.2 (to the extent the Farids Group has requested to include Registrable Securities in an Eligible Registration Statement pursuant to clause (a) of such Section 6.1 or 6.2, as the case may be), the Company shall effect such registration to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof, and pursuant thereto the Company shall cooperate in the sale of the securities and shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC an Eligible Registration Statement on such form as shall be available for the sale of the Registrable Securities by the Farids Group in accordance with the intended method of distribution thereof and the provisions of this Article VI, and use its reasonable best efforts to cause each such Eligible Registration Statement to become effective and remain effective as provided herein; provided, however, that before filing any Eligible Registration Statement or Prospectus or any amendments or supplements thereto (not including documents that would be incorporated or deemed to be incorporated therein by reference), the Company shall afford the Farids Group, its counsel and the managing underwriter, if any, an opportunity to review copies of all such documents proposed to be filed. The Company shall not file any Eligible Registration Statement or Prospectus or any amendments or supplements thereto in respect of which the Farids Group has a right to review prior to the filing of such document, if the Farids Group, its counsel or the managing underwriter, if any, shall reasonably object, in writing, on a timely basis.

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Eligible Registration Statement as may be necessary to keep such Eligible Registration Statement continuously effective for the effectiveness period; and comply with the provisions of the Securities Act, the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to it with respect to the disposition of all securities covered by such Eligible Registration Statement as so amended or in such Prospectus as so supplemented.

(c) Notify the Farids Group, its counsel and the managing underwriter, if any, promptly (but in any event within 10 business days), and confirm such notice in writing, (i) when a Prospectus or any prospectus supplement or post-effective amendment has been filed, and, with respect to an Eligible Registration Statement or any post-effective amendment, when the same has become effective (including in such notice a written statement that the Farids Group may, upon request, obtain, without charge, one conformed copy of such Eligible Registration Statement or post-effective amendment including financial statements and schedules, all documents incorporated or deemed to be incorporated by reference and all exhibits), (ii) of the issuance by the SEC of any stop order suspending the effectiveness of a Eligible Registration Statement or of any order preventing or suspending the use of any preliminary prospectus or the initiation of any proceedings for that purpose, (iii) if at any time when a prospectus is required by the Securities Act to be delivered in connection with sales of the Eligible Registrable Securities the representations and warranties of the Company contained in any agreement (including any underwriting agreement) contemplated by Section 6.6(k) below cease to be true and correct in all material respects, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of an Eligible Registration Statement or any of the Registrable Securities for offer or sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose, (v) of the happening of any event that makes any statement made in such Eligible Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in such Eligible Registration Statement, Prospectus or documents so that, in the case of such Eligible Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the Company's reasonable determination that a post-effective amendment to an Eligible Registration Statement would be appropriate.

(d) Use its reasonable best efforts to prevent the issuance of any order suspending the effectiveness of an Eligible Registration Statement or of any order preventing or suspending the use of a Prospectus or suspending the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, and, if any such order is issued, to obtain the withdrawal of any such order at the earliest possible moment.

(e) If requested by the managing underwriter, if any, or the Farids Group, (i) promptly incorporate in a post-effective amendment such information as the managing underwriter, if any, or the Farids Group reasonably requests to be included therein to comply with applicable Law, (ii) make all required filings of such post-effective amendment as soon as practicable after the Company has received notification of the matters to be incorporated in such post-effective amendment, and (iii) supplement or make amendments to such Eligible Registration Statement; provided, however, that the Company shall not be required to take any actions under this Section 6.6(e) that are not, in the opinion of counsel for the Company, in compliance with applicable Law.

(f) Furnish to the Farids Group and each managing underwriter, if any, without charge, one conformed copy of the Eligible Registration Statement or Statements and each post-effective amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference and all exhibits.

(g) Deliver to the Farids Group, its counsel and the underwriters, if any, without charge, as many copies of the Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Persons may reasonably request; and, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by the Farids Group and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus and an amendment or supplement thereto.

(h) Prior to any public offering of Registrable Securities, to use its reasonable best efforts to register or qualify, and cooperate with the Farids Group, the underwriters, if any, the sales agent and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or "blue sky" laws of such jurisdictions within the United States as the Farids Group or the managing underwriter, if any, reasonably request in writing; use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the period during which the related Eligible Registration Statement is required to be kept effective and use its reasonable best efforts to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the applicable Eligible Registration Statement; provided, however, that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it is not then so qualified or (B) take any action that would subject it to general service of process or taxation in any such jurisdiction where it is not then so subject.

(i) Upon the occurrence of any event contemplated by clause (v) or (vi) of Section 6.6(c) above, as promptly as practicable prepare a supplement or post-effective amendment to the Eligible Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(j) Enter into an underwriting agreement in form, scope and substance as is customary in underwritten offerings and take all such other actions as are reasonably requested by the managing underwriter in order to expedite or facilitate the registration or the disposition of such Registrable Securities, and in such connection, (i) make such customary representations and warranties to the underwriters, with respect to the business of the Company and its subsidiaries, and the Eligible Registration Statement, Prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein; (ii) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions shall be reasonably satisfactory (in form, scope and substance) to the managing underwriter), addressed to the underwriters covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by the underwriters; and (iii) obtain "comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Eligible Registration Statement), addressed to each of the underwriters, such letters to be in customary form and covering matters of the type customarily covered in "comfort" letters in connection with underwritten offerings. The above shall be done at each closing under such underwriting agreement, or as and to the extent required thereunder.

(k) Use its reasonable best efforts to cause all Registrable Securities covered by such Eligible Registration Statement to be listed on each securities exchange on which the Common Stock is then listed.

(l) Comply with all applicable rules and regulations of the SEC and make generally available to its security-holders earnings statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) (i) commencing at the end of any fiscal quarter in which Registrable Securities are sold to underwriters in a firm commitment or best efforts underwritten offering and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter of the Company after the effectiveness date of an Eligible Registration Statement, which statements shall cover said 12-month periods.

Section 6.7 Delay of Registration; Furnishing Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 6.1 or 6.2 that the Farids Group shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of distribution of such securities as required by Section 6.12 or as otherwise reasonably requested by the Company.

Section 6.8 Indemnification. In the event any Registrable Securities are included in an Eligible Registration Statement under Section 6.1 or 6.2:

(a) To the fullest extent permitted by law, the Company will indemnify and hold harmless the Farids Group, the partners, members, directors and officers of any member of the Farids Group, any underwriter (as defined in the Securities Act), the directors and officers of such underwriter, and each person, if any, who controls any member of the Farids Group or such underwriter within the meaning of the Securities Act or the Exchange Act (collectively, the **"Non-Company Indemnified Parties"**), against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or suits, actions or proceedings in respect thereof) and reasonable documented expenses that arise out of or are based upon any of the following statements, omissions or violations by the Company: (i) any untrue statement or alleged untrue statement of a material fact contained in such Eligible Registration Statement or incorporated by reference therein, including any preliminary prospectus, final prospectus or summary prospectus contained therein or any amendments or supplements thereto or any document incorporated by reference therein, or any other such disclosure document (including reports and other documents filed under the Exchange Act and any document incorporated by reference therein) or related document or report, (ii) any omission or alleged omission to state therein a material fact required to be stated therein (in the case of an Eligible Registration Statement only), or necessary to make the statements therein not misleading, in the case of a prospectus, in the light of the circumstances when they were made, or (iii) any violation or alleged violation by the Company or any of its subsidiaries of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any federal, state, foreign or common law, rule or regulation in connection with the offering covered by such Eligible Registration Statement (collectively, a **"Violation"**); and the Company will reimburse each such Non-Company Indemnified Party for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, suit, action or proceeding; provided, however, that the indemnity agreement contained in this Section 6.8(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, suit, action or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned, nor shall the Company be liable in any such case for any such loss, claim, damage, liability, suit, action or proceeding to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such Eligible Registration Statement by such Non-Company Indemnified Party.

(b) To the fullest extent permitted by law, the Farids Group will, jointly and severally, indemnify and hold harmless the Company, each of its directors, officers, employees, agents, representatives, and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, any underwriter (as defined in the Securities Act), the directors and officers of such underwriter, and each person, if any, who controls such underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages or liabilities (joint or several) to which the Company or any such director, officer, employee, agent, representative, controlling person or underwriter may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or suits, actions or proceedings in respect thereof) and reasonable documented expenses that arise out of or are based upon any of the following statements, omissions or violations: (i) any untrue statement or alleged untrue statement of a material fact contained in such Eligible Registration Statement or incorporated by reference therein, including any preliminary prospectus, final prospectus or summary prospectus contained therein or any amendments or supplements thereto or any document incorporated by reference therein, or any other such disclosure document (including reports and other documents filed under the Exchange Act and any document incorporated by reference therein) or related document or report, (ii) any omission or alleged omission to state therein a material fact required to be stated therein (in the case of an Eligible Registration Statement only), or necessary to make the statements therein not misleading, in the case of a prospectus, in the light of the circumstances when they were made, or (iii) any violation or alleged violation by the Company or any of its subsidiaries of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any federal, state, foreign or common law, rule or regulation in connection with the offering covered by such Eligible Registration Statement (collectively, a "**Holder Violation**"), in each case to the extent (and only to the extent) that such Holder Violation occurs in reliance upon and in conformity with written information furnished by the Farids Group expressly for use in connection with such Eligible Registration Statement; and the Farids Group will reimburse any legal or other expenses reasonably incurred by the Company or any such director, officer, employee, agent, representative, controlling person or underwriter in connection with investigating or defending any such loss, claim, damage, liability, suit, action or proceeding if it is judicially determined that there was such a Holder Violation; provided, however, that the indemnity agreement contained in this Section 6.8(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, suit, action or proceeding if such settlement is effected without the consent of the Farids Group, which consent shall not be unreasonably withheld, delayed or conditioned; provided, further, that in no event shall any indemnity under this Section 6.8(b) exceed the net proceeds from the offering received by the Farids Group upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Promptly after receipt by an indemnified party under paragraph (a) or (b) of this Section 6.8 (an "**Indemnified Party**") of written notice of the commencement of any claim, damage, suit, action or proceeding (including any governmental or regulatory investigation) being brought or asserted against it, such Indemnified Party will, if a claim in respect thereof is to be made against any indemnifying party under paragraph (a) or (b) of this Section 6.8 (an "**Indemnifying Party**"), deliver to the Indemnifying Party a written notice of the commencement thereof; provided, that the failure of the Indemnified Party to deliver written notice to the Indemnifying Party shall not relieve it from any liability it may have under paragraph (a) or (b) of this Section 6.8 except to the extent such failure has materially prejudiced the Indemnifying Party's ability to defend such action (through the forfeiture of substantive rights or defenses). The Indemnifying Party shall have the right to participate in, and, to the extent the Indemnifying Party so desires, jointly with any other Indemnifying Party who has received a similar notice, to assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party in such proceeding and shall pay the fees and expenses of such counsel relating to such proceeding, and after notice from the Indemnifying Party to the Indemnified Party of its election so to assume the defense thereof, the Indemnifying Party shall not, except as specified below, be liable to such Indemnified Party under paragraph (a) or (b) above, as the case may be, for any legal expenses of other counsel. In any such proceeding, an Indemnified Party shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnified Party; provided the Indemnifying Party will pay the reasonable fees and expenses of such counsel if (i) the Indemnifying Party and the Indemnified Party shall have so mutually agreed; (ii) the Indemnifying Party has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Party; (iii) the Indemnified Party shall have reasonably concluded, based on the advice of counsel, that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Party; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Party and the Indemnified Party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. It is understood and agreed that the Indemnifying Party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel that is required to effectively defend against any such proceeding) for all Indemnified Parties, and that all such fees and expenses shall be paid or reimbursed promptly. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent (which shall not be unreasonably withheld, delayed or conditioned), but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Party agrees to indemnify each Indemnified Party from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Party shall, without the written consent of the Indemnified Party (which shall not be unreasonably withheld, delayed or conditioned), effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnification could have been sought hereunder by such Indemnified Party, unless such settlement (x) includes an unconditional release of such Indemnified Party, in form and substance reasonably satisfactory to such Indemnified Party, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party.

(d) If the indemnification provided for in this Section 6.8 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages or liabilities referred to herein, the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall to the extent permitted by applicable Law contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the actions that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering made under such Eligible Registration Statement received by such Holder.

(e) The parties hereto agree that it would not be just and equitable if contribution pursuant to Section 6.8(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(f) The obligations of the Company and the Farids Group under this Section 6.8 shall survive completion of any offering of Registrable Securities in an Eligible Registration Statement and the termination of this Agreement.

(g) The obligations of the parties under this Section 6.8 will be in addition to any liability, without duplication, which any party may otherwise have to any other party.

Section 6.9 "Market Stand-Off" Agreement. The Farids Group hereby agrees that the Farids Group shall not Transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale or other Transfer, any Lock-Up Security held by the Farids Group (other than those included in the registration) for a period specified by the representative(s) of the underwriters of Registrable Securities or any other securities sold in any offering in respect of which the Farids Group received notice from the Company in accordance with Section 6.2, such period not to exceed one hundred and eighty (180) days following the pricing date of any underwritten offering; provided that the Farids Group shall only be required to comply with this Section 6.9 if the Farids Group beneficially own (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) at least 3.0% or more of the number of shares of Common Stock outstanding at such time. The Company may impose stop transfer instructions with respect to any Lock-Up Security subject to the foregoing restriction until the end of said one hundred and eighty (180) day or shorter period.

Section 6.10 Agreement to Furnish Information. The Farids Group agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the representative(s) of the underwriter(s) that are consistent with the Farids Group's obligations under Section 6.9 or that are necessary to give further effect thereto. In addition, if requested by the Company or such representative(s), the Farids Group shall provide, to the extent the Farids Group has elected to include Registrable Securities in an Eligible Registration Statement, within one (1) business day of such request, such information relating to itself, the Registrable Securities held by it and the registration and the intended method of distribution of the Registrable Securities as may be reasonably requested by the Company or such representative(s) in connection with the completion of any public offering of Common Stock pursuant to such Eligible Registration Statement. The underwriters of Registrable Securities are intended third party beneficiaries of Sections 6.8 and 6.10 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

Section 6.11 Termination. The rights and obligations of the Farids Group set forth in this Article VI (other than those set forth in Sections 6.8 and 6.9) shall terminate on the date that the Farids Group owns less than 3% of the issued and outstanding Common Stock, but in no event earlier than the Expiration Date (as defined in the Warrant).

## **ARTICLE VII**

### **RIGHT OF FIRST REFUSAL: CHANGE IN CONTROL**

#### Section 7.1 Right of First Offer for 144 Sales.

(a) Subject to the restrictions set forth in Section 5.1 of this Agreement and Section 2.3 of the Warrant, in the event any member of the Farids Group proposes to Transfer (other than a Permitted Transfer) a Threshold Block, in a transaction or series of related transactions, of Shares in a 144 Sale, the Farids Group shall furnish to the Company a written notice of such proposed Transfer (a "**ROFO Sale Notice**") at least 48 hours prior to the opening of trading on the Nasdaq Global Market (or such other primary stock exchange upon which the Common Stock is listed) on the business day that the Farids Group proposes to begin to effect such 144 Sale.

(b) The ROFO Sale Notice shall include:

(i) (A) the number of Shares proposed to be sold (the "**ROFO Shares**"), (B) the per share purchase price in cash at which the Farids Group is prepared to Transfer such ROFO Shares (the "**ROFO Sale Price**") and (C) the date the Farids Group proposes to begin to effect such 144 Sale; and

(ii) (ii) an offer to sell to the Company and/or a designee of the Company all or a portion of the ROFO Shares at the ROFO Sale Price.

(c) If the Company wishes to purchase (and/or cause a designee to purchase) all or a portion of the ROFO Shares at the ROFO Sale Price, the Company shall deliver a notice (a "**ROFO Purchase Notice**") to the Farids Group no later than 8:00 a.m. New York time on the business day that the Farids Group proposes to effect such 144 Sale specifying the number of ROFO Shares it wishes to purchase (and/or cause a designee to purchase) from the Farids Group. The closing of the purchase of such ROFO Shares by the Company and/or any such designee shall take place no later than five (5) business days after delivery of the ROFO Purchase Notice, with payment for such ROFO Shares being made concurrently with such purchase to the Farids Group's account designated in the ROFO Sale Notice. If the Company does not timely deliver a ROFO Purchase Notice it shall be deemed to have waived all of its rights with respect to the offer contained in the ROFO Sale Notice.

(d) In the event that the number of ROFO Shares offered to be purchased in the ROFO Purchase Notice is less than the number of ROFO Shares set forth in the Sale Notice (or the Company does not timely deliver a ROFO Purchase Notice), the Farids Group may sell the ROFO Shares that are not subject to any such ROFO Purchase Notice during the five (5) day business day period beginning on the date in the ROFO Sale Notice on which the Farids Group proposed to begin to effect such 144 Sale (the "**ROFO Transfer Period**"); provided that no such ROFO Share may be sold for less than the ROFO Sale Price.

(e) (e) If by the expiration of the ROFO Transfer Period, the Farids Group has not completed the Transfer of any ROFO Shares at the ROFO Sales Price or a higher price, in order for the Farids Group to Transfer such ROFO Shares (or any other Shares) it shall be necessary for a new ROFO Sale Notice or ROFR Sale Notice to be delivered, and the terms and provisions of this Article VII to be again complied with. The Farids Group shall not deliver more than one ROFO Sale Notice or ROFR Sale Notice in any thirty (30) day period.

Section 7.2 Right of First Refusal.

(a) Subject to the restrictions set forth in Section 5.1 of this Agreement and Section 2.3 of the Warrant, in the event any member of the Farids Group proposes to Transfer (other than a Permitted Transfer) (i) a Threshold Block, in a transaction or series of related transactions, that, to the Farids Group's knowledge (after due inquiry in connection with a private, non-open market transaction) is to a Person whom the Company reasonably determines is a direct or indirect material competitor of the Company or any Affiliate of such Person or (ii) a Significant Block, in a transaction or series of related transactions, that, to the Farids Group's knowledge (after due inquiry in connection with a private, non-open market transaction) is to a Person whom the Company reasonably determines is a direct or indirect material competitor of the Company or any Affiliate of such Person (in each case, regardless of whether such Transfer will constitute a 144 Sale), the Farids Group shall furnish to the Company a written notice of such proposed Transfer (a "**ROFR Sale Notice**") at least (5) business days prior to the business day that the Farids Group proposes to effect such Transfer.

(b) The ROFR Sale Notice shall include:

(i) (A) the identity of the proposed transferee, (B) the purchase agreement and other documentation for the proposed Transfer (the "**ROFR Sale Documentation**"), (C) the number of Shares proposed to be sold (the "**ROFR Shares**"), (D) the per share purchase price in cash at which the Farids Group is prepared to Transfer such ROFR Shares (the "**ROFR Sale Price**") and (E) the date the Farids Group proposes to effect such Transfer; and

(ii) an offer to sell to the Company and/or a designee of the Company all of the ROFR Shares at the ROFR Sale Price.

(c) If the Company wishes to purchase (and/or cause a designee to purchase) all of the ROFR Shares at the ROFR Sale Price, the Company shall deliver a notice (a "**ROFR Purchase Notice**") to the Farids Group within three (3) business day after receipt of the ROFR Sale Notice. The closing of the purchase of such ROFR Shares by the Company and/or any such designee shall take place no later than the later of (i) the purchase date set forth in the ROFR Sale Documentation and (ii) five (5) business days after delivery of the ROFR Purchase Notice, with payment for such ROFR Shares being made concurrently with such purchase to the Farids Group's account designated in the ROFR Sale Notice. If the Company does not timely deliver a ROFR Purchase Notice it shall be deemed to have waived all of its rights with respect to the offer contained in the ROFR Sale Notice.

(d) In the event that Company does not timely delivery a ROFR Purchase Notice, the Farids Group may sell the ROFR Shares to the proposed transferee identified in the ROFR Sale Notice at the ROFR Sale Price and on the other terms and conditions set forth in the ROFR Sale Documentation no later than three (3) business days following the date the Farids Group proposed to effect such Transfer in the ROFR Sale Notice (the "**ROFR Transfer Period**").

(e) If by the expiration of the ROFR Transfer Period, the Farids Group has not completed the Transfer of the ROFR Shares, in order for the Farids Group to Transfer such ROFR Shares (or any other Shares) it shall be necessary for a new ROFO Sale Notice or ROFR Sale Notice to be delivered, and the terms and provisions of this Article VII to be again complied with. The Farids Group shall not deliver more than one ROFR Sale Notice or ROFO Sale Notice in any thirty (30) day period.

## **ARTICLE VIII** **MISCELLANEOUS**

Section 8.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (upon telephonic confirmation of receipt), on the first business day following the date of dispatch if delivered by a recognized next day courier service, or on the third business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(a) if to the Company to:

Rocky Mountain Chocolate Factory, Inc.  
265 Turner Drive  
Durango, Colorado 81303  
Attention: Chief Executive Officer and Chief Financial Officer

with a copy (which shall not constitute notice) to:

Perkins Coie LLP  
1900 Sixteenth Street, Suite 1400  
Denver, Colorado 80202  
Attention: Sonny Allison and Ned Prusse

(b) If to the Farids Group to:

Farids & Co. LLC  
980 Hammond Dr., Suite 1000  
Atlanta, GA 30328 USA  
Attention: Tariq Farid

(c) If to EA to:

Edible Arrangement, LLC  
980 Hammond Dr., Suite 1000  
Atlanta, GA 30328 USA  
Attention: Tariq Farid

with a copy (which shall not constitute notice) to:

DLA Piper LLP (US)  
444 West Lake Street  
Suite 900  
Chicago, IL 60606  
Attention: Neal Aizenstein

Section 8.2 Further Assurances. Each party hereto shall do and perform or cause to be done and performed all further acts and shall execute and deliver all other agreements, certificates, instruments and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

Section 8.3 Amendments and Waivers. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is duly executed and delivered by the Company and the Farids Group. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law. The execution of a joinder agreement to this Agreement by a Family Member of TF shall not constitute an amendment to this Agreement requiring the consent of any party hereto.

Section 8.4 Fees and Expenses. Each party hereto shall pay all of its own fees and expenses (including attorneys' fees) incurred in connection with this Agreement and the transactions contemplated hereby.

Section 8.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, that, unless in connection with Permitted Transfers, neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any person without the express written consent of the other party hereto and any such assignment or other transfer shall be null and void; provided, further, that no such assignment shall relieve the assigning party of its obligations hereunder if such assignee does not perform such obligations. Prior to the receipt by the Company of adequate written notice of the Permitted Transfer of any Purchased Shares in accordance with the provisions of this Agreement and specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such shares in its records as the absolute owner and holder of such shares for all purposes, including the payment of dividends.

Section 8.6 Governing Law.

(a) This Agreement shall be governed and construed in accordance with the laws of the State of New York applicable to contracts made and wholly performed within such state, except for matters directly within the purview of the DGCL, which shall be governed by the DGCL. Each of the Farids Group and the Company hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction and venue of the United States District Court for the Southern District of New York and in the courts hearing appeals therefrom unless no basis for federal jurisdiction exists, in which event each party hereto irrevocably consents to the exclusive jurisdiction and venue of the Supreme Court of the State of New York, New York County, and the courts hearing appeals therefrom, for any action, suit or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Farids Group and the Company hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any such action, suit or proceeding, any claim that it is not personally subject to the jurisdiction of the aforesaid courts for any reason, other than the failure to serve process in accordance with this Section 8.6, that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable Law, that the action, suit or proceeding in any such court is brought in an inconvenient forum, that the venue of such action, suit or proceeding is improper, or that this Agreement, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable Law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the party is entitled pursuant to the final judgment of any court having jurisdiction. Each of the Farids Group and the Company irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any and all rights to trial by jury in connection with any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) Each of the Farids Group and the Company expressly acknowledges that the foregoing waivers are intended to be irrevocable under the laws of the State of New York, the State of Delaware and of the United States of America; provided, that consent by the Farids Group and the Company to jurisdiction and service contained in this Section 8.6 is solely for the purpose referred to in this Section 8.6 and shall not be deemed to be a general submission to said courts or in the State of New York other than for such purpose.

Section 8.7 Ownership Limitation. The Farids Group shall not (unless specifically requested in writing by the Company, acting through a resolution of a majority of the Company's directors), directly or indirectly, and agrees to cause the Affiliates of the Farid Group to not, directly or indirectly, in any manner acquire, offer or propose to acquire, or agree to acquire, directly or indirectly, whether by purchase, tender or exchange offer, through the acquisition of control of another person, by joining a partnership, limited partnership, syndicate or other group (including any group of persons that would be treated as a single "person" under Section 13(d) of the Exchange Act), through swap or hedging transactions or otherwise, any securities of the Company, or any rights decoupled from the underlying securities of the Company that would result in the Farids Group (together with its Affiliates) owning, controlling or otherwise having any beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 19.99% or more of the fully diluted number of shares of Common Stock outstanding at such time; provided, however, that nothing herein will require Common Stock to be sold to the extent that the Farids Group and its Affiliates, collectively, exceed the ownership limit under this Section 8.7 as the result of any share repurchase or other Company action that reduces the number of outstanding shares of Common Stock on or after the date hereof; provided, further, that (a) this Section 8.7 shall not preclude Farids or EA from privately requesting a waiver of the provisions of Section 8.7, and (b) the provisions of this Section 8.7 shall terminate and be of no further force and effect if the Company enters into a definitive agreement with respect to, or publicly announces that it plans to enter into, a transaction involving all or a controlling portion of the Company's equity securities or all or substantially all of the Company's assets (whether by merger, consolidation, business combination, tender or exchange offer, recapitalization, restructuring, sale, equity issuance or otherwise).

Section 8.8 Non-Disparagement.

(a) Neither the Company nor any of its Affiliates shall in any manner, directly or indirectly, in any capacity or manner, make or cause to be made, or in any way encourage any other person to make or cause to be made, any public statement or public announcement, including in any document or report filed with or furnished to the SEC or through the press, media, analysts or other persons, that constitutes an ad hominem attack on or otherwise disparages, defames or slanders the Farids Group or any of its Affiliates or any of their respective successors or current or former members, partners, officers, directors or employees (it being understood and agreed that the restrictions in this Section 8.8(a) shall not apply to any member of the Board of Directors based upon discussions solely among other members of the Board of Directors and/or management of the Company); provided, that the limitations set forth in this Section 8.8(a) shall not prevent the Company or any of its Affiliates from (i) responding to any public statement or announcement made by the Farids Group or any of its Affiliates that was made in breach of Section 8.8(b) below or (ii) if solicited by a Third Party, making objective statements that reflect the Company's view with respect to factual matters concerning specific acts or determinations of the Farids Group or any of its Affiliates (or their respective current or former representatives) occurring after the date hereof. For the avoidance of doubt, a public statement or announcement shall only be deemed to be made by the Company if such public statement or announcement is made by (X) an executive officer or a member of the Board of Directors (other than a Director Designee) or (Y) an employee or representative of the Company authorized to make such statement or announcement on behalf of the Company.

(b) Neither the Farids Group nor any of its Affiliates shall in any manner, directly or indirectly, in any capacity or manner, make or cause to be made, or in any way encourage any other person to make or cause to be made, any public statement or public announcement, including in any document or report filed with or furnished to the SEC or through the press, media, analysts or other persons, that constitutes an ad hominem attack on or otherwise disparages, defames or slanders the Company or any of its Affiliates or any of their respective successors or current or former members, partners, officers, directors or employees; provided, that, the limitations set forth in this Section 8.8(b) shall not prevent the Farids Group or any of its Affiliates from (i) responding to any statement made by the Company or any of its Affiliates or representatives that was made in breach of Section 8.8(a) above or (ii) if solicited by a Third Party, making objective statements that reflect the Farids Group's or any of its Affiliates' view with respect to factual matters concerning specific acts or determinations of the Company, any of its Affiliates or any current or former representatives of the Company or any of its Affiliates occurring after the date hereof. For the avoidance of doubt, a public statement or announcement shall only be deemed to be made by the Farids Group or any of its Affiliates if such public statement or announcement is made by (X) a Farids manager, director or executive officer or an EA manager, director or executive officer (Y) an employee or representative of Farids or EA authorized to make such statement or announcement on behalf of Farids or EA, as applicable.

Section 8.9 Non-Solicitation.

(a) Each of EA, Farids and the Company shall not, and shall cause their respective controlled Affiliates to not, either directly or indirectly solicit, hire, or contract with any of the employees of the other party or its Affiliates during the Term (as defined in the Exclusive Supplier Operating Agreement) and for one (1) year following the termination or expiration thereof; provided that this Section 8.9(a) shall not apply with respect to any such employee who employment with the other party and its Affiliates has been terminated for a period in excess of nine (9) months.

(b) Notwithstanding anything to the contrary in this Agreement, the restrictions regarding solicitation in this Section 8.9 shall not be deemed to apply to media advertisements of general circulation, open job fairs, the efforts of an employment search firm or other generalized means of publicizing a job opening, such as on a website or job board which, in each case, are not targeted primarily at the employees of the other party or its Affiliates; provided that this Section 8.9(b) shall not limit the restrictions or hiring set forth in Section 8.9(a).

Section 8.10 Entire Agreement. This Agreement and the other Transaction Documents constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties and/or their Affiliates with respect to the subject matter of this Agreement.

Section 8.11 Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 8.12 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable Law, such provision shall be deemed to be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforced in accordance with its terms to the maximum extent permitted by law.

Section 8.13 Counterparts; Third Party Beneficiaries. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same instrument. Facsimile and electronic (.PDF) signatures shall be sufficient to execute this Agreement. Except for Section 6.8 with respect to the underwriters of Registrable Securities, no provision of this Agreement shall confer upon any person other than the parties hereto any rights or remedies hereunder.

Section 8.14 Survival. The representations, warranties, agreements and covenants contained herein shall survive the Closing.

Section 8.15 Remedies. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to seek specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or equity. In the event of any dispute between the parties concerning the terms and provisions of this Agreement, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first written above.

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.**

By: /s/ Bryan J. Merryman  
Name: Bryan J. Merryman  
Title: Chief Executive Officer and Chief Financial Officer

**FARIDS & CO. LLC**

By: /s/ Tariq Farid  
Name: Tariq Farid  
Title: Chief Executive Officer

**EDIBLE ARRANGEMENTS, LLC**

By: /s/ Tariq Farid  
Name: Tariq Farid  
Title: Chief Executive Officer

*[Signature Page to Strategic Alliance Agreement]*

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EXHIBIT A

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT (this "**Joinder Agreement**") is executed pursuant to the terms of the Strategic Alliance Agreement, dated as of December 20, 2019, by and among Farids & Co. LLC, a Delaware limited liability company ("**Farids**"), Edible Arrangements, LLC, a Delaware limited liability company, and Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (the "**Company**"), a copy of which is attached hereto and is incorporated herein by reference (the "**Agreement**"), by the undersigned (the "**Farids Transferee**"). Capitalized terms used but not defined herein have the meanings set forth in the Agreement. By execution and delivery of this Joinder Agreement, the Farids Transferee agrees as follows:

SECTION 1. Acknowledgment. The Farids Transferee acknowledges that it has acquired Purchased Shares from a member of the Farids Group pursuant to a Permitted Transfer.

SECTION 2. Agreement. The Farids Transferee (a) agrees that the Purchased Shares it owns shall be bound by and subject to the terms of the Agreement to the same extent as if such Farids Transferee were a member of the Farids Group, (b) hereby adopts the Agreement with the same force and effect as if it were originally a member of the Farids Group and (c) shall constitute a member of the "Farids Group" under the Agreement.

SECTION 3. Notice. Any notice required to be provided by the Agreement shall be given to the Farids Transferee at the address of Farids Group listed in the Agreement.

SECTION 4. Governing Law. This Joinder Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed therein.

Executed and dated this     day of     .

Farids Transferee:

[INSERT NAME]

By: \_\_\_\_\_  
[Title]

Acknowledged and Agreed to by

ROCKY MOUNTAIN CHOCOLATE  
FACTORY, INC.

By: \_\_\_\_\_  
[Title]

**EXHIBIT B**

**EXCLUSIVE SUPPLIER OPERATING AGREEMENT**

[Attached]

B-1

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**EXHIBIT C**

**WARRANT**

[Attached]

C-1

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**EXHIBIT D**

**INDEMNIFICATION AGREEMENT**

[Attached]

D-1

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**EXHIBIT E**  
**AMENDMENT**

E-1

**Strategic Alliance Letter of Intent**  
**RMCF eCommerce Management by Edible**  
**December 20, 2019**

This Letter of Intent (the "**Letter of Intent**") is non-binding on the parties and only constitutes an expression of intent regarding the potential structure and terms of a transaction between Rocky Mountain Chocolate Factory, Inc., a Delaware corporation ("**RMCF**") and Edible Arrangements, LLC, a Delaware limited liability company ("**Edible**"), whereby RMCF would, as part of the broader Strategic Alliance, license to Edible certain rights related to the domain name RMCF.com to be defined in further detail in the Agreement (defined below) for purposes of Edible selling certain products produced by RMCF (the "**Products**") (to be further defined in the Agreement) to end user customers through the webpage for the Products made available on Edible's website ("**RMCF Marketplace**").

Given the pace of the Strategic Alliance and the public announcement on December 20<sup>th</sup> 2019, and because transitioning to the RMCF Marketplace may take up to 9 to 12 calendar months to fully complete, both parties will work in good faith to negotiate the terms of the Agreement. Under no circumstances will this Letter of Intent constitute a binding agreement between RMCF and Edible; and, at the present time there is no agreement or contract between the parties with respect to the subject matter addressed below. Unless and until final a definitive license agreement (the "**Agreement**") has been executed and delivered by both parties, no party will be under any legal obligation of any kind regarding the transaction contemplated by this Letter of Intent. The Agreement would contain many essential terms not addressed herein but are nonetheless necessary for the Agreement to become a contract. The Agreement and all proposals contained herein are subject to review and approval by appropriate levels of each party's management/board, and their efficacy is subject to such management/board approval.

**Background**

RMCF would continue to operate a website that offers corporate information and information about the Products ("**RMCF Website**"). Although the exact digital architecture has not been defined or agreed, it remains understood that RMCF Website would contain a link that would seamlessly direct visitors seeking to purchase Products to the RMCF Marketplace (e.g., "Shop all Products"). Upon clicking the link, the visitor would be redirected to the Edible managed RMCF Marketplace where they could purchase Products. For clarity, the RMCF Website would provide information to visitors only and all e-commerce activity previously performed by RMCF for the Products would be managed by Edible.

**Proposed Terms:**

- (1) RMCF would redirect website traffic of visitors of the RMCF Website seeking to purchase Products exclusively to the RMCF Marketplace for a nominal amount of \$1
  - (i) The website would likely have an ecommerce function that would redirect to a RMCF page of Edible's website or would be an immediate redirect
  - (ii) RMCF would still own and manage the upkeep of corporate info (about us, investor relations, etc.) which would remain a part of the RMCF website
  - (iii) RMCF would retain all IP rights on how the brand is marketed and presented – i.e. IP Rights and obligations would be similar as under the operating agreement
  - (iv) The explicit goal of the parties is that irrespective of whether customers come to RMCF.com or Edible.com, they would arrive at the same RMCF tab on Edible's website.

- (2) Edible would handle everything related to ecommerce transactional activities for the RMCF Marketplace, such as:
- (i) Customer acquisition/ all on-line advertising
  - (ii) Fulfillment – Edible would be responsible for all fulfillment, except as noted in (8) and (9) below. RMCF franchisees would be able to opt-in to participate for either store pick-up or delivery in their area, subject to the ecommerce fee in (8) below.
  - (iii) Customer Checkout
- (3) Other than selling Products to Edible, RMCF would have no other financial exposure resulting from the activities conducted on the RMCF Marketplace (unless it provides fulfillment as outlined in (9) below)
- (4) EA would own all of the customer information of RMCF Marketplace customers, and this “asset” would be part of any change of control matter, where fair market value would determine its ultimate value if purchased from Edible
- (5) Edible would receive the flow of orders that are currently placed by customers on RMCF.com (currently, approximately \$700,000 worth of orders)
- (i) Both parties acknowledge the need for a transition period before RMCF.com license and traffic is transferred, which could be up-to 9-12 months
- (6) Edible would purchase Products for the RMCF Marketplace pursuant to the terms and conditions of the Exclusive Supplier Operating Agreement between the parties
- (i) Inventory for the sales on the RMCF Marketplace would be included in EA's normal Purchase Orders
  - (ii) Purchase of Products by EA for sale on the RMCF Marketplace would count toward warrant revenue targets
- (7) If Edible requests a RMCF franchisee to handle the fulfillment of an order placed on the RMCF Marketplace, Edible would deduct an ecommerce fee from the total transaction value (subject to a current maximum of 30% of the order value), consistent with what Edible charges its own franchisees to handle fulfillment of an ecommerce order.
- (8) If Edible requests RMCF handle the fulfillment of an order placed on the RMCF Marketplace, Edible would deduct an ecommerce fee from the total transaction value (subject to a current maximum of 30% of the order value) to be mutually agreed to by the parties
- (9) RMCF would retain 100% control of all RMCF related social media (Instagram, Facebook, etc.), with the explicit understanding that RMCF is not expected to spend any advertising on such social media sites to drive traffic to RMCF.com
- (10) Upon a change of control, RMCF could repurchase the license and all the transactional value (assets) of the ecommerce channel for fair market value, as determined by an independent third party

(11)

Other than through all existing customers, RMCF will not market or sell Products through e-commerce with any other Person without the prior written consent of EA, which shall not be unreasonably withheld or delayed if EA in good faith believes that such new e-commerce customer would not reasonably be expected to have a material adverse effect on the sale of Products by EA.

**AGREED TO AND ACCEPTED BY:**

*Rocky Mountain Chocolate Factory, Inc.*

*Edible Arrangements, LLC*

/s/ Bryan J. Merryman  
**SIGNATURE**

/s/ Tariq Farid  
**SIGNATURE**

Bryan J. Merryman  
**PRINTED NAME**

Tariq Farid  
**PRINTED NAME**

CEO and CFO  
**TITLE**

Chief Executive Officer  
**TITLE**

December 20, 2019  
**DATE**

December 20, 2019  
**DATE**