

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

**FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**BETTER CHOICE COMPANY INC.**  
(Exact name of registrant as specified in its charter)

DELAWARE  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR  
ORGANIZATION)

2048  
(PRIMARY STANDARD INDUSTRIAL  
CLASSIFICATION CODE NUMBER)

83-4284557  
(I.R.S. EMPLOYER  
IDENTIFICATION NUMBER)

166 Douglas Road E  
Oldsmar, FL 34677  
(813) 659-5921  
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Damian Dalla-Longa  
Chief Executive Officer  
166 Douglas Road E  
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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

LARGE ACCELERATED

FILER

ACCELERATED FILER

Non-accelerated filer

Smaller reporting company

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 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities To Be Registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum Offering Price Per Share <sup>(2)</sup>	Proposed Maximum Aggregate Offering Price <sup>(2)</sup>	Amount of Registration Fee <sup>(3)</sup>
Common Stock, par value \$0.001 per share	46,765,215	\$ 3.15	\$ 147,310,427.25	\$ 19,120.89

(1) In the event of a stock split, stock dividend or similar transaction involving our common stock, the number of shares registered shall automatically be increased to cover the additional shares of common stock issuable pursuant to Rule 416 under the Securities Act.

(2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended. Shares of the registrant's common stock are eligible for trading on the over-the-counter market. To the registrant's knowledge, the last sale of the registrant's common stock that was reported on the over-the-counter market occurred on October 25, 2019 at a price of \$3.00 per share.

(3) To be paid in connection with the initial public filing of the registration statement.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said section 8(a), may determine.

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**The information in this preliminary prospectus is not complete and may be changed. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**Subject to Completion Dated October 25, 2019**

**PRELIMINARY PROSPECTUS**

**BETTER CHOICE COMPANY INC.**

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**46,765,215 Shares of Common Stock**

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This prospectus relates solely to the resale of up to an aggregate of 46,765,215 shares of our common stock, par value \$0.001 per share ("common stock"), by the selling stockholders identified in this prospectus. The selling stockholders acquired the shares of common stock offered by this prospectus from us in private placement transactions in reliance on exemptions from registration under the Securities Act of 1933, as amended (the "Securities Act") as more fully described herein. We are registering the resale of these shares of common stock by the selling stockholders to satisfy registration rights we have granted to the selling stockholders.

The selling stockholders may offer to sell the shares of common stock being offered in this prospectus at fixed prices, at prevailing market prices at the time of sale, at varying prices, at negotiated prices or through other means described in the section entitled "Plan of Distribution." We do not know when or in what amount the selling stockholders may offer these shares of common stock for sale. The selling stockholders may sell some, all or none of the shares of common stock offered by this prospectus.

The selling stockholders will receive all proceeds from the sale of the shares of common stock hereunder, and we will not receive any of the proceeds from their sale of the shares of common stock hereunder. We have agreed to pay all expenses relating to registering the shares of common stock being offered in this prospectus. The selling stockholders will pay any brokerage commissions and/or similar charges incurred by them for the sale of the shares of common stock being offered in this prospectus.

There is currently a limited public trading market for our common stock. Because all of the shares of common stock being offered in this prospectus are being offered by the selling stockholders, we cannot currently determine the price or prices at which these shares may be sold.

Our common stock is quoted on the OTCQB tier of the electronic over-the-counter marketplace operated by OTC Markets Group, Inc under the symbol "BTTR." On October 25, 2019, the last reported sales price for our common stock was \$3.00 per share.

We are a "smaller reporting company" under applicable Securities and Exchange Commission (the "SEC") rules and will be eligible for reduced public company reporting requirements. See "Summary—We are a Smaller Reporting Company."

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**Investing in our common stock involves significant risks. You should read the section entitled "Risk Factors" beginning on page 5 for a discussion of certain risk factors that you should consider before investing in our common stock.**

We may amend or supplement this prospectus from time to time by filing amendments or supplements as required. You should read the entire prospectus and any amendments or supplements carefully before you make your investment decision.

**Neither the SEC nor any other regulatory body has passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

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**The date of this prospectus is \_\_\_\_\_, 2019**

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You should rely only on the information contained in this prospectus. We have not, and the selling stockholders have not, authorized anyone to provide you with different information. If anyone provides you with different information, you should not rely on it. We are not, and the selling stockholders are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information contained in this prospectus is accurate only as of the date on the front cover of this prospectus. Neither the delivery of this prospectus nor any sale made in connection with this prospectus shall, under any circumstances, create any implication that there has been no change in our affairs since the date of this prospectus or that the information contained in this prospectus is correct as of any time after its date. Information contained on our website, or any other website operated by us, is not part of this prospectus.

For investors outside the United States: We have not, and the selling stockholders have not, done anything that would permit possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside the United States.

**CERTAIN IMPORTANT INFORMATION**

**Trademarks**

We own or have rights to use the trademarks and trade names that we use in conjunction with the operation of our business. Each trademark or trade name of any other company appearing in this prospectus is, to our knowledge, owned by such other company. Solely for convenience, our trademarks and trade names referred to in this prospectus may appear without the ® or ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks and trade names.

**Presentation of Financial and Other Information**

On May 6, 2019, Better Choice Company Inc. (“Better Choice Company”) acquired TruPet LLC (“TruPet”) and Bona Vida, Inc. (“Bona Vida”) in a pair of all-stock transactions (the “acquisitions”). The acquisition of TruPet is treated as a reverse merger with TruPet determined to be the accounting acquirer of the Better Choice Company. As such, the historical financial statements of the registrant are those of TruPet and TruPet’s equity has been re-cast to reflect shares of Better Choice Company common stock received in the acquisitions. The acquisition of Bona Vida is treated as an asset acquisition. Unless otherwise stated or the context otherwise requires, the historical business information described in this prospectus prior to consummation of the acquisitions is that of TruPet and, following consummation of the acquisitions, reflects business information of Better Choice Company, TruPet and Bona Vida as a combined business.

## SUMMARY

*This summary highlights selected information contained elsewhere in this prospectus, but it does not contain all of the information that you may consider important in making your investment decision. Therefore, you should carefully read the entire prospectus carefully, including, in particular, the "Risk Factors" section beginning on page 5 of this prospectus and the consolidated financial statements and related notes included elsewhere in this prospectus before making an investment decision.*

*In this prospectus, unless the context otherwise requires, to the "Company", "we", "us" and "our" refer to TruPet and its consolidated subsidiaries prior to May 6, 2019 and to Better Choice Company, TruPet and Bona Vida and their consolidated subsidiaries post May 6, 2019.*

### Overview

We are a rapidly-growing animal health and wellness company at the forefront of pet nutrition. We have an alternative and holistic approach to animal health that is accelerating into hemp-derived cannabidiol ("CBD") products. We launched our predecessor company TruPet with the vision to lead the pet industry's shift towards health and wellness products that support longer and better lives for pets. We empower our customers with the right knowledge and information so that they proactively make the best decisions when it comes to pet health and wellness. We have a demonstrated, multi-year track record of success selling trusted animal health and wellness products leveraging our established digital footprint.

We have a deep portfolio of premium animal health and wellness products sold under the TruDog, TruCat, TruGold, Orapup, Rawgo! and Hound Dog brand names across multiple forms and classes, including foods, treats, toppers, dental products, chews, tinctures, grooming products and supplements. We offer our customers near 30 active stock keeping units ("SKUs") through two distribution channels: direct-to-consumer, or DTC, and retail partners. Through our digital footprint, including social networks, online advertisements, emails, as well as direct mail, we reach a diverse base of customers across a broad range of demographics and gather valuable market and consumer behavior data. Our unique DTC strategy, one-on-one customer relationships and data-driven approach enable us to develop products that best meet our customers' needs. We have leveraged this unique digital engagement and success to penetrate the retail partner channel, including online ecommerce, gas stations and convenience stores, specialty stores and mall kiosks and anticipate expanding our distribution channels to include big box retailers, club stores and veterinary distributors in the near future. Our network allows us to rapidly scale with retail partners once we have confirmed consumer acceptance of new products.

Our established supply and distribution infrastructure allows us to develop, manufacture and commercialize new products generally in under 12 weeks. We will continue to deliver innovation to expand our product offerings and improve the health and well-being of pets. We leverage our proprietary behavioral database, customer feedback and analytics capabilities to derive valuable insights and launch new products. We currently have 20 canine products in our product pipeline that we plan to launch over the next six months. In addition to our domestic capabilities, we have partnered with a leading Israeli research and development center, Cannasoul, to create a portfolio of indication-specific intellectual property focused on hemp-derived CBD formulations.

We position our products and brands to capitalize on mainstream trends of pet humanization and increased consumer focus on the health and well-being of their pets. Pet parents want to feed their pets the highest quality natural products, yet 80% of pets consume products with insufficient nutrition or harmful ingredients. Additionally, we believe that the evolving CBD regulatory landscape in the United States and globally provides tailwinds to our business which will support and accelerate our growth.

Our experienced management and board members have an established track record across the retail, consumer packaged goods, pet health and wellness industries, and they share a common vision to build the premier provider of health and wellness pet products.

## **The Acquisitions and the May Private Placement**

### ***TruPet Acquisition***

On December 17, 2018, Better Choice Company made a \$2,200,000 investment in TruPet, an online seller of pet foods, pet nutritional products and related pet supplies. On February 2, 2019 Better Choice Company entered into a definitive agreement to acquire the remainder of TruPet. In connection with the acquisition, 15,027,533 shares of Better Choice Company common stock were issued to TruPet's members for the remaining 93.3% of the issued and outstanding membership interests of TruPet. We closed the acquisition on May 6, 2019. The shares of common stock included in the registration statement of which this prospectus is a part includes the shares of common stock issued to TruPet's members in the Acquisition.

### ***Bona Vida Acquisition***

On February 28, 2019, Better Choice Company entered into a definitive agreement to acquire all of the outstanding shares of Bona Vida, an emerging hemp-based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space. In connection with the acquisition, 18,003,273 shares of Better Choice Company common stock were issued to Bona Vida's stockholders for all shares of Bona Vida's common stock outstanding immediately prior to the acquisition. We closed the acquisition on May 6, 2019. The shares of common stock included in the registration statement of which this prospectus is a part includes the shares of common stock issued to former stockholders of Bona Vida in the Acquisition.

### ***May Private Placement***

On May 6, 2019, we completed a private placement (the "May Private Placement"), in which we sold 5,744,991 shares of our common stock and 5,744,991 warrants to purchase our common stock at an exercise price of \$4.25 per share at an offering price of \$3.00 per share in reliance on exemptions from registration under the Securities Act. The warrants are exercisable for 24 months from the closing of the May Private Placement. The shares of common stock we sold in the May Private Placement were sold to certain of the selling stockholders identified in this prospectus. The net proceeds from the May Private Placement, after deducting offering expenses and the payment of the placement fee, were approximately \$15.7 million which we used for general corporate purposes. In connection with the May Private Placement, we entered into a registration rights agreement (as amended, the "May Private Placement Registration Rights Agreement"). See "Description of Capital Stock—Registration Rights Agreements—May Private Placement Registration Rights Agreement" for more information.

## **Recent Developments**

### ***Halo Acquisition***

On October 15, 2019, we entered into a Stock Purchase Agreement (the "Agreement") with Halo, Purely For Pets, Inc., a Delaware corporation ("Halo"), Thriving Paws, LLC, a Delaware limited liability company ("Thriving Paws"), HH-Halo LP, a Delaware limited partnership ("HH-Halo") and, together with Thriving Paws, the "Sellers") and HH-Halo, in the capacity of the representative of the Sellers. Pursuant to the terms and subject to the conditions of the Agreement, among other things, we agreed to purchase from the Sellers one hundred percent (100%) of the issued and outstanding capital stock of Halo (the "Acquisition"). The aggregate consideration payable by us under the Agreement is \$40,000,000, subject to customary adjustments for Halo's net working capital, cash, and indebtedness, and consisting of a combination of (a) cash, (b) shares of our common stock, par value \$0.001 per share, (c) convertible subordinated notes or other equity or debt security and (d) a second lien promissory note issued by Halo in favor of HH-Halo. Each party's obligation to consummate the transactions contemplated by the Acquisition is subject to customary and agreed upon conditions, including, but not limited to, the absence of any statute, rule, regulation, executive order, decree, temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other governmental entity or other legal restraint or prohibition preventing or making illegal the consummation of the Acquisition.

## **General Corporate Information**

We were incorporated in the State of Nevada in 2001 under the name Cayanne Construction, Inc., and in 2009, changed our name to Sports Endurance, Inc. Effective March 11, 2019, we changed our name to Better Choice Company Inc. after reincorporating in Delaware. Our principal executive offices are located at 166 Douglas Road E,

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Oldsmar, FL 34677, and our telephone number at that address is (813) 659-5921. Our website is available at <https://www.betterchoicecompany.com>. Information on our website or any other website is not incorporated by reference herein and does not constitute a part of this prospectus.

**We are a Smaller Reporting Company**

We are a “smaller reporting company,” as defined in Item 10(f)(1) of Regulation S-K. As a smaller reporting company, we are eligible for exemptions from various reporting requirements applicable to other public companies that are not smaller reporting companies, including, but not limited to:

- Reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements;
- Not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002; and
- Reduced disclosure obligations for our annual and quarterly reports, proxy statements and registration statements.

We will remain a smaller reporting company until the end of the fiscal year in which (1) we have a public common equity float of more than \$250 million, or (2) we have annual revenues for the most recently completed fiscal year of more than \$100 million plus we have a public common equity float or public float of more than \$700 million. We also would not be eligible for status as smaller reporting company if we become an investment company, an asset-backed issuer or a majority-owned subsidiary of a parent company that is not a smaller reporting company.

We have elected to take advantage of certain of the reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of other reduced reporting requirements in future filings. As a result, the information that we provide to our stockholders may be different from what you might receive from other public reporting companies in which you hold equity interests.

References herein to “smaller reporting company” shall have the meaning associated with it in Item 10(f)(1) of Regulation S-K.

	<b>The Offering</b>
<b>Common Stock Offered by the Selling Stockholders</b>	A total of up to 46,765,215 shares of our common stock. The selling stockholders may from time to time sell some, all or none of the shares of common stock pursuant to the registration statement of which this prospectus is a part.
<b>Shares of Common Stock Outstanding</b>	45,427,659 as of September 30, 2019.
<b>Use of Proceeds</b>	The selling stockholders will receive all of the proceeds from the sale of shares of our common stock. We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders.
<b>Dividend Policy</b>	<p>We currently intend to retain our future earnings, if any, to finance the development and expansion of our business and, therefore, do not intend to pay cash dividends on our common stock for the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon then-existing conditions, including our results of operations and financial condition, capital requirements, business prospects, statutory and contractual restrictions on our ability to pay cash dividends, if any, and other factors our board of directors may deem relevant.</p> <p>Our Series E preferred stock (as defined herein) ranks senior to the shares of our common stock with respect to dividend rights and holders of Series E preferred stock are entitled to a cumulative dividend at the rate of 10.0% per annum on the stated value of \$0.99 per share.</p> <p>See “Dividend Policy.”</p>
<b>Risk Factors</b>	Investing in our common stock involves a high degree of risk. For a discussion of factors you should consider in making an investment, see “Risk Factors” beginning on page <a href="#">5</a> .
<b>Listing and Trading Symbol</b>	“BTTR.”
Except as otherwise indicated, the number of shares of our common stock outstanding is based on the number of shares of our common stock outstanding as of September 30, 2019, including the shares held by the selling stockholders. This number does not include:	
	<ul style="list-style-type: none"><li>• 9,312,815 warrants to purchase our common stock at a weighted average exercise price of \$4.00 per share that we issued in the May Private Placement and the December Private Placement (as defined herein) (together, the “Private Placements”);</li><li>• 6,000,000 shares of common stock underlying options to purchase common stock at a weighted average exercise price of \$5.12 per share that we granted under the Company’s 2019 Incentive Award Plan (the “2019 Plan”) to our directors, executive officers key employees and third-party contractors in connection with the private placement (of which 1,215,545 options have vested).</li></ul>

## RISK FACTORS

*An investment in our common stock involves a high degree of risk. Before making an investment decision, you should carefully consider the following risk factors, which address the material risks concerning our business and an investment in our common stock, together with the other information contained in this prospectus. If any of the risks discussed in this prospectus occur, our business, prospects, liquidity, financial condition and results of operations could be materially and adversely affected, in which case the trading price of our common stock could decline significantly and you could lose all or part of your investment. Some statements in this prospectus, including statements in the following risk factors, constitute forward-looking statements. Please refer to the section entitled "Cautionary Statement Concerning Forward-Looking Statements."*

### **Risks Related to Our Business and Industry**

***We may not be able to successfully implement our growth strategy on a timely basis or at all.***

Our future success depends on our ability to implement our growth strategy of introducing new products and expanding into new markets and new distribution channels and attracting new consumers to our brand and sub-brands. Our ability to implement this growth strategy depends, among other things, on our ability to:

- establish our brands and reputation as a well-managed enterprise committed to delivering premium quality products to the pet health and wellness industry;
- enter into distribution and other strategic arrangements with retailers and other potential distributors of our products;
- continue to effectively compete in specialty channels and respond to competitive developments;
- market and sell our products through the development of multi-channel distribution strategies focused on direct-to-consumer and distribution through wholesale venues including specialty retailers and veterinarian offices;
- expand and maintain brand loyalty;
- develop new proprietary value-branded products and product line extensions that appeal to consumers;
- maintain and, to the extent necessary, improve our high standards for product quality, safety and integrity;
- maintain sources from suppliers that comply with all federal, state and local laws for the required supply of quality ingredients to meet our growing demand;
- identify and successfully enter and market our products in new geographic markets and market segments;
- execute value-focused pricing strategies that position our products as premium, great tasting, all natural products offered at a competitive price;
- maintain compliance with all federal, state and local laws related to our products; and
- attract, integrate, retain and motivate qualified personnel.

We may not be able to successfully implement our growth strategy and may need to change our strategy in order to maintain our growth. If we fail to implement our growth strategy or if we invest resources in a growth strategy that ultimately proves unsuccessful, our business, financial condition and results of operations may be materially adversely affected.

***We may have difficulties managing our anticipated growth, or we may not grow at all.***

If we succeed in growing our business, such growth could strain our management team and capital resources. Our ability to manage operations and control growth will be dependent on our ability to raise and spend capital to successfully attract, train, motivate, retain and manage new members of senior management and other key personnel and continue to update and improve our management and operational systems, infrastructure and other resources, financial and management controls, and reporting systems and procedures. Failure to manage our growth effectively could cause us to misallocate management or financial resources, and result in additional expenditures and inefficient use of existing human and capital resources or we otherwise may be forced to grow at a slower pace that could impair or eliminate our ability to achieve and sustain profitability. Such slower than expected growth may require us to restrict or cease our operations and go out of business.

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Additionally, our anticipated growth will increase the demands placed on our suppliers, resulting in an increased need for us to manage our suppliers and monitor for quality assurance and comply with all applicable laws. Any failure by us to manage our growth effectively could impair our ability to achieve our business objectives.

***We have a history of losses, we expect to incur losses in the future and we may not be able to achieve or maintain profitability.***

We have a history of losses. We incurred net losses of \$6.0 million for the fiscal year ended December 31, 2018 and had \$16.7 million in accumulated deficit at December 31, 2018. Because we have a short operating history at scale, it is difficult for us to predict our future operating results. As a result, our losses may be larger than anticipated, and we may not achieve profitability when expected, or at all. Also, we expect our operating expenses to increase over the next several years as we further increase marketing spend, hire more employees, continue to develop new products and services, and expand internationally. These efforts may be more costly than we expect and may not result in increased revenue or growth in our business. Any failure to increase our revenue sufficiently to keep pace with our investments and other expenses could prevent us from achieving or maintaining profitability or positive cash flow on a consistent basis. Furthermore, if our future growth and operating performance fail to meet investor or analyst expectations, or if we have future negative cash flow or losses resulting from our investment in acquiring new customers or expanding our business, our business, financial condition and operating results may be materially adversely affected.

***We require a significant amount of cash to operate our business or increase our production to meet consumer demand for our products.***

The continued development of our business will require additional funding, and there is no assurance that we will generate cash flow from operations in the future sufficient to run our operations, service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring our existing debt or obtaining additional equity capital. The evolving nature of the business in which we operate may also make it more challenging to raise additional capital. We cannot assure you that our business will generate sufficient cash flow from operations in an amount sufficient to fund our liquidity needs.

***We have a limited operating history and, as a result, our past results may not be indicative of future operating performance.***

We have a limited operating history as a consolidated company to date and with the current scale of our business, which makes it difficult to forecast our future results, particularly with respect to our own and third-party retail channels, which we have only recently developed. You should not rely on our past annual or quarterly results of operations as indicators of future performance. Because we are in the early stages of operating our business, we are subject to many of the same risks inherent in the operation of a business with a limited operating history. You should consider and evaluate our prospects in light of the risks and uncertainty frequently encountered by companies like ours, including the potential inability to continue as a going concern. We will need to raise substantial additional capital, but adequate additional capital may not be available when we need it, on acceptable terms or at all.

We anticipate that we will need to raise additional capital to execute our business plan and maintain and expand our operations. Additional capital may not be available to us on acceptable terms, or at all. If we are unable to raise additional capital, our business may be harmed and we may need to curtail or cease operations. We may sell equity securities or debt securities in one or more transactions at prices and in a manner as we may determine from time to time. If we sell any such securities in subsequent transactions, our current investors may be materially diluted. Any debt financing, if available, may involve restrictive covenants and could reduce our operational flexibility or profitability. If we cannot raise funds on acceptable terms, we may not be able to grow our business or respond to competitive pressures.

***Our recurring losses and significant accumulated deficit have raised substantial doubt regarding our ability to continue as a going concern.***

We have experienced recurring operating losses over the last two years and have a significant accumulated deficit. We expect to continue to generate operating losses and consume significant cash resources for the foreseeable future. Without additional financing, these conditions raise substantial doubt about our ability to continue as a going concern, meaning that we may be unable to continue operations for the foreseeable future or realize assets and discharge

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liabilities in the ordinary course of operations. If we seek additional financing to fund our business activities in the future and there remains doubt about our ability to continue as a going concern, investors or other financing sources may be unwilling to provide additional funding on commercially reasonable terms or at all. If we are unable to obtain sufficient funding, our business, prospects, financial condition and results of operations will be materially and adversely affected and we may be unable to continue as a going concern. If we are unable to continue as a going concern, we may have to liquidate our assets and may receive less than the value at which those assets are carried on our consolidated financial statements, and it is likely that investors will lose all or a part of their investment.

***The combined business may be unable to integrate Bona Vida's and TruPet's businesses successfully and realize the anticipated benefits of the acquisitions.***

The acquisitions involved the combination of two businesses that historically have operated as independent companies. The success of the acquisitions will depend in large part on the success of the management of the combined business in integrating the operations, strategies, technologies and personnel of the companies. We may fail to realize some or all of the anticipated benefits of the acquisitions if the integration process takes longer than expected or is more costly than expected.

Our failure to meet the challenges involved in successfully integrating the operations of Bona Vida or TruPet or to otherwise realize any of the anticipated benefits of the acquisitions could impair our operations. The combined business will be required to devote management attention and resources to integrating Bona Vida's and TruPet's business practices and operations.

Potential issues and difficulties the combined business may encounter in the integration process include the following:

- the inability to integrate the respective businesses of Bona Vida and TruPet in a manner that permits the combined business to achieve the synergies anticipated to result from the acquisitions, which could result in the anticipated benefits of the acquisitions not being realized partly or wholly in the time frame currently anticipated or at all;
- integrating personnel from the two companies while maintaining focus on safety and providing consistent, high quality products and customer service; and
- performance shortfalls at one or both of the companies as a result of the diversion of management's attention caused by the acquisitions and integrating the companies' operations.

***We may seek to grow our business through acquisitions of or investments in new or complementary businesses, facilities, technologies or products, or through strategic alliances, and the failure to manage acquisitions, investments or strategic alliances, or the failure to integrate them with our existing business, could have a material adverse effect on us.***

From time to time we expect to consider opportunities to acquire or make investments in new or complementary businesses, facilities, technologies or products, or enter into strategic alliances, that may enhance our capabilities, expand our network, complement our current products or expand the breadth of our markets. Potential and completed acquisitions and investments and other strategic alliances involve numerous risks, including:

- problems integrating the purchased business, facilities, technologies or products;
- issues maintaining uniform standards, procedures, controls and policies;
- assumed liabilities, including for compliance issues prior to the time we will enter into a transaction with such party;
- unanticipated costs associated with acquisitions, investments or strategic alliances;
- diversion of management's attention from our existing business;
- adverse effects on existing business relationships with suppliers, third-party contract manufacturers, and retail customers;
- risks associated with entering new markets in which we have limited or no experience;
- potential write-offs of acquired assets and/or an impairment of any goodwill recorded as a result of an acquisition;

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- potential loss of key employees of acquired businesses; and
- increased legal and accounting compliance costs.

We do not know if we will be able to identify acquisitions or strategic relationships we deem suitable, whether we will be able to successfully complete any such transactions on favorable terms or at all or whether we will be able to successfully integrate any acquired business, facilities, technologies or products into our business or retain any key personnel, suppliers or customers. Our ability to successfully grow through strategic transactions depends upon our ability to identify, negotiate, complete and integrate suitable target businesses, facilities, technologies and products and to obtain any necessary financing. These efforts could be expensive and time-consuming and may disrupt our ongoing business and prevent management from focusing on our operations. If we are unable to integrate any acquired businesses, facilities, technologies and products effectively, our business, financial condition and results of operations could be materially adversely affected.

***If we do not successfully develop additional products and services, or if such products and services are developed but not successfully commercialized, we could lose revenue opportunities.***

Our future success will depend, in part, on our ability to develop and market new products and improvements to our existing products, including those that we may develop through partnerships, strategic relationships or licensing arrangements. We are always assessing and identifying new opportunities to provide additional products and related services to our customers. The process of identifying and commercializing new products is complex, uncertain and may involve considerable costs, and if we fail to accurately predict customers' changing needs and preferences, our business could be harmed. The success of our innovation and product development efforts is affected by the technical capability of our product development staff, the ability to establish new supplier relationships and third-party consultants in developing and testing new products, including complying with governmental regulations, our attractiveness as a partner for outside research and development scientists and entrepreneurs and the success of our management and sales team in introducing and marketing new products. We have already and may have to continue to commit significant resources to commercializing new products before knowing whether our investments will result in products the market will accept. Implementation of these plans may also divert management's attention from other aspects of our business and place a strain on management, operational and financial resources, as well as our information systems. Launching new products or updating existing products may also leave us with obsolete inventory that we may not be able to sell or we may sell at significantly discounted prices. Furthermore, we may not execute successfully on commercializing those products because of errors in product planning or timing, technical hurdles that we fail to overcome in a timely fashion, or a lack of appropriate resources. This could result in competitors providing those solutions before we do and a reduction in net sales and earnings.

The success of new products will depend on several factors, including proper new product definition, timely completion and introduction of these products, differentiation of new products from those of our competitors, the possibility of increased competition with our current products, unrecovered costs associated with failed product introductions and market acceptance of these products. There can be no assurance that we will successfully identify additional new product opportunities, develop and bring new products to market in a timely manner, or achieve market acceptance of our products or that products and technologies developed by others will not render our products or technologies obsolete or non-competitive. Furthermore, the timing and cost of our R&D initiatives may increase as a result of additional government regulation or otherwise, making it more time-consuming and/or costly to research, test and develop new products. If we are unable to successfully develop or otherwise acquire new products, our business, financial condition and results of operations may be materially adversely affected.

***Because we are engaged in a highly competitive business, if we are unable to compete effectively, our results of operations could be adversely affected.***

The pet health and wellness industry is highly competitive. We compete on the basis of product and ingredient quality, product availability, palatability, brand awareness, loyalty and trust, product variety and innovation, product packaging and design, reputation, price and convenience and promotional efforts. The pet products and services retail industry has become increasingly competitive due to the expansion of pet-related product offerings by certain supermarkets, warehouse clubs, and other mass and general retail and online merchandisers and the entrance of other specialty retailers into the pet food and pet supply market. For example, General Mills, one of the largest mass market consumer goods companies, acquired Blue Buffalo in April 2018, signaling a shift toward the food, drug, and mass channel and away from specialty pet supply stores. In addition, in May 2018, Amazon launched its own pet products brand and announced its intention to continue to expand its online offering of pet supplies.

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We face direct competition from companies that sell various pet health and wellness products at a lower price point and distribute such products to traditional retailers, which are larger than we are and have greater financial resources. Price gaps between products may result in market share erosion and harm our business. Our current and potential competitors may also establish cooperative or strategic relationships amongst themselves or with third parties that may further enhance their resources and offerings. Further, it is possible that domestic or foreign companies, some with greater experience in the pet health and wellness industry or greater financial resources than we possess, will seek to provide products or services that compete directly or indirectly with ours in the future.

Many of our current competitors have, and potential competitors may have, longer operating histories, greater brand recognition, larger fulfillment infrastructures, greater technical capabilities, significantly greater financial, marketing and other resources and larger customer bases than we do. These factors may allow our competitors to derive greater net sales and profits from their existing customer base, acquire customers at lower costs or respond more quickly than we can to new or emerging technologies and changes in consumer preferences or habits. These competitors may engage in more extensive research and development efforts, undertake more far reaching marketing campaigns and adopt more aggressive pricing policies (including but not limited to predatory pricing policies and the provision of substantial discounts), which may allow them to build larger customer bases or generate net sales from their customer bases more effectively than we do.

Our competitors may be able to identify and adapt to changes in consumer preferences more quickly than us due to their resources and scale. They may also be more successful in marketing and selling their products, better able to increase prices to reflect cost pressures and better able to increase their promotional activity, which may impact us and the entire pet health and wellness industry. Increased competition as to any of our products could result in price reduction, increased costs, reduced margins and loss of market share, which could negatively affect our profitability. While we believe we are better equipped to customize products for the pet health and wellness market generally and CBD products more specifically as compared to other companies in the industry, there can be no assurance that we will be able to successfully compete against these other companies. Expansion into markets served by our competitors and entry of new competitors or expansion of existing competitors into our markets could materially adversely affect our business, financial condition and results of operations.

***If we fail to attract new customers, or retain existing customers, or fail to do either in a cost-effective manner, we may not be able to increase sales.***

Our success depends, in part, on our ability to attract new, and retain existing, customers in a cost-effective manner. We have made, and we expect that we will continue to make, significant investments in attracting and retaining customers. Marketing campaigns can be expensive and may not result in the cost-effective acquisition, or retention, of customers. Further, as our brand becomes more widely known, future marketing campaigns may not attract new or retain customers at the same rate as past campaigns. If we are unable to attract new customers, and retain existing customers, our business will be harmed.

***Our estimate of the size of our addressable market may prove to be inaccurate.***

Data for retail sales of pet products is collected for most, but not all channels, and as a result, it is difficult to estimate the size of the market and predict the rate at which the market for our products will grow, if at all. While our market size estimate was made in good faith and is based on assumptions and estimates we believe to be reasonable, this estimate may not be accurate. If our estimates of the size of our addressable market are not accurate, our potential for future growth may be less than we currently anticipate, which could have a material adverse effect on our business, financial condition, and results of operations.

***We are vulnerable to fluctuations in the price and supply of ingredients, packaging materials, and freight.***

The prices of the ingredients, packaging materials and freight are subject to fluctuations in price attributable to, among other things, changes in supply and demand of raw materials, or other commodities, fuel prices and government-sponsored agricultural programs. The sales prices to our DTC customers are a delivered price. Therefore, changes in our input costs could impact our gross margins. Our ability to pass along higher costs through price increases to our customers is dependent upon competitive conditions and pricing methodologies employed in the various markets in which we compete. To the extent competitors do not also increase their prices, customers and consumers may choose to purchase competing products or may shift purchases to lower-priced private label or other value offerings which may adversely affect our results of operations.

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We use significant quantities of food ingredients and other products as well as plastic packaging materials provided by third-party suppliers. We buy from a variety of producers and manufacturers, and alternate sources of supply are generally available. However, the supply and price are subject to market conditions and are influenced by other factors beyond our control. We do not have long-term contracts with many of our suppliers, and, as a result, they could increase prices or fail to deliver. The occurrence of any of the foregoing could increase our costs and disrupt our operations.

***We may be subject to product liability claims or regulatory action if our products are alleged to have caused significant loss or injury.***

We may be subject to product liability claims, regulatory action and litigation if our products are alleged to have caused loss or injury or failed to include adequate instructions for use or failed to include adequate warnings concerning possible side effects or interactions with other substances. Previously unknown adverse reactions resulting from animal consumption of CBD products alone or in combination with other medications or substances could also occur. In addition, the sale of any ingested product involves a risk of injury due to tampering by unauthorized third parties or product contamination. Our products may also be subject to product recalls, including voluntary recalls or withdrawals, if they are alleged to pose a risk of injury or illness, or if they are alleged to have been mislabeled, misbranded or adulterated or to otherwise be in violation of governmental regulations. We have in the past recalled, and may again in the future have to recall, certain of our products as a result of potential contamination and quality assurance concerns. A product liability claim or regulatory action against us could result in increased costs and could adversely affect our reputation and goodwill with our patients and consumers generally. There can be no assurance that we will be able to maintain product liability insurance on acceptable terms or with adequate coverage against potential liabilities. Such insurance is expensive and may not be available in the future on acceptable terms, or at all. The inability to obtain sufficient insurance coverage on reasonable terms or to otherwise protect against potential product liability claims could result in us becoming subject to significant liabilities that are uninsured and also could adversely affect our commercial arrangements with third parties.

***We plan to expand our business and operations into jurisdictions outside of the current jurisdictions where we conduct business, and there are risks associated with doing so.***

We plan in the future to expand our operations and business into jurisdictions outside of the jurisdictions where we currently carry on business, such as in South America and the Middle East. There can be no assurance that any market for our products will develop in any such foreign jurisdiction. We may face new or unexpected risks or significantly increase our exposure to one or more existing risk factors, including economic instability, new competition, changes in laws and regulations, including the possibility that we could be in violation of these laws and regulations as a result of such changes, and the effects of competition. These factors may limit our capability to successfully expand our operations in, or export our products to, those other jurisdictions.

***We may not be able to manage our manufacturing and supply chain effectively, which may adversely affect our results of operations.***

We must accurately forecast demand for all of our products in order to ensure that we have enough products available to meet the needs of our customers. Our forecasts are based on multiple assumptions that may cause our estimates to be inaccurate and affect our ability to obtain adequate third-party contract manufacturing capacity in order to meet the demand for our products, which could prevent us from meeting increased customer demand and harm our brand and our business. If we do not accurately align our manufacturing capabilities with demand, our business, financial condition and results of operations may be materially adversely affected.

We currently rely on a single supplier, GenCanna, for all of our supply of CBD. If our sole source supplier was to go out of business, we might be unable to find a replacement for such source in a timely manner, if at all. If a sole source supplier were to be acquired by a competitor, the competitor may elect not to sell to us at all. The loss of our single supplier could cause additional difficulties in finding a substitute supplier given the strict licensing requirements in this industry and there are a limited number of suppliers that currently hold such licenses and comply with the 2014 Farm Bill (as defined below). If for any reason we were to change any one of our third-party contract manufacturers, we could face difficulties that might adversely affect our ability to maintain an adequate supply of our products, and we would incur costs and expend resources in the course of making the change. Moreover, we might not be able to obtain terms as favorable as those received from our current third-party contract manufacturers, which in turn would increase our costs.

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In addition, we must continuously monitor our inventory and product mix against forecasted demand. If we underestimate demand, we risk having inadequate supplies. We also face the risk of having too much inventory on hand that may reach its expiration date and become unsalable, and we may be forced to rely on markdowns or promotional sales to dispose of excess or slow-moving inventory. If we are unable to manage our supply chain effectively, our operating costs could increase and our profit margins could decrease.

***Our third-party contract manufacturers may breach our manufacturing agreements, most of which are nonexclusive such that these manufacturers could produce similar products for our competitors.***

We have contracts with our manufacturers, with which we utilize purchase orders. Our manufacturers may breach these agreements, including by engaging in illegal activity, and we may not be able to enforce our rights under these agreements or may incur significant costs attempting to do so. As a result, we cannot predict with certainty our ability to obtain products in adequate quantities, of required quality and at acceptable prices from our third-party contract manufacturers in the future. Any one of these risks could harm our ability to deliver our products on time, or at all, damage our reputation and our relationships with our retail partners and customers, and increase our product costs thereby reducing our margins.

In addition, most of our arrangements with our manufacturers are not exclusive. As a result, certain of our manufacturers could produce similar products for our competitors. Our competitors could enter into restrictive or exclusive arrangements with our manufacturers that could impair or eliminate our access to manufacturing capacity. Our manufacturers could also be acquired by our competitors, and may become our direct competitors, thus limiting or eliminating our access to manufacturing capacity.

***Interruption in our sourcing operations could disrupt production, shipment or receipt of our merchandise, which would result in lost sales and could increase our costs.***

We do not own or operate any manufacturing facilities and therefore depend upon independent third-party contract manufacturers for the manufacture of all of our products. Our products are manufactured to our specifications by factories within the United States and New Zealand. We cannot control all of the various factors, which include inclement weather; natural disasters, such as earthquakes, hurricanes, tornadoes, floods and other adverse weather and climate conditions; political and financial instability; strikes; unforeseen public health crises, such as pandemics and epidemics; acts of war or terrorism and other catastrophic events, whether occurring in the United States or internationally, that might affect a manufacturer's ability to ship orders of our products to customers from or to the impacted region in a timely manner or to meet our quality standards. For example, we receive and warehouse a portion of our inventory in Tampa, Florida, a city that is particularly vulnerable to hurricanes, floods, tornadoes and sinkholes. If any such disaster were to impact this facility, our operations would be materially disrupted. Inadequate labor conditions, health or safety issues in the factories where goods are produced can negatively impact our brand reputation. Late delivery of products or delivery of products that do not meet our quality standards could cause us to miss the delivery date requirements of our customers or delay timely delivery of merchandise to our stores or our wholesale customers for those items. From time to time, a third-party contract manufacturer may experience financial difficulties, bankruptcy or other business disruptions, which could disrupt our supply of products or require that we incur additional expense by providing financial accommodations to the third-party contract manufacturer or taking other steps to seek to minimize or avoid supply disruption, such as establishing a new third-party contract manufacturing arrangement with another provider. These events could cause us to fail to meet customer expectations, cause our retail or wholesale customers to cancel orders or cause us to be unable to deliver merchandise in sufficient quantities or of sufficient quality to our stores or our wholesale customers, which could result in lost sales and have a material adverse effect on our business, financial condition and results of operations.

Further, we may be unable to locate an additional or alternate third-party contract manufacturing arrangement in a timely manner or on commercially reasonable terms, if at all. Identifying a suitable manufacturer is an involved process that requires us to become satisfied with the prospective manufacturer's level of expertise, quality control, responsiveness and service, financial stability and labor practices. Any delay, interruption or increased cost in the proprietary value-branded products that might occur for any reason could affect our ability to meet customer demand for our products, adversely affect our net sales, increase our cost of sales and hurt our results of operations. In addition, manufacturing disruption could injure our reputation and customer relationships, thereby harming our business.

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### ***We are reliant on key inputs and changes in their costs could negatively impact our profitability.***

Our business is dependent on a number of key inputs and their related costs including raw materials and supplies related to product development and manufacturing operations. Any significant interruption or negative change in the availability or economics of the supply chain for key inputs could materially impact our business, financial condition, results of operations or prospects. Some of these inputs may only be available from a single supplier or a limited group of suppliers. If a sole source supplier was to go out of business, we might be unable to find a replacement for such source in a timely manner or at all. If a sole source supplier were to be acquired by a competitor, that competitor may elect not to sell to us in the future. Any inability to secure required supplies and services or to do so on appropriate terms could have a materially adverse impact on our business, financial condition, results of operations or prospects.

### ***If the ingredients used in our products are contaminated, alleged to be contaminated or are otherwise rumored to have adverse effects, our results of operations could be adversely affected.***

We buy ingredients from a variety of third-party suppliers. If these materials are alleged or prove to include contaminants that affect the safety or quality of our products or are otherwise rumored to have adverse effects, for any reason, we may sustain the costs of and possible litigation resulting from a product recall and need to find alternate ingredients, delay production, or discard or otherwise dispose of products, which could adversely affect our business, financial condition and results of operations. In addition, if any of our competitors experience similar events, our reputation could be damaged, including as a result of a loss of consumer confidence in the types of products we sell.

Although we insure on an economically reasonable basis against product recalls and product contamination, and carry a cannabis regulatory and enforcement endorsement under our Directors and Officers insurance policy, our insurance may not be adequate to cover all liabilities that we may incur in connection with product liability claims, including among others, that the products we sell caused injury or illness, include inadequate instructions for use or include inadequate warnings concerning possible side effects or interactions with other substances. For example, punitive damages are generally not covered by insurance. If we are subject to substantial product liability claims in the future, we may not be able to continue to maintain our existing insurance, obtain comparable insurance at a reasonable cost, if at all, or secure additional coverage. This could result in future product liability claims being uninsured. If there is a product liability judgment against us or a settlement agreement related to a product liability claim, our business, financial condition and results of operations may be materially adversely affected. In addition, even if product liability claims against us are not successful or are not fully pursued, these claims could be costly and time-consuming and may require management to spend time defending claims rather than operating our business.

### ***If any of our independent transportation providers experience delays or disruptions, our business could be adversely affected.***

We currently rely on independent transportation service providers both to ship raw materials and products to our manufacturing and distribution warehouses from our third-party suppliers and third-party contract manufacturers and to ship products from our manufacturing and distribution warehouses to our customers. Our utilization of these delivery services, or those of any other shipping companies that we may elect to use, is subject to risks, including increases in fuel prices, which would increase our shipping costs, employee strikes, organized labor activities and inclement weather, which may impact the shipping company's ability to provide delivery services sufficient to meet our shipping needs. Furthermore, if we are not able to negotiate acceptable terms with these companies or they experience performance problems or other difficulties, it could negatively impact our operating results and customer experience. If any of the foregoing occurs, our business, financial condition and results of operations may be materially adversely affected.

### ***Any damage to our reputation or our brands may materially adversely affect our business, financial condition and results of operations.***

Maintaining, developing and expanding our reputation with our customers and our suppliers is critical to our success. Our brand may suffer if our marketing plans or product initiatives are not successful. The importance of our brand may decrease if competitors offer more products similar to the products that we manufacture. Further, our brands may be negatively impacted due to real or perceived quality issues or if consumers perceive us as being untruthful in our marketing and advertising, even if such perceptions are not accurate. Product contamination, the failure to maintain high standards for product quality, safety and integrity, including raw materials and ingredients obtained from

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suppliers, or allegations of product quality issues, mislabeling or contamination, even if untrue or caused by our third-party contract manufacturing partners or raw material suppliers, may reduce demand for our products or cause production and delivery disruptions. However, we may be unable to detect or prevent product and/or ingredient quality issues, mislabeling or contamination, particularly in instances of fraud or attempts to cover up or obscure deviations from our guidelines and procedures. If any of our products become unfit for consumption, cause injury or are mislabeled, we may have to engage in a product recall and/or be subject to liability. Damage to our reputation or our brands or loss of consumer confidence in our products for any of these or other reasons could result in decreased demand for our products and our business, financial condition and results of operations may be materially adversely affected. In addition, if any of our competitors experience similar events, our reputation could be damaged, including as a result of a loss of consumer confidence in the types of products we sell.

Further, our corporate reputation is susceptible to damage by actions or statements made by current or former employees, competitors, vendors, adversaries in legal proceedings and government regulators, as well as members of the investment community and the media. There is a risk that negative information about our company, even if based on false rumor or misunderstanding, could adversely affect our business, results of operations, and financial condition. In particular, damage to our reputation could be difficult and time-consuming to repair, could make potential or existing retail customers reluctant to select us for new engagements, resulting in a loss of business, and could adversely affect our recruitment and retention efforts.

### ***Our business depends, in part, on the sufficiency and effectiveness of our marketing and trade promotion programs and incentives.***

Due to the competitive nature of our industry, we must effectively and efficiently promote and market our products through advertisements as well as through trade promotions and incentives to sustain and improve our competitive position in our market. Marketing investments may be costly. In addition, we may, from time to time, change our marketing strategies and spending, including the timing or nature of our trade promotions and incentives. We may also change our marketing strategies and spending in response to actions by our customers, competitors and other companies that manufacture and/or distribute pet health and wellness products. The sufficiency and effectiveness of our marketing and trade promotions and incentives are important to our ability to retain and improve our market share and margins. If our marketing and trade promotions and incentives are not successful or if we fail to implement sufficient and effective marketing and trade promotions and incentives or adequately respond to changes in industry marketing strategies, our business, financial condition and results of operations may be adversely affected.

### ***If we are unable to achieve desired results from, or maintain our advertising and marketing arrangements with certain third-party advertising or marketing providers to generate customers, our ability to generate revenue and our business could be adversely affected.***

We have entered into multiple advertising and marketing arrangements with certain advertising and marketing providers that are designed to increase traffic to our application on the Facebook platform. Our ability to attract new customers and retain existing customers is based in part on our ability to generate increased traffic or better retention rates through these user acquisition campaigns. In addition, we may lack the ability to control the advertisements and actions that are taken by these providers on the Facebook platform.

If we are unable to enter into such arrangements on favorable terms, are unable to achieve the desired results under these arrangements and programs, are unable to maintain these relationships, fail to generate sufficient traffic or generate sufficient revenue from purchases pursuant to these arrangements and programs, or properly manage the actions of these providers, our ability to generate revenue and our ability to attract and retain our customers may be impacted, negatively affecting our business and results of operations. In addition, if Facebook restricts our ability to use such arrangements and programs or takes limits or restricts access to its platform by us or our applications as a result of advertisements or actions taken by third-party advertising or marketing providers, it could have a material adverse effect on our business or results of operations.

### ***Our intellectual property rights may be inadequate to protect our business.***

We attempt to protect our intellectual property rights, both in the United States and in foreign countries, through a combination of patent, trademark, copyright and trade secret laws, as well as licensing agreements and third-party nondisclosure and assignment agreements. Because of the differences in foreign trademark, patent and other laws concerning proprietary rights, our intellectual property rights may not receive the same degree of protection in foreign

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countries as they would in the United States. Our failure to obtain or maintain adequate protection of our intellectual property rights for any reason could have a material adverse effect on our business, results of operations and financial condition.

We also rely on unpatented proprietary technology. It is possible that others will independently develop the same or similar technology or otherwise obtain access to our unpatented technology. To protect our trade secrets and other proprietary information, we require employees, consultants, advisors and collaborators to enter into confidentiality agreements. We cannot assure you that these agreements will provide meaningful protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use, misappropriation or disclosure of such trade secrets, know-how or other proprietary information. If we are unable to maintain the proprietary nature of our technologies, we could be materially adversely affected.

We rely on our trademarks, trade names, and brand names to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. We cannot assure you that our trademark applications will be approved. Third parties may also oppose our trademark applications, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition, and could require us to devote resources advertising and marketing new brands. Further, we cannot assure you that competitors will not infringe our trademarks, or that we will have adequate resources to enforce our trademarks.

### ***A failure to maintain third-party licenses could impede our ability to sell certain products.***

We license certain intellectual property from third parties in order to sell certain of our products. If any of these licenses expire, we cannot assure you that we will be able to renew them on acceptable terms or at all. Upon expiration, or if any of these licenses are terminated prior to the end of its term, we may have to cease using the licensed trademarks or other intellectual property. If we no longer have the right to use the licensed trademarks, we will have to rebrand the products, and if we no longer have the right to use other licensed intellectual property, we may have to cease sales of the relevant products, either of which could have an adverse effect on our business or results of operations.

### ***If third parties claim that we infringe upon their intellectual property rights, our business and results of operations could be adversely affected.***

We face the risk of claims that we have infringed third parties' intellectual property rights. Any claims of intellectual property infringement, even those without merit, could be expensive and time consuming to defend; could require us to cease selling the products that incorporate the challenged intellectual property, could require us to redesign, reengineer, or rebrand the product, if feasible, could divert management's attention and resources, or could require us to enter into royalty or licensing agreements in order to obtain the right to use a third party's intellectual property.

Any royalty or licensing agreements, if required, may not be available to us on acceptable terms or at all. A successful claim of infringement against us could result in our being required to pay significant damages, enter into costly license or royalty agreements, or stop the sale of certain products, any of which could have a negative impact on our business, financial condition, results of operations and our future prospects.

### ***We depend on the knowledge and skills of our senior management and other key employees, and if we are unable to retain and motivate them or recruit additional qualified personnel, our business may suffer.***

We have benefited substantially from the leadership and performance of our senior management, as well as other key employees. Our success will depend on our ability to retain our current management and key employees, and to attract and retain qualified personnel in the future, and we cannot guarantee that we will be able to retain our personnel or attract new, qualified personnel. In addition, we do not maintain any "key person" life insurance policies. The loss of the services of members of our senior management or key employees could prevent or delay the implementation and completion of our strategic objectives, or divert management's attention to seeking qualified replacements.

### ***Failure to comply with the U.S. Foreign Corrupt Practices Act, other applicable anti-corruption and anti-bribery laws, and applicable trade control laws could subject us to penalties and other adverse consequences.***

We operate our business in part outside of the United States. Our operations are subject to the U.S. Foreign Corrupt Practices Act (the "FCPA"), as well as the anti-corruption and anti-bribery laws in the countries where we do business. The FCPA prohibits covered parties from offering, promising, authorizing or giving anything of value,

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directly or indirectly, to a “foreign government official” with the intent of improperly influencing the official’s act or decision, inducing the official to act or refrain from acting in violation of lawful duty, or obtaining or retaining an improper business advantage. The FCPA also requires publicly traded companies to maintain records that accurately and fairly represent their transactions, and to have an adequate system of internal accounting controls. In addition, other applicable anti-corruption laws prohibit bribery of domestic government officials, and some laws that may apply to our operations prohibit commercial bribery, including giving or receiving improper payments to or from non-government parties, as well as so-called “facilitation” payments. In addition, we are subject to U.S. and other applicable trade control regulations that restrict with whom we may transact business, including the trade sanctions enforced by the U.S. Treasury, Office of Foreign Assets Control (OFAC). We also plan to expand our operations outside of the United States in the future and our risks related to the FCPA will increase as we grow our international presence.

We are in the process of implementing policies, internal controls and other measures reasonably designed to promote compliance with applicable anticorruption and anti-bribery laws and regulations, and certain safeguards designed to ensure compliance with U.S. trade control laws, our employees or agents may engage in improper conduct for which we might be held responsible. Any violations of these anti-corruption or trade controls laws, or even allegations of such violations, can lead to an investigation and/or enforcement action, which could disrupt our operations, involve significant management distraction, and lead to significant costs and expenses, including legal fees. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business, delisting from securities exchanges and other consequences that may have a material adverse effect on our business, financial condition and results of operations. In addition, our brand and reputation, our sales activities or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery or trade control laws and regulations.

### ***A failure of one or more key information technology systems, networks or processes may materially adversely affect our ability to conduct our business.***

The efficient operation of our business depends on our information technology systems. We rely on our information technology systems to effectively manage our sales and marketing, accounting and financial and legal and compliance functions, engineering and product development tasks, research and development data, communications, supply chain, order entry and fulfillment and other business processes. We also rely on third parties and virtualized infrastructure to operate and support our information technology systems. The failure of our information technology systems, or those of our third-party service providers, to perform as we anticipate could disrupt our business and could result in transaction errors, processing inefficiencies and the loss of sales and customers, causing our business and results of operations to suffer.

In addition, our information technology systems may be vulnerable to damage or interruption from circumstances beyond our control, including fire, natural disasters, power outages, systems failures, security breaches, cyber-attacks and computer viruses. The failure of our information technology systems to perform as a result of any of these factors or our failure to effectively restore our systems or implement new systems could disrupt our entire operation and could result in decreased sales, increased overhead costs, excess inventory and product shortages and a loss of important information.

Further, it is critically important for us to maintain the confidentiality and integrity of our information technology systems. To the extent that we have information in our databases that our customers consider confidential or sensitive, any unauthorized disclosure of, or access to, such information due to human error, breach of our systems through cybercrime, a leak of confidential information due to employee misconduct or similar events could result in a violation of applicable data protection and privacy laws and regulations, legal and financial exposure, damage to our reputation, a loss of confidence of our customers, suppliers and manufacturers and lost sales. Actual or suspected cyber-attacks may cause us to incur substantial costs, including costs to investigate, deploy additional personnel and protection technologies, train employees and engage third-party experts and consultants. We have taken steps to protect the security of our systems. Despite the implementation of these security measures, our systems may still be vulnerable to physical break-ins computer viruses, programming errors, attacks by third parties or similar disruptive problems. If any of these risks materialize, our reputation and our ability to conduct our business may be materially adversely affected.

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***We rely heavily on third-party commerce platforms to conduct our businesses. If one of those platforms is compromised, our business, financial condition and results of operations could be harmed.***

We currently rely upon third-party commerce platforms, including Shopify. We also rely on e-mail service providers, bandwidth providers, Internet service providers and mobile networks to deliver e-mail and “push” communications to customers and to allow customers to access our website.

Any damage to, or failure of, our systems or the systems of our third-party commerce platform providers could result in interruptions to the availability or functionality of our website and mobile applications. As a result, we could lose customer data and miss order fulfillment deadlines, which could result in decreased sales, increased overhead costs, excess inventory and product shortages. If for any reason our arrangements with our third-party commerce platform providers are terminated or interrupted, such termination or interruption could adversely affect our business, financial condition, and results of operations. We exercise little control over these providers, which increases our vulnerability to problems with the services they provide. We could experience additional expense in arranging for new facilities, technology, services and support. In addition, the failure of our third-party commerce platform providers to meet our capacity requirements could result in interruption in the availability or functionality of our website and mobile applications.

***Failure to comply with federal, state and foreign laws and regulations relating to privacy, data protection and consumer protection, or the expansion of current or the enactment of new laws or regulations relating to privacy, data protection and consumer protection, could adversely affect our business and our financial condition.***

We collect, store, process, and use personal information and other customer data, and we rely in part on third parties that are not directly under our control to manage certain of these operations and to collect, store, process and use payment information. Due to the volume and sensitivity of the personal information and data we and these third parties manage and expect to manage in the future, as well as the nature of our customer base, the security features of our information systems are critical. A variety of federal, state and foreign laws and regulations govern the collection, use, retention, sharing and security of this information. Laws and regulations relating to privacy, data protection and consumer protection are evolving and subject to potentially differing interpretations. These requirements may not be harmonized, may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. As a result, our practices may not have complied or may not comply in the future with all such laws, regulations, requirements and obligations.

We expect that new industry standards, laws and regulations will continue to be proposed regarding privacy, data protection and information security in many jurisdictions, including the CCPA, which will go into effect on January 1, 2020. We cannot yet determine the impact such future laws, regulations and standards may have on our business. Complying with these evolving obligations is costly. For instance, expanding definitions and interpretations of what constitutes “personal data” (or the equivalent) within the United States and elsewhere may increase our compliance costs and legal liability. A significant data breach or any failure, or perceived failure, by us to comply with any federal, state or foreign privacy or consumer protection-related laws, regulations or other principles or orders to which we may be subject or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand and business, and may result in claims, investigations, proceedings or actions against us by governmental entities or others or other penalties or liabilities or require us to change our operations and/or cease using certain data sets. Depending on the nature of the information compromised, we may also have obligations to notify users, law enforcement or payment companies about the incident and may need to provide some form of remedy, such as refunds, for the individuals affected by the incident.

***We are subject to risks related to online payment methods.***

We accept payments using a variety of methods, including credit card and debit card. As we offer new payment options to customers, we may be subject to additional regulations, compliance requirements and fraud. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. We are also subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. As our business changes, we may also be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. If we fail to comply with the rules or requirements of any provider of a payment method we accept, if the volume of fraud in our transactions limits or

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terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, we may, among other things, be subject to fines or higher transaction fees and may lose, or face restrictions placed upon, our ability to accept credit card and debit card payments from customers or facilitate other types of online payments. If any of these events were to occur, our business, financial condition and operating results could be materially adversely affected. We occasionally receive orders placed with fraudulent credit card data. We may suffer losses as a result of orders placed with fraudulent credit card data even if the associated financial institution approved payment of the orders. Under current credit card practices, we may be liable for fraudulent credit card transactions. If we are unable to detect or control credit card fraud, our liability for these transactions could harm our business, financial condition and results of operations.

### ***Significant merchandise returns or refunds could harm our business.***

We allow our customers to return products or offer refunds, subject to our return and refunds policy. If merchandise returns or refunds are significant or higher than anticipated and forecasted, our business, financial condition, and results of operations could be adversely affected. Further, we modify our policies relating to returns or refunds from time to time, and may do so in the future, which may result in customer dissatisfaction and harm to our reputation or brand, or an increase in the number of product returns or the amount of refunds we make.

### ***Premiums for our insurance coverage may not continue to be commercially justifiable, and our insurance coverage may have limitations and other exclusions and may not be sufficient to cover our potential liabilities.***

We have insurance to protect our assets, operations and employees. While we believe our insurance coverage addresses all material risks to which we are exposed and is adequate and customary in our current state of operations, such insurance is subject to coverage limits and exclusions and may not be available for the risks and hazards to which we are exposed. No assurance can be given that such insurance will be adequate to cover our liabilities or will be generally available in the future or, if available, that premiums will be commercially justifiable. In addition, insurance that is otherwise readily available, such as general liability, and directors and officer's insurance, may become more difficult for us to find, and more expensive, due to our CBD products. There are no guarantees that we will be able to find such insurances in the future, or that the cost will be affordable to us. If we are unable to obtain such insurances or if we were to incur substantial liability and such damages were not covered by insurance or were in excess of policy limits, we may be prevented from entering into certain business sectors, our growth may be inhibited, and we may be exposed to additional risk and financial liabilities, which could have a material adverse effect on our business, results of operations and financial condition could be materially adversely affected.

### ***To the extent our retail customers purchase products in excess of consumer consumption in any period, our net sales in a subsequent period may be adversely affected as our retail customers seek to reduce their inventory levels.***

From time to time, our retail customers may purchase more products than they expect to sell to consumers during a particular time period. Our retail customers may grow their inventory in anticipation of, or during, our promotional events, which typically provide for reduced prices during a specified time or other incentives. Our retail customers may also increase inventory in anticipation of a price increase for our products, or otherwise over order our products as a result of overestimating demand for our products. If a retail customer increases its inventory during a particular reporting period as a result of a promotional event, anticipated price increase or otherwise, then our net sales during the subsequent reporting period may be adversely impacted as our retail customers seek to reduce their inventory to customary levels. This effect may be particularly pronounced when the promotional event, price increase or other event occurs near the end or beginning of a reporting period or when there are changes in the timing of a promotional event, price increase or similar event, as compared to the prior year. To the extent our retail customers seek to reduce their usual or customary inventory levels or change their practices regarding purchases in excess of consumer consumption, our net sales and results of operations may be materially adversely affected in that or subsequent periods.

We may also voluntarily recall or withdraw products in order to protect our brand or reputation if we determine that they do not meet our standards, whether for quality, palatability, appearance or otherwise. If there is any future product recall or withdrawal, it could result in substantial and unexpected expenditures, destruction of product inventory, damage to our reputation and lost sales due to the unavailability of the product for a period of time, and our business, financial condition and results of operations may be materially adversely affected. In addition, a product recall or withdrawal may require significant management attention and could result in enforcement action by regulatory authorities.

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### ***Adverse litigation judgments or settlements resulting from legal proceedings relating to our business operations could materially adversely affect our business, financial condition and results of operations.***

From time to time, we are subject to allegations, and may be party to legal claims and regulatory proceedings, relating to our business operations. Such allegations, claims and proceedings may be brought by third parties, including our customers, employees, governmental or regulatory bodies or competitors. Defending against such claims and proceedings, regardless of their merits or outcomes, is costly and time consuming and may divert management's attention and personnel resources from our normal business operations, and the outcome of many of these claims and proceedings cannot be predicted. If any of these claims or proceedings were to be determined adversely to us, a judgment, a fine or a settlement involving a payment of a material sum of money were to occur, or injunctive relief were issued against us, our reputation could be affected and our business, financial condition and results of operations could be materially adversely affected.

### ***There may be decreased spending on pets in a challenging economic climate.***

The United States and other countries have experienced and continue to experience challenging economic conditions. Our business, financial condition and results of operations may be materially adversely affected by a challenging economic climate, including adverse changes in interest rates, volatile commodity markets and inflation, contraction in the availability of credit in the market and reductions in consumer spending. In addition, a slow-down in the general economy or a shift in consumer preferences to less expensive products may result in reduced demand for our products which may affect our profitability. The keeping of pets and the purchase of pet-related products may constitute discretionary spending for some of our consumers and any material decline in the amount of consumer discretionary spending may reduce overall levels of pet ownership or spending on pets. As a result, a challenging economic climate may cause a decline in demand for our products which could be disproportionate as compared to competing pet food brands since our products command a price premium. If economic conditions result in decreased spending on pets and have a negative impact on our suppliers or distributors, our business, financial condition and results of operations may be materially adversely affected.

### ***The Tax Cuts and Jobs Act, or the TCJA, could adversely affect our business and financial condition.***

On December 22, 2017, President Trump signed into law the TCJA, which significantly reforms the Internal Revenue Code of 1986, as amended (the "Code"). The TCJA, among other things, contains significant changes to corporate taxation, including a permanent reduction of the corporate income tax rate, a partial limitation on the deductibility of business interest expense, a limitation of the deduction for net operating loss carryforwards to 80% of current year taxable income, and the modification or repeal of many business deductions and credits. As the U.S. Treasury Department and the IRS issue guidance on the interpretation and application of the TCJA, we continue to examine the impact the TCJA may have on our business. Notwithstanding the reduction in the corporate income tax rate, the overall impact of the TCJA is uncertain and our business and financial condition could be adversely affected. The impact of this tax reform on holders of our common stock is also uncertain and could be adverse.

### ***Our ability to utilize our net operating loss carryforwards may be limited.***

Our ability to utilize our federal net operating loss carryforwards and federal tax credit may be limited under Section 382 of the Code. The limitations apply if we experience an "ownership change" (generally defined as a greater than 50 percentage point change (by value) in the ownership of our equity by certain stockholders over a rolling three-year period). Similar provisions of state tax law may also apply. We have not assessed whether such an ownership change has previously occurred. If we have experienced an ownership change at any time since our formation, we may already be subject to limitations on our ability to utilize our existing net operating losses to offset taxable income. In addition, future changes in our stock ownership, which may be outside of our control, may trigger an ownership change and, consequently, the limitations under Section 382. As a result, if or when we earn net taxable income, our ability to use our pre-change net operating loss carryforwards to offset such taxable income may be subject to limitations, which could adversely affect our future cash flows.

### **Risks Related to the Regulation of Our Business and Products**

#### ***We and our third-party contract manufacturers and suppliers are subject to extensive governmental regulation and may be subject to enforcement if we are not in compliance with applicable requirements.***

We and our third-party contract manufacturers and suppliers are subject to a broad range of federal, state and local laws and regulations governing, among other things, the testing, development, manufacture, distribution, marketing

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and post-market reporting of animal foods, including those that contain CBD. These include laws administered by the U.S. Food and Drug Administration (“FDA”), the U.S. Federal Trade Commission (“FTC”), the U.S. Department of Agriculture (“USDA”), and other federal, state and local regulatory authorities.

Because we market food, supplements and other products that are regulated as food and cosmetic care products for animals, we and the companies that manufacture our products are subject to the requirements of the Federal Food, Drug and Cosmetic Act (“FDCA”) and regulations promulgated thereunder by the FDA. The statute and regulations govern, among other things, the manufacturing, composition, ingredients, packaging, labeling and safety of food for animals. The FDA requires that facilities that manufacture animal food products comply with a range of requirements, including hazard analysis and preventative controls regulations, current good manufacturing practices (“cGMPs”) and supplier verification requirements. Processing facilities, including those of our third-party contract manufacturers and suppliers, are subject to periodic inspection by federal, state and local authorities. If our third-party contract manufacturers cannot successfully manufacture products that conform to our specifications and the strict regulatory requirements of the FDA and applicable state and local laws, they may be subject to adverse inspectional findings or enforcement actions, which could materially impact our ability to market our products, could result in their inability to continue manufacturing for us or could result in a recall of our products that have already been distributed. If the FDA or other regulatory authority determines that we or they have not complied with the applicable regulatory requirements, our business, financial condition and results of operations may be materially adversely impacted. If we do not comply with labeling requirements, including making unlawful claims about our products, we could be subject to public warning letters and possible further enforcement (which other companies distribution CBD products have faced).

In addition, we currently market and plan to market our products with claims regarding the functional benefits of our products for pets, including that our products are intended to support the immune system, promote healthy skin, support healthy heart function, promote calmness and relaxation, support joint function, promote healthy bones and other similar claims. While we believe that such claims are permissible claims for animal foods and supplements and that our packaging is in compliance with the FDA’s requirements, the FDA and other regulatory authorities may consider such claims to suggest that our products are intended to treat, cure, or prevent a disease, thereby potentially meeting the statutory definition of a “drug,” and the FDA has issued warning letters to companies for improper marketing of CBD products on this basis. In addition, the FTC has issued warning letters to companies for failing to properly substantiate their CBD product claims, which constitutes false advertising. For these and other reasons, the FDA, FTC and other regulatory authorities may consider our products to be new animal drugs without adequate substantiation or approval for our claims, which could lead to statutory and regulatory violations, enforcement actions and product recalls.

Failure by us or our third-party contract manufacturers and suppliers to comply with applicable laws and regulations or to obtain and maintain necessary permits, licenses and registrations relating to our or our partners’ operations could subject us to administrative and civil penalties, including fines, injunctions, recalls or seizures, warning letters, restrictions on the marketing or manufacturing of our products, or refusals to permit the import or export of products, as well as potential criminal sanctions, which could result in increased operating costs resulting in a material effect on our operating results and business. See “Business— Government Regulation.”

***The FDA has stated that it interprets the FDCA to prohibit the sale of food products, including animal foods and supplements, that contain CBD. The FDA is considering seeking a change in the relevant statutory framework to allow for certain CBD-containing food products or otherwise working to find a regulatory pathway pursuant to its current authorities, but unless and until such changes are enacted, the FDA and other federal and state regulatory authorities could take enforcement action to prevent us from marketing pet food, products and supplements with CBD that could adversely impact our business, financial condition and results of operations or cause us to halt product sales altogether.***

Although hemp and CBD are no longer controlled substances subject to regulation by the DEA, the FDA has stated publicly that it is nonetheless unlawful under the FDCA to introduce animal food, which includes products intended for animals labeled as food, treats, or supplements, containing CBD into interstate commerce. The FDCA prohibits the introduction or delivery for introduction into interstate commerce of any food that contains an approved drug or a drug for which substantial clinical investigations have been instituted and made public, unless a statutory exemption applies. The FDA has publicly stated its conclusion that none of the statutory exceptions has been met for CBD. See “Business—Government Regulation—FDA Regulation of Animal Foods.”

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On May 31, 2019, the FDA held a public hearing to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling and sale of products containing cannabis or cannabis-derived compounds (such as CBD) to provide the FDA with information as it considers policy options related to the regulation of these products, particularly in light of the changes to the legal status of hemp enacted in the 2018 Farm Bill. The FDA has also formed an internal working group to evaluate the potential pathways to market for CBD products, which could include seeking statutory changes from Congress or promulgating new regulations. If legislative action is necessary, such legislative changes could take years to finalize and may not include provisions that would enable us to produce, market and/or sell our CBD products, and FDA could similarly take years to promulgate new regulations. Additionally, while the agency's enforcement focus to date has primarily been on CBD products that are associated with therapeutic claims, the agency has recently issued warning letters to companies marketing CBD products without such claims, and there is a risk that FDA could take enforcement action against us, our third-party contract manufacturers or suppliers, or those marketing similar products to us, which could limit or prevent us from marketing our products and have a material adverse impact on our business, financial condition and results of operations.

Moreover, local, state, federal, and international CBD, hemp and cannabis laws and regulations are rapidly changing and subject to evolving interpretations, which could require us to incur substantial costs associated with compliance requirements or alteration of certain aspects of our business plan in the event that our CBD products become subject to new restrictions. In addition, violations of these laws, or allegations of such violations, could disrupt our business and result in a material adverse effect on our operations. It is also possible that regulations may be enacted in the future that will be directly applicable to our products. We cannot predict the nature of any future laws, regulations, interpretations, or applications, nor can we determine what effect additional governmental regulations or administrative policies and procedures, when and if promulgated, could have on our activities in the hemp and CBD industry. The constant evolution of laws and regulations may require us to incur substantial costs associated with legal and compliance fees and ultimately require us to alter our business plan.

***Our products contain CBD derived from hemp. The 2018 Farm Bill enacted a number of changes to the legal status of hemp and hemp products, including removal from the statutory list of controlled substances. However, implementation of the 2018 Farm Bill is ongoing, and there is still significant uncertainty regarding the legal status of hemp and hemp-based products under U.S. law.***

Our products that contain CBD are subject to various state and federal laws regarding the production and sale of hemp-based products. Historically, the DEA has interpreted CBD to be subject to the Controlled Substances Act of 1970 ("CSA") under the definition for "marihuana," a Schedule I controlled substance. However, the Agriculture Improvement Act of 2018 (the "2018 Farm Bill") removed "hemp," from the definition of "marihuana." "Hemp" is defined as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol ("THC") concentration of not more than 0.3 percent on a dry weight basis. As a result of the enactment of the 2018 Farm Bill, and since we believe that the CBD contained in our products and the hemp from which it is derived meet the definition of "hemp," we believe that our CBD products and the hemp from which they are derived are not Schedule I controlled substances under the CSA. However, there is a risk that we could be subject to enforcement action, including prosecution, if any of our products are determined to not meet the definition of "hemp" and to constitute "marihuana" under the CSA based on THC levels or other violations, which would have a negative impact on our business and operations.

In addition, the 2018 Farm Bill contained provisions that require the USDA to, among other things, promulgate a new regulatory framework governing the growth and cultivation of hemp, where hemp grown in compliance with the framework would be permitted in interstate commerce throughout the United States. The USDA has not yet promulgated these new regulations, and it is not certain when the agency will do so. The lack of USDA regulations has created uncertainty regarding the extent to which states where hemp is still illegal under state law may take enforcement action against hemp and hemp products that may otherwise comply with federal law. This issue is the subject of currently active litigation, where courts in different states have come down on both sides, and we cannot predict the outcome of the active litigation or how the various federal, state and local authorities will regulate the interstate transportation of hemp and hemp products. Moreover, as the USDA and federal courts continue to address this issue, we face the risk that a state could seize or take other enforcement action against us or our partners with respect to the hemp from which our CBD products are derived. Furthermore, violations of these laws, or alleged violations, could disrupt our business and result in a material adverse effect on our operations.

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***Our products may be subject to recalls for a variety of reasons, which could require us to expend significant management and capital resources.***

Manufacturers and distributors of products are sometimes subject to the recall or return of their products for a variety of reasons, including product defects, such as contamination, adulteration, unintended harmful side effects or interactions with other substances, packaging safety and inadequate or inaccurate labeling disclosure. Although we have detailed procedures in place for testing finished products, there can be no assurance that any quality, potency or contamination problems will be detected in time to avoid unforeseen product recalls, regulatory action or lawsuits, whether frivolous or otherwise. If any of the animal food or care products produced by us are recalled due to an alleged product defect or for any other reason, we could be required to incur the unexpected expense of the recall and any legal proceedings that might arise in connection with the recall. We had to issue a recall in 2018 for one of our products after a single retail sample collected by the Michigan Department of Agriculture tested positive for *Salmonella*. Although customers reported no incidents of injury or illness in association with this product, the recall negatively affected our results. As a result of any such recall, we may lose a significant amount of sales and may not be able to replace those sales at an acceptable margin or at all. In addition, a product recall may require significant management attention or damage our reputation and goodwill or that of our products or brands.

Additionally, product recalls may lead to increased scrutiny of our operations by the FDA or other state or federal regulatory agencies, requiring further management attention, increased compliance costs and potential legal fees, fines, penalties and other expenses. Any product recall affecting the cannabis industry more broadly, whether or not involving us, could also lead consumers to lose confidence in the safety and security of the products sold by producers generally, including products sold by us.

***Within the United States, we and our third-party contract manufacturers and suppliers face a variety of state and local restrictions on the cultivation of hemp, and if state or local regulatory authorities take enforcement action to prevent us from selling our products, our business, financial condition and results of operations could be materially adversely impacted.***

We currently source hemp-derived CBD for inclusion in our pet foods, treats, and oils from a single supplier that cultivates hemp in compliance with the requirements of the Agricultural Act of 2014 (the “2014 Farm Bill”). The growth and cultivation of hemp is subject to a complex regulatory framework that is implemented and affected by multiple federal agencies, as well as state and local authorities. In 2014, Congress enacted the 2014 Farm Bill to allow for the limited growth and cultivation of industrial hemp under federal law. This statute allowed institutions of higher education and state departments of agriculture to grow and cultivate industrial hemp for agricultural or other academic research purposes, or for hemp to be grown under the auspices of a state agricultural pilot program, in states where such growth and cultivation is legal under state law. While the 2018 Farm Bill created a pathway under which hemp and its derivatives, including CBD, would no longer be a Schedule I controlled substance under the CSA and would be protected from interference in interstate commerce, the USDA has not yet implemented the regulatory framework to govern the growth and cultivation of hemp. Because the USDA has not yet promulgated regulations implementing the hemp production provisions of the 2018 Farm Bill, the USDA has confirmed that the provisions of the 2014 Farm Bill currently govern the growth and cultivation of hemp, along with applicable state licensing regulations under the 2014 framework. Notwithstanding the uncertain implementation of those provisions, state and local authorities have enacted their own restrictions on the cultivation or sale of hemp or hemp-derived CBD, including laws that ban the cultivation or possession of hemp or any other plant of the cannabis genus and derivatives thereof, such as CBD. Currently several states ban the cultivation and possession of hemp or CBD, while others have taken enforcement action against human and pet food products that contain CBD, and states may enact new laws or regulations that prohibit or limit the sale of such products at any time. In the event of a change in federal or state laws and regulations that are adverse to our CBD products, we may be restricted or limited with respect to sale or distribution of those products, which could adversely impact our intended business plan with respect to such products.

While the USDA has announced its intention to publish its hemp regulations in late 2019, the ultimate timing and content of these regulations implementing the 2018 Farm Bill is uncertain. Additionally, it remains to be seen which states submit their own regulatory plans for the cultivation of hemp and which states become subject to the USDA framework. The timing and content of these federal and state regulatory plans may impact our ability to obtain sufficient quantities of CBD at an acceptable price and on a timely basis. If our current supplier were to face increased regulation or be unable to continue to supply our business, we may be unable to fulfill our customer’s orders or find a suitable replacement supplier in a timely fashion or at comparable prices. If our current supplier or any future suppliers fail to comply with the applicable regulatory requirements, our business may suffer.

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***Changes in existing laws or regulations, including how such existing laws or regulations are enforced by federal, state, and local authorities, or the adoption of new laws or regulations may increase our costs and otherwise adversely affect our business, financial condition and results of operations.***

In addition to the legal framework applicable to hemp and CBD, the manufacture and marketing of animal food products is highly regulated, and we and our third-party contract manufacturers and suppliers are subject to a variety of federal and state laws and regulations applicable to pet food and treats. These laws and regulations apply to many aspects of our business, including the manufacture, packaging, labeling, distribution, advertising, sale, quality and safety of our products. We could incur costs, including fines, penalties, and third-party claims, in the event of any violations of, or liabilities under, such requirements, including any competitor or consumer challenges relating to compliance with such requirements. For example, in connection with the marketing and advertisement of our products, we could be the target of claims relating to false or deceptive advertising, including under the auspices of the FTC and state consumer protection statutes.

The regulatory environment in which we operate could change significantly and adversely in the future. The laws and regulations that apply to our products and business may change in the future and we may incur (directly, or indirectly through our third-party contract manufacturers or suppliers) material costs to comply with current or future laws and regulations or any required product recalls. Any change in manufacturing, labeling, or marketing requirements for our products may lead to an increase in costs or interruptions in manufacturing or raw material supply, either of which could adversely affect our operations and financial condition. For example, recent federal and state attention to the sale of CBD-containing products, specifically pet products that contain CBD, could result in standards or requirements that mandate changes to our current labeling, product ingredients or marketing. New or revised government laws and regulations could significantly limit our ability to run our business as it is currently conducted, result in additional compliance costs and, in the event of noncompliance, lead to administrative or civil remedies, including fines, injunctions, withdrawals, recalls or seizures and confiscations, as well as potential criminal sanctions. Any such changes or actions by the FDA or other regulatory agencies could have a material adverse effect on our third-party manufacturers, our suppliers or our business, financial condition and results of operations.

***Government scrutiny, warnings and public perception could increase our costs of production and increase our legal and regulatory expenses, and if we are unable to comply with the applicable requirements for marketing pet foods, we could face substantial civil and criminal penalties.***

Manufacturing, processing, labeling, packaging, storing and distributing pet products are activities subject to extensive federal, state and local regulation, as well as foreign regulation. In the United States, these operations are regulated by the FDA and various state and local public health and agricultural agencies. The FDA Food Safety Modernization Act of 2011 provides direct recall authority to the FDA for food products and includes a number of other provisions designed to enhance food safety, including increased inspections by the FDA of domestic and foreign food facilities and increased review of food products imported into the United States. In addition, many states have adopted the Association of American Feed Control Officials' model pet food regulations or variations thereof, which generally regulate the information manufacturers provide about pet food. Compliance with government regulation can be costly or may otherwise adversely affect our business. Moreover, failure to comply with applicable laws and regulations could subject us to civil remedies, including fines, injunctions, recalls or seizures, as well as potential criminal sanctions, which could in turn have a material adverse effect on our business, financial condition and results of operations.

We operate in a highly regulated environment with constantly evolving legal and regulatory frameworks. Consequently, we are subject to heightened risk of legal claims, government investigations or regulatory enforcement actions. Although we have implemented policies and procedures designed to ensure compliance with existing laws and regulations, there can be no assurance that our employees, temporary workers, contractors or agents will not violate our policies and procedures. Moreover, a failure to maintain effective regulatory compliance policies and procedures could lead to violations, unintentional or otherwise, of laws and regulations. Legal claims, government investigations or regulatory enforcement actions arising out of our failure or alleged failure to comply with applicable laws and regulations could subject us to civil and criminal penalties that could materially and adversely affect our product sales, reputation, financial condition and operating results. In addition, the costs and other effects of defending potential and pending litigation and administrative actions against us may be difficult to determine and could materially adversely affect our business, financial condition and results of operations.

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***Because there has been limited study on the effects of CBD, including on animals, future nonclinical and clinical research studies and analysis of such studies by third parties, including government agencies, may lead to conclusions that dispute or conflict with our understandings and beliefs regarding the benefits, viability, safety, dosing and social acceptance of CBD.***

Research in the United States and internationally regarding the benefits, viability, safety and dosing of isolated cannabinoids (such as CBD or THC) remains in relatively early stages. There have been few clinical trials on the benefits of CBD conducted on humans or animals, including studies focused on the consumption of CBD in foods.

Future research and clinical trials may draw opposing conclusions to statements contained in current articles, reports and studies regarding CBD or could reach different or negative conclusions regarding the medical benefits, viability, safety, dosing or other facts and perceptions related to CBD, which could adversely affect acceptance of CBD in foods and the demand for such products. Future research may also cause regulatory authorities to change how they enforce regulatory restrictions applicable to hemp and CBD. We cannot predict any negative research and clinical trial findings in the future that may have a material adverse impact on our business, financial condition and results of operation.

***The market for raw foods and CBD and hemp products for pets is a young market and may not achieve the growth potential we expect or may grow more slowly than expected.***

Our success will depend in significant part on customer acceptance, our ability to change with customer tastes and to meet customer needs with new products. If customers do not accept our products, our sales and revenue will either fail to materialize or decline, resulting in a reduction in our operating income or possible increases in losses. Demand for CBD and hemp products is also influenced by the popularity of certain aesthetics, cultural and demographic trends, marketing and advertising expenditures, legality concerns, and general economic conditions. Because these factors can change rapidly, customer demand also can shift quickly. The success of new product introductions depends on various factors, including product selection and quality, sales and marketing efforts and timely production. We may not always be able to respond quickly and effectively to changes in customer taste and demand due to the amount of time and financial resources that may be required to bring new products to market. The inability to respond quickly to market changes could have an impact on our expected growth potential and the growth potential of the market for raw foods and CBD and hemp products for pets. Even if this market develops, we may not succeed in our plan to become a category leader.

***Negative publicity from being in the hemp and CBD space could have a material adverse effect on our business, financial condition, and results of operations.***

Hemp and marijuana are both varieties of the plant *Cannabis sativa L.*, except that hemp, as defined by federal law for exemption from Schedule I of the CSA, has a delta-9 THC concentration of not more than 0.3% on a dry weight basis. The same plant with a higher THC content is considered marijuana, which is legal for medical and recreational use under certain state laws, but which is not legal under federal law. The similarities between these plants can cause confusion, and our activities with hemp may be incorrectly perceived as us being involved in federally illegal marijuana activities.

Also, despite growing support for the cannabis industry and legalization of marijuana in certain U.S. states, many individuals and businesses remain opposed to the cultivation and sale of cannabis and cannabis-derived products. Any negative publicity resulting from an incorrect perception that we operate in the marijuana space could result in a loss of current or future business. It could also adversely affect the public's perception of us or our common stock and lead to reluctance by new parties to do business with or invest in us. We cannot assure you that additional business partners, including but not limited to financial institutions and customers, will not attempt to end or curtail their relationships with us. Any such negative press or impacts to business relationships could have a material adverse effect on our business, financial condition, and results of operations.

***We are subject to risks inherent in an agricultural business, including the risk of crop failure.***

The hemp from which our CBD products are derived is grown in an agricultural process. As such, our business will be subject to the risks inherent in the agricultural business, including risks of crop failure presented by weather, water availability, insects, plant diseases and similar agricultural risks. There can be no assurance that these risks will not entirely interrupt our activities or have a material adverse effect on our business.

***Our ability to deduct certain business expenses for income tax purposes is subject to uncertainty.***

Section 280E of the Code prohibits the deduction of certain otherwise ordinary business expenses from carrying on any trade or business that consists of “trafficking” Schedule I or II controlled substances, as defined by the CSA. Under existing IRS guidance, the bulk of operating costs and general administrative costs of trades or businesses subject to Section 280E of the Code are not permitted to be deducted. Although the 2018 Farm Bill created a pathway under which hemp and its derivatives, including CBD, would no longer be a Schedule I controlled substance under the CSA, until the USDA implements regulations pursuant to the 2018 Farm Bill, we believe our ability to deduct certain ordinary business expenses requires compliance with the 2014 Farm Bill. We do not believe that Section 280E of the Code currently forbids our deduction of otherwise ordinary business expenses because we believe that we are in compliance with the 2014 Farm Bill and/or the products we sell are from participants that are compliant with the 2014 Farm Bill. However, until the USDA promulgates regulations under the 2018 Farm Bill, non-compliance with the 2014 Farm Bill by us or our suppliers may have a material adverse tax effect on us.

**Risks Related to an Investment in Our Common Stock**

***There is currently a limited public market for our common stock, a trading market for our common stock may never develop, and our common stock prices may be volatile and could decline substantially.***

Prior to the date of this prospectus, although our common stock is quoted on OTC Markets, OTCQB tier of OTC Markets Group Inc., an over-the-counter quotation system, under the symbol “BTTR”, there has been no material public market for our common stock. In these marketplaces, our stockholders may find it difficult to obtain accurate quotations as to the market value of their shares of our common stock, and may find few buyers to purchase their stock and few market makers to support its price. As a result of these and other factors, investors may be unable to resell shares of our common stock at or above the price for which they purchased them, at or near quoted bid prices, or at all. Further, an inactive market may also impair our ability to raise capital by selling additional equity in the future, and may impair our ability to enter into strategic partnerships or acquire companies or products by using shares of our common stock as consideration.

Moreover, there can be no assurance that any selling stockholders will sell any or all of their shares of common stock and there may initially be a lack of supply of, or demand for, our common stock. In the case of a lack of supply for our common stock, the trading price of our common stock may rise to an unsustainable level, particularly in instances where institutional investors may be discouraged from purchasing our common stock because they are unable to purchase a block of shares in the open market due to a potential unwillingness of our selling stockholders to sell the amount of shares at the price offered by such investors and the greater influence individual investors have in setting the trading price. In the case of a lack of demand for our common stock, the trading price of our common stock could decline significantly and rapidly at any time.

We intend to list shares of our common stock on a national securities exchange in the future, but we do not now, and may not in the future, meet the initial listing standards of any national securities exchange, which is often a more widely-traded and liquid market. Some, but not all, of the factors which may delay or prevent the listing of our common stock on a more widely-traded and liquid market include the following: our stockholders’ equity may be insufficient; the market value of our outstanding securities may be too low; our net income from operations may be too low; our common stock may not be sufficiently widely held; we may not be able to secure market makers for our common stock; and we may fail to meet the rules and requirements mandated by the several exchanges and markets to have our common stock listed. Should we fail to satisfy the initial listing standards of the national exchanges, or our common stock is otherwise rejected for listing, and remains listed on the OTC Markets or is suspended from the OTC Markets, the trading price of our common stock could suffer and the trading market for our common stock may be less liquid and our common stock price may be subject to increased volatility.

Therefore, an active, liquid, and orderly trading market for our common stock may not initially develop or be sustained, which could significantly depress the public price of our common stock and/or result in significant volatility, which could affect your ability to sell your common stock. Even if an active trading market develops for our common stock, the market price of our common stock may be highly volatile and subject to wide fluctuations. Our financial performance, government regulatory action, tax laws, interest rates and market conditions in general could have a significant impact on the future market price of our common stock.

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***We are not subject to compliance with rules requiring the adoption of certain corporate governance measures and as a result our stockholders have limited protections against interested director transactions, conflicts of interest and similar matters.***

The Sarbanes-Oxley Act, as well as resulting rule changes enacted by the SEC, the New York Stock Exchange and the NASDAQ Stock Market, require the implementation of various measures relating to corporate governance. These measures are designed to enhance the integrity of corporate management and the securities markets and apply to securities which are listed on those exchanges. Because we are not listed on the NASDAQ Stock Market or the New York Stock Exchange, we are not presently required to comply with many of the corporate governance provisions. Until we comply with such corporate governance measures, regardless of whether such compliance is required, the absence of such standards of corporate governance may leave our stockholders without protections against interested director transactions, conflicts of interest and similar matters.

***We do not have a class of our securities registered under Section 12 of the Exchange Act. Until we do, or we become subject to Section 15(d) of the Exchange Act, we will be a “voluntary filer.”***

We are not currently required under Section 13 or Section 15(d) of the Exchange Act to file periodic reports with the SEC. We have in the past voluntarily elected to file some or all of these reports to ensure that sufficient information about us and our operations is publicly available to our stockholders and potential investors. Until we become subject to the reporting requirements under the Exchange Act, we are a “voluntary filer” and we are currently considered a non-reporting issuer under the Exchange Act. We will not be required to file reports under Section 13(a) or 15(d) of the Exchange Act until the earlier to occur of: (i) our registration of a class of securities under Section 12 of the Exchange Act, which would be required if we list a class of securities on a national securities exchange or if we meet the size requirements set forth in Section 12(g) of the Exchange Act, or which we may voluntarily elect to undertake at an earlier date; or (ii) the effectiveness of a registration statement under the Securities Act relating to our common stock. Until we become subject to the reporting requirements under either Section 13(a) or 15(d) of the Exchange Act, we are not subject to the SEC’s proxy rules, and large holders of our capital stock will not be subject to beneficial ownership reporting requirements under Sections 13 or 16 of the Exchange Act and their related rules. As a result, our stockholders and potential investors may not have available to them as much or as robust information as they may have if and when we become subject to those requirements. In addition, if we do not register under Section 12 of the Exchange Act, and remain a “voluntary filer”, we could cease filing annual, quarterly or current reports under the Exchange Act.

***If our common stock becomes subject to the “penny stock” rules, it could adversely affect the market price of our common stock and increase your transaction costs to sell those shares.***

The SEC has adopted Rule 3a51-1, which establishes the definition of a “penny stock” as any equity security that has a market price of less than \$5.00 per share or with an exercise price of less than \$5.00 per share, subject to certain exceptions. If the price of our common stock is less than \$5.00, our common stock will be deemed a penny stock. For any transaction involving a penny stock, unless exempt, Rule 15c-9 requires that a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser’s written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement.

Generally, brokers may be less willing to execute transactions in securities subject to the “penny stock” rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

***We may have material liabilities that were not discovered before, and have not been discovered since, the closing of the acquisitions.***

As a result of the acquisitions, the prior business plan and management relating to Better Choice Company was abandoned and replaced with the business and management team of Bona Vida and TruPet. As a result, we may have material liabilities based on activities before the acquisitions that have not been discovered or asserted. We could experience losses as a result of any such undisclosed liabilities that are discovered in the future, which could materially harm our business and financial condition. Although the agreements entered into in connection with the acquisitions contains customary representations and warranties from Bona Vida and TruPet concerning their assets, liabilities, financial condition and affairs, there may be limited or no recourse against the pre-acquisition stockholders or principals in the event those representations prove to be untrue. As a result, our current and future stockholders will bear some, or all, of the risks relating to any such unknown or undisclosed liabilities.

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***Our common stock prices may be volatile which could cause the value of an investment in our common stock to decline.***

The market price of our common stock may be highly volatile and subject to wide fluctuations. Our financial performance, government regulatory action, tax laws, interest rates and market conditions in general could have a significant impact on the future market price of our common stock.

The public price of our common stock following the date of this prospectus also could be subject to wide fluctuations in response to the risk factors described in this prospectus and others beyond our control, including:

- the number of shares of our common stock publicly owned and available for trading;
- actual or anticipated quarterly variations in our results of operations or those of our competitors;
- our actual or anticipated operating performance and the operating performance of similar companies in our industry;
- our announcements or our competitors' announcements regarding, significant contracts, acquisitions, or strategic investments;
- general economic conditions and their impact on the pet food markets;
- the overall performance of the equity markets;
- threatened or actual litigation;
- changes in laws or regulations relating to our industry;
- any major change in our board of directors or management;
- publication of research reports about us or our industry or changes in recommendations or withdrawal of research coverage by securities analysts; and
- sales or expected sales of shares of our common stock by us, and our officers, directors, and significant stockholders.

In addition, the stock market in general has experienced extreme price and volume fluctuations that often have been unrelated or disproportionate to the operating performance of those companies. Securities class action litigation has often been instituted against companies following periods of volatility in the overall market and in the market price of a company's securities. Such litigation, if instituted against us, could result in very substantial costs, divert our management's attention and resources and harm our business, operating results, and financial condition.

***The public price of our common stock may have little or no relationship to the offering price in the May Private Placement.***

There is only a limited public market for our common stock. On May 6, 2019, we completed the May Private Placement, in which we sold 5,744,991 shares of our common stock and 5,744,991 warrants to purchase our common stock at an exercise price of \$4.25 per share at an offering price of \$3.00 per share to certain of the selling stockholders identified in this prospectus in reliance on exemptions from registration under the Securities Act. However, the offering price in the May Private Placement may have little or no relation to broader market demand for our common stock. As a result, you should not place undue reliance on the offering price in the May Private Placement as it may differ materially from the public prices of our common stock.

***Because we are a "smaller reporting company," we will not be required to comply with certain disclosure requirements that are applicable to other public companies and we cannot be certain if the reduced disclosure requirements applicable to smaller reporting companies will make our common stock less attractive to investors.***

We are a "smaller reporting company," as defined in Item 10(f)(1) of Regulation S-K. As a smaller reporting company we are eligible for exemptions from various reporting requirements applicable to other public companies that are not smaller reporting companies, including, but not limited to:

- Reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements;
- Not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002; and
- Reduced disclosure obligations for our annual and quarterly reports, proxy statements and registration statements.

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We will remain a smaller reporting company until the end of the fiscal year in which (1) we have a public common equity float of more than \$250 million, or (2) we have annual revenues for the most recently completed fiscal year of more than \$100 million plus we have any public common equity float or public float of more than \$700 million. We also would not be eligible for status as smaller reporting company if we become an investment company, an asset-backed issuer or a majority-owned subsidiary of a parent company that is not a smaller reporting company.

***We do not expect to pay any cash dividends to the holders of the common stock in the foreseeable future and the availability and timing of future cash dividends, if any, is uncertain.***

We expect to use cash flow from future operations to repay debt and support the growth of our business and do not expect to declare or pay any cash dividends on our common stock in the foreseeable future. Our Credit Facility (as defined herein) places certain restrictions on the ability of us and our subsidiaries to pay cash dividends. We may amend our Credit Facility or enter into new debt arrangements that also prohibit or restrict our ability to pay cash dividends on our common stock.

Subject to such restrictions, our board of directors will determine the amount and timing of stockholder dividends, if any, that we may pay in future periods. In making this determination, our directors will consider all relevant factors, including the amount of cash available for dividends, capital expenditures, covenants, prohibitions or limitations with respect to dividends, applicable law, general operational requirements and other variables. We cannot predict the amount or timing of any future dividends you may receive, and if we do commence the payment of dividends, we may be unable to pay, maintain or increase dividends over time. Therefore, you may not be able to realize any return on your investment in our common stock for an extended period of time, if at all.

***Future sales of our common stock, or the perception that such sales may occur, may depress our share price, and any additional capital through the sale of equity or convertible securities may dilute your ownership in us.***

We may in the future issue our previously authorized and unissued securities. We are authorized to issue 88,000,000 shares of common stock and 4,000,000 shares of preferred stock with such designations, preferences and rights as determined by our board of directors. The potential issuance of such additional shares of common stock will result in the dilution of the ownership interests of the holders of our common stock and may create downward pressure on the trading price, if any, of our common stock. The registration rights of our stockholders and the sales of substantial amounts of our common stock following the effectiveness of the registration statement of which this prospectus is a part, or the perception that these sales may occur, could cause the market price of our common stock to decline and impair our ability to raise capital. We also may grant additional registration rights in connection with any future issuance of our capital stock.

In connection with the acquisitions, certain of our stockholders agreed that for a period of six months after the closing date of the acquisitions, subject to certain exceptions, they would not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any shares of our common stock or securities convertible into or exchangeable or exercisable for any shares of our common stock. These lock-up agreements expire on November 6, 2019 and thereafter, subject to the next paragraph, up to an additional 33,030,807 shares of common stock will be eligible for sale in the public market. If the restrictions under the lock-up agreements are waived, our common stock will be available for sale into the market, which could reduce the market value for our common stock.

In addition, on September 17, 2019, we entered into a five-year consulting agreement with Bruce Linton. As compensation for the services rendered, we issued 2,500,000 share purchase warrants to acquire one share each of our common stock with an exercise price of \$0.10. An additional 1,500,000 share purchase warrants to acquire one share each of our common stock with an exercise price of \$10.00. As part of the consulting agreement, we agreed to use our commercially reasonable efforts to cause each of our directors and officers to enter into a lock-up agreement, upon customary terms and conditions, between each officer or director and Mr. Linton for a period of no more than one year from September 1, 2019. As of October 25, 2019, 14,392,931 shares of common stock were subject to lock-up agreements. The lock-up agreement will expire on September 15, 2020.

In October 2018, we also issued Series E Convertible Preferred Stock ("Series E preferred stock"). As of October 25, 2019, the Series E preferred stock was convertible into 2,167,744 shares of common stock, all of which will be freely tradeable. The exercise, conversion or exchange of convertible securities, including for other securities, will dilute the percentage ownership of our stockholders. The dilutive effect of the exercise or conversion of these securities may adversely affect our ability to obtain additional capital. The holders of these securities may be expected to exercise or convert such securities at a time when we would be able to obtain additional equity capital on terms

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more favorable than such securities or when our common stock is trading at a price higher than the exercise or conversion price of the securities. The exercise or conversion of outstanding securities will have a dilutive effect on the securities held by our shareholders. We have in the past, and may in the future, exchange outstanding securities for other securities on terms that are dilutive to the securities held by other shareholders not participating in such exchange.

In addition, (i) 9,312,815 warrants to purchase our common stock at a weighted average exercise price of \$4.00 per share that we issued in the May Private Placement and the December Private Placement (as defined herein) are outstanding and (ii) 6,000,000 shares of common stock are issuable pursuant to outstanding options granted under the 2019 Plan to our executive officers and directors key employees and third-party contractors in connection with the private placement (of which 1,215,545 are vested). The issuance of any such shares would ultimately be dilutive to the holders of shares of common stock acquired in the listing.

***We may issue preferred stock whose terms could adversely affect the voting power or value of our common stock.***

Our certificate of incorporation authorizes us to issue, without the approval of our stockholders, one or more classes or series of preferred stock having such designations, preferences, limitations and relative rights, including preferences over our common stock with respect to dividends and distributions, as our board of directors may determine. The terms of one or more classes or series of preferred stock could adversely impact the voting power or value of our common stock. For example, we might grant holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events, or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we might grant to holders of preferred stock could affect the value of the common stock.

***We will continue to incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives.***

As a public company, we incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002 and rules subsequently implemented by the SEC, impose various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our management and other personnel devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly, particularly after we are no longer a smaller reporting company. For example, we expect that these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance.

Pursuant to Section 404, we will be required to furnish a report by our management on our internal control over financial reporting, including an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. To achieve compliance with Section 404 within the prescribed period, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that neither we nor our independent registered public accounting firm will be able to conclude within the prescribed timeframe that our internal control over financial reporting is effective as required by Section 404. This could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our financial statements.

***We have material weaknesses in our internal control over financial reporting. If these material weaknesses persist or if we fail to establish and maintain effective internal control over financial reporting, our ability to accurately report its financial results could be adversely affected.***

Prior to the closing of the acquisitions, TruPet was a private company and had limited accounting and financial reporting personnel and other resources with which to address its internal control over financial reporting. In connection with the preparation of the financials for the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2019 our management, with the participation of our Chief Executive Officer, Damian Dalla-Longa and our Chief Financial Officer, Andreas Schulmeyer, evaluated the effectiveness of our internal control over

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financial reporting as of June 30, 2019 and determined they were not effective. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

The material weaknesses related to our inability to prepare accurate financial statements, resulting from a failure to maintain effective controls over the control environment. Specifically, the Company had not developed and effectively communicated to its employees and consultants its accounting policies and procedures, which resulted in inconsistent practices. Since these entity level programs have a pervasive effect across the organization, management has determined that these circumstances constitute a material weakness. Our second material weakness found that we did not maintain effective controls over financial statement disclosure. Specifically, controls were not designed and in place to ensure that all disclosures required were originally addressed in our financial statements. Accordingly, management has determined that this control deficiency constitutes a material weakness. The primary cause the weaknesses was the small size of our accounting staff, which resulted in a lack of segregation of duties and insufficient review procedures. We have begun building our in-house finance team by hiring a Chief Financial Officer and controller and believe, under this new leadership, we will review, revise and amend the internal processes to develop effective controls. There can be no assurance that these efforts will remediate the material weaknesses or avoid future weaknesses or deficiencies. Any failure to remediate the material weakness and any future weaknesses or deficiencies or any failure to implement required new or improved controls or difficulties encountered in their implementation could cause us to fail to meet its reporting obligations or result in material misstatements in its financial statements. If we are unable to remediate its material weaknesses, our management may not be able to conclude that its disclosure controls and procedures or internal control over financial reporting are effective, which could result in investors losing confidence in its reported financial information and may lead to a decline in the stock price.

***We will continue to incur significant costs in staying current with reporting requirements. Our management will be required to devote substantial time to compliance initiatives. Additionally, the lack of an internal audit group may result in material misstatements to our financial statements and ability to provide accurate financial information to our shareholders.***

Our management and other personnel will need to devote a substantial amount of time to compliance initiatives to maintain reporting status. Moreover, these rules and regulations, which are necessary to remain as a public reporting company, will be costly because external third party consultant(s), attorneys, or other firms may have to assist us in following the applicable rules and regulations for each filing on behalf of the company.

We currently do not have an internal audit group, and we may eventually need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge to have effective internal controls for financial reporting. Additionally, due to the fact that our officers and directors have limited experience as an officer or director of a reporting company, such lack of experience may impair our ability to maintain effective internal controls over financial reporting and disclosure controls and procedures, which may result in material misstatements to our financial statements and an inability to provide accurate financial information to our stockholders.

Moreover, if we are not able to comply with the requirements or regulations as a public reporting company in any regard, we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources.

***Many of our officers and directors lack significant experience in, and with, the reporting and disclosure obligations of publicly-traded companies in the United States.***

Many of our officers and directors lack significant experience in, and with the reporting and disclosure obligations of publicly-traded companies, and with serving as an officer and or director of a publicly-traded company. This lack of experience may impair our ability to maintain effective internal controls over financial reporting and disclosure controls and procedures, which may result in material misstatements to our financial statements and an inability to provide accurate financial information to our stockholders. Consequently, our operations, future earnings and ultimate financial success could suffer irreparable harm due to our officers' and director's ultimate lack of experience in our industry and with publicly-traded companies and their reporting requirements in general.

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### ***Provisions in our certificate of incorporation and bylaws and Delaware law may discourage a takeover attempt even if a takeover might be beneficial to our stockholders.***

Provisions contained in our certificate of incorporation and bylaws could make it more difficult for a third party to acquire us after we have become a publicly traded company. Provisions in our certificate of incorporation and bylaws impose various procedural and other requirements, which could make it more difficult for stockholders to effect certain corporate actions. For example, our certificate of incorporation authorizes our board of directors to determine the rights, preferences, privileges and restrictions of unissued series of preferred stock without any vote or action by our stockholders. Thus, our board of directors can authorize and issue shares of preferred stock with voting or conversion rights that could dilute the voting power of holders of our other series of capital stock. These rights may have the effect of delaying or deterring a change of control of our company. Additionally, our certificate of incorporation and/or bylaws establish limitations on the removal of directors and on the ability of our stockholders to call special meetings and include advance notice requirements for nominations for election to our board of directors and for proposing matters that can be acted upon at stockholder meetings.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the General Corporation Law of the State of Delaware (the “DGCL”), which prohibits an “interested stockholder” owning in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which such stockholder acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

See “Description of Capital Stock—Anti-Takeover Effects of Provisions of Our Certificate of Incorporation, Our Bylaws and Delaware Law.” These provisions could limit the price that certain investors might be willing to pay in the future for shares of our common stock.

### ***Our bylaws designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.***

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer (or affiliate of any of the foregoing) of us to us or the our shareholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or our certificate of incorporation or bylaws, or (iv) any other action asserting a claim arising under, in connection with, and governed by the internal affairs doctrine; provided that these exclusive forum provisions will not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of, and consented to, the provisions of our bylaws described in the preceding sentence. This choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and such persons. Alternatively, if a court were to find these provisions of our bylaws inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition or results of operations.

### ***Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.***

Our certificate of incorporation provides that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. In addition, as permitted by Section 145 of the Delaware General Corporation Law, our certificate of incorporation and our indemnification agreements that we have entered into with our directors and officers provide that:

- We will indemnify our directors and officers for serving us in those capacities or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful.

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- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- We will not be obligated pursuant to the indemnification agreements entered into with our directors and executive officers to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings to enforce an indemnitee's right to indemnification or advancement of expenses, proceedings authorized by our board of directors and if offered by us in our sole discretion.
- The rights conferred in our certificate of incorporation are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- We may not retroactively amend our certificate of incorporation or indemnification agreement provisions to reduce our indemnification obligations to directors, officers, employees and agents.

***We are a holding company and rely on payments, advances and transfers of funds from our subsidiaries to meet our obligations and pay any dividends.***

We have limited direct operations and significant assets other than ownership of 100% of the capital stock of our subsidiaries. Because we primarily conduct our operations through our subsidiaries, we depend on those entities for payments to generate the funds necessary to meet our financial obligations, and to pay any dividends with respect to our common stock. Legal and contractual restrictions in our Credit Facility and other agreements that may govern future indebtedness of our subsidiaries, as well as the financial condition and operating requirements of our subsidiaries, may limit our ability to obtain cash from our subsidiaries. The earnings from, or other available assets of, our subsidiaries might not be sufficient to make distributions or loans to enable us to meet certain of our obligations. Any of the foregoing could materially and adversely affect our business, financial condition, results of operations and cash flows. See "Dividend Policy."

### CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

The information in this prospectus includes “forward-looking statements.” All statements, other than statements of historical fact, included in this prospectus regarding, among other things, our strategy, future operations, financial position, projected costs, prospects, plans and objectives of management are forward-looking statements. When used in this prospectus, the words “could,” “believe,” “anticipate,” “intend,” “estimate,” “expect,” “project” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. These forward-looking statements are based on our current expectations and assumptions about future events and are based on currently available information as to the outcome and timing of future events. When considering forward-looking statements, you should keep in mind the risk factors and other cautionary statements described under the heading “Risk Factors” included in this prospectus. These forward-looking statements are based on management’s current belief, based on currently available information, as to the outcome and timing of future events. Our forward-looking statements involve significant risks and uncertainties (some of which are beyond our control) and assumptions that could cause actual results to differ materially from our historical experience and our present expectations or projections. Important factors that could cause actual results to differ materially from those in the forward-looking statements include, but are not limited to, those summarized below:

- our ability to successfully implement our growth strategy;
- failure to achieve growth or manage anticipated growth;
- our ability to achieve or maintain profitability;
- the uncertainty of probability based upon our history of losses;
- our ability to continue as a going concern;
- our ability to generate sufficient cash flow to run our operations, service our debt and make necessary capital expenditures;
- failure to integrate Bona Vida’s and TruPet’s businesses successfully and realize anticipated benefits;
- failure to successfully develop additional products and service or successfully commercialize such products and services;
- failure to comply with legal and regulatory requirements, by us or our third party contract manufacturers and suppliers;
- risk of enforcement actions by the FDA or other regulatory authorities that may prevent us from marketing pet food, products and supplements with CBD;
- uncertainty regarding the status of hemp and hemp-based products under U.S. law, as implementation of the 2018 Farm Bill is ongoing;
- risk of our products being recalled for a variety of reasons, including product defects, packaging safety and inadequate or inaccurate labeling disclosure;
- risk of shifting customer demand in relation to raw foods, CBD and hemp products for pets and failure to respond to such changes in customer taste quickly and effectively; and
- the other risks identified in this prospectus including, without limitation, those under the headings “Risk Factors,” “Business Overview,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

These factors are not necessarily all of the important factors that could cause actual results to differ materially from those expressed in any of our forward-looking statements. Other unknown or unpredictable factors also could have material adverse effects on our future results. Our future results will depend upon various other risks and uncertainties, including those described elsewhere in this prospectus under the heading, “Risk Factors.” Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. We undertake no obligation to update or revise any forward-looking statements after the date they are made, whether as a result of new information, future events or otherwise. All forward-looking statements attributable to us are qualified in their entirety by this cautionary statement.

**USE OF PROCEEDS**

We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders pursuant to this prospectus. The selling stockholders will pay any underwriting discounts and commissions and expenses they incur for brokerage, accounting, tax or legal services or any other expenses they incur in disposing of the shares. We will bear all other costs, fees and expenses incurred in effecting the registration of the shares covered by this prospectus, including, without limitation, all registration and filing fees and fees and expenses of our counsel and our accountants.

**DETERMINATION OF OFFERING PRICE**

The selling stockholders will determine at what price they may sell the Securities offered by this prospectus, and such sales may be made at fixed prices, prevailing market prices at the time of the sale, varying prices determined at the time of sale, or negotiated prices.

**MARKET FOR THE SECURITIES**

Our common stock is listed on the OTCQB under the symbol “BTTR” and has been trading since June 2010. No established public trading market existed for our common stock prior to June 2010. The closing price of our common stock on the OTCQB on September 30, 2019 was \$4.36 per share. As of September 30, 2019, we had 45,427,659 shares of our common stock outstanding. As of September 30, 2019, we had 149 record holders of our common stock.

## **DIVIDEND POLICY**

We do not currently anticipate declaring or paying cash dividends on our common stock in the foreseeable future. We currently intend to retain our future earnings, if any, to finance the development and expansion of our business. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon then-existing conditions, including our results of operations and financial condition, capital requirements, business prospects, statutory and contractual restrictions on our ability to pay cash dividends, including restrictions contained in the credit agreements governing our Credit Facility, and other factors our board of directors may deem relevant. Accordingly, you may need to sell your shares of our common stock to realize a return on your investment, and you may not be able to sell your shares at or above the price you paid for them. See “Risk Factors—Risks Related to an Investment in our Common Stock—We do not expect to pay any cash dividends to the holders of the common stock in the foreseeable future and the availability and timing of future cash dividends, if any, is uncertain.”

Our Series E preferred stock ranks senior to the shares of our common stock with respect to dividend rights and holders of Series E preferred stock are entitled to a cumulative dividend at the rate of 10.0% per annum on the stated value of \$0.99 per share (as adjusted), accruing quarterly in arrears, as set forth in the Certificate of Designation Preferences and Rights of Series E preferred stock (“Series E Certificate of Designation”). All accrued dividends on each share of Series E preferred stock shall be paid upon conversion of the share of Series E preferred stock for which the applicable dividend is due. At our option, dividends on the Series E preferred stock may be paid in cash or stock. We also must declare a dividend on the Series E preferred stock on a pro rata basis with our common stock. As of June 30, 2019, the amount of dividends payable on the Series E preferred stock was approximately \$0.2 million.

**CAPITALIZATION**

The following table shows our cash and cash equivalents and capitalization as of June 30, 2019.

You should refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the financial statements and related notes contained elsewhere in this prospectus in evaluating the material presented below.

	<b>As of June 30, 2019</b>
<i>In thousands (except shares)</i>	
<b>Cash and cash equivalents</b>	<u>\$ 5,019</u>
<b>Long-term debt, including current maturities:</b>	
Credit Facility <sup>(1)</sup>	\$ 6,200
Total debt, net of deferred financing costs	<u>                    </u>
<b>Deficit:</b>	
Series E preferred stock, \$0.001 par value, 2,900,000 shares authorized, 1,707,919 shares issued and outstanding	13,007
Common stock, \$0.001 par value, 88,000,000 shares authorized, 43,168,161 shares issued and outstanding	43
Additional paid-in capital	170,017
Accumulated deficit	<u>(181,023)</u>
Total stockholders’ deficit	<u>(10,963)</u>
<b>Total capitalization</b>	<u>\$ (3,225)</u>

- (1) On May 6, 2019, we entered into a Loan Agreement with Franklin Synergy Bank, a Tennessee banking corporation, pursuant to which, at our option and subject to the occurrence of certain funding conditions, Franklin Synergy Bank will provide advances to us in an aggregate amount less than or equal to \$6.2 million.

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION  
AND RESULTS OF OPERATIONS**

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Selected Consolidated Financial Data" and our audited and unaudited consolidated financial statements and related notes appearing elsewhere in this prospectus. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of a variety of risks and uncertainties, including those described in this prospectus under "Forward-Looking Statements" and "Risk Factors." We assume no obligation to update any of these forward-looking statements.*

**Overview and Outlook**

Better Choice Company is a holistic pet wellness company providing high quality raw cannabidiol ("CBD") infused and non-CBD infused food, treats, and supplements in addition to dental care products and accessories for pets and their human parents. Our products are formulated and manufactured using only high-quality ingredients manufactured, tested and packaged to our specifications.

On February 2, 2019 and February 28, 2019, respectively, Better Choice Company entered into definitive agreements to acquire through stock exchange agreements, approximately 93% of the outstanding limited liability company interest of TruPet and all of the outstanding shares of Bona Vida, an emerging hemp-based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space. On May 6, 2019, Better Choice Company consummated the stock exchange transactions whereby TruPet and Bona Vida became wholly owned subsidiaries of Better Choice Company. For accounting and financial reporting purposes, the transaction has been treated as a reverse acquisition whereby TruPet is considered the acquirer of Better Choice Company. Thus, the historical financial information of the registrant is that of TruPet even though the legal registrant remains Better Choice Company.

TruPet was founded in 2013 and has a track record of increasing its sales and customer base since that time. TruPet has contributed to and has benefited from the positive trend toward feeding pets a healthy, natural diet. We pride ourselves on our customer service and ability to communicate and educate our customers. During 2017 and 2018, we increased marketing investments to acquire new customers while also maintaining our relationship with our current customers. During 2017, we launched the TruDog Love Club ("TLC"), a loyalty program that provides our customers with unique benefits including discounted prices, subscription shipments of replenishable products, free or reduced shipping, and other benefits not available to non-TLC members. The program has expanded and now has two tiers of loyalty club members. Tier 1 awards customers with six points per dollar spent and tier 2, TLC, awards customers with twelve points per dollar spent and provides opportunities to earn points at a higher rate. The number of loyalty members has grown to approximately 28,000 club members since its inception. Approximately 81% of DTC sales during the six-month period ending June 30, 2019 were from returning customers including TLC club members.

In order to obtain customers, we invest in advertising on social media sites and offer products to first time buyers at significant discounts. Our goal is to blend different acquisition channels as efficiently as possible in our advertising so that we obtain the most customers for the least amount of spend while maintaining our target growth rates. We are currently evaluating various long-term metrics for customer acquisition to determine the optimum mix of customer acquisition spend.

During 2018, we experienced two separate recalls of our products as a result of the detection of salmonella. Since that time, we and our third-party manufacturing partners have increased testing of each product batch to avoid any additional recalls. While we do not believe we lost customers because of the recalls, we did incur additional shipping and customer service expenses to alleviate and avoid additional backlogs in product shipments caused by the recalls. We allowed products to be shipped from the manufacturing plants to the warehouse using truckloads not at full capacity, or LTL, which is more expensive than limiting our shipments to full-capacity truckloads. We also shipped customer orders in several shipments, rather than waiting to fulfill entire orders as certain products were backlogged due to the recall. To address the additional strain on our customer service function, we also expanded the number and hours of our customer service representatives to help guide our customers through the recall process, resulting in an increase to our customer service costs.

**Fiscal Year End**

On May 21, 2019, the Board of Directors of the Company approved a change fiscal year from August 31 to December 31 to align with TruPet's fiscal year end. The fiscal year change for the Company is effective with our 2019 fiscal year, which begins January 1, 2019 and ends December 31, 2019.

**Components of Our Results of Operations**

*Net Sales*

We sell non-CBD and CBD infused product for pets, including private branded freeze dried and dehydrated raw foods, supplements, dental care products for dogs, and treats and accessories for dogs, cats, and pet parents. We sell our products through our online portal directly to our consumers and through online retailers and pet specialty retail stores. Our products are sold under the TruDog, TruCat, Rawgo!, Orapup or Hound Dog brand name.

Net sales include revenue derived from the sale of our products and related shipping fees offset by promotional discounts, refunds and loyalty points earned. We offer a variety of promotions and incentives to our customers including daily discounts, multi-bag purchase discounts and coupon codes for initial purchases. Historically, our net sales have been driven by our distribution of our products through our direct to consumer channel. However, sales through the retail channel have become a more important component of our growth in net sales and gross profit.

Key factors that affect our future sales growth include: our new product introduction in both the non-CBD and CBD markets, our expansion into retail and other specialty channels, entry into the market of competitors in the CBD industry and international expansion. We recognize revenue to depict the transfer of promised goods to the customer in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods. Revenue is recognized upon receipt of product by our DTC customers and at the time of shipment for our retail and consignment customers. We record a revenue reserve based on past return rates to account for customer returns.

*Cost of Goods Sold and Gross Profit*

Our products are manufactured to our specifications by contract manufacturing plants. We design our packaging in-house for manufacture by third parties. Packaging is shipped directly to contract manufacturing plants. We directly source the hemp derived CBD oils used in our products from select suppliers to ensure product quality and traceability of the ingredient. CBD oils are shipped to our warehouse and forwarded to our contract manufacturing partners as needed for production. Our contract manufacturers procure the raw food ingredients, manufacture, test and package our products. Cost of goods sold consists primarily of the cost of product obtained from the contract manufacturing plants, packaging materials and CBD oils directly sourced by the Company, and freight for shipping product from our contract manufacturing plants to our warehouse. We review inventory on hand periodically to identify damages, slow moving inventory, and/or aged inventory. Based on the analysis, we record inventories on the lower of cost and net realizable value, with any reduction in value expensed as cost of goods sold.

We calculate gross profit as net sales, including any shipping revenue collected from our customers, less cost of goods sold. Our gross profit has been and, we expect, will continue to be affected by a variety of factors, primarily product sales mix, volumes sold, discounts offered to our club members, discounts offered to newly acquired and recurring customers, the cost of our manufactured products, and the cost of freight from the manufacturer to our warehouse. Changes in cost of goods sold and gross profit may be driven by the volume and price of our sales, including the extent of discounts offered, variations in the cost of CBD and the price we pay for our manufactured products and variations in our freight costs.

*Operating Expenses*

Sales and marketing expenses include costs related to customer service and warehousing, merchant credit card fees, compensation for sales personnel, shipping costs, other costs related to the selling platform, as well as marketing, including paid media and content creation expenses. Customer service and warehousing costs include the cost of our customer service department, including our in-house call center, and costs associated with warehouse operations, including but not limited to payroll, rent, insurance and warehouse management systems. Marketing expenses consist primarily of Facebook and other media ads, other advertising and marketing costs, all geared towards acquiring new customers and building brand awareness. We expect selling expenses to continue to grow as we actively acquire new online customers and begin to build our wholesales channel.

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General and administrative expenses include management and office personnel compensation and bonuses, stock compensation, corporate level information technology related costs, rent, travel, professional service fees, insurance, product development costs and general corporate expenses. We expect general and administrative expenses to continue to increase in absolute dollars as we expand our commercial infrastructure to both drive and support our planned growth in revenue and support the additional costs associated with being a public company.

### Research and Development

We do not invest in non-CBD pet food research, but we do continually review sales of our existing products as well as those of non-CBD competitors to identify possible product extensions. We acquired two CBD related research agreements as part of the acquisition of Bona Vida. We will invest resources into the effectiveness of CBD infused canine pet food to determine if specific strains of CBD are more effective than others in addressing canine health issues. We are also conducting trials with existing products to determine optimal product formulations. During the period ended December 31, 2018, we did not record research and development expenses. We expect to incur research and development expenses during the remainder of 2019 and in future periods.

### Interest Expense

Interest expense originates from debt incurred under a revolving credit agreement entered into in May 2019, and under our note payable to a prior TruPet member, corporate credit cards, and our line of credit agreement and other debt in place prior to the acquisition.

### Income Taxes

Our income tax provision consists of an estimate of federal and state income taxes based on enacted federal and state tax rates, as adjusted for allowable credits, deductions and uncertain tax positions. During the period ended December 31, 2018, we did not record income tax expense because TruPet was a limited liability company. Subsequent to the consummation of the acquisitions, the Company, as a corporation, is required to provide for income taxes.

## Results of Operations

### Three and Six Months Ended June 30, 2019 Compared to Three and Six Months Ended June 30, 2018

<i>Dollars in thousands</i>	Six Months Ended			Three Months Ended		
	June 30, 2019	June 30, 2018	% Change	June 30, 2019	June 30, 2018	% Change
Net Sales	\$ 7,635	\$ 7,064	8%	\$ 4,084	\$ 3,817	7%
Cost of Goods Sold	4,082	3,329	23%	2,421	1,384	75%
Gross Profit	3,553	3,735	(-5)%	1,663	2,433	(-32)%
General & Administrative	6,004	1,351	344%	4,571	665	587%
Share-Based Compensation	4,212	—	—	4,006	—	—
Sales & Marketing	5,597	2,819	99%	3,412	1,512	126%
Other Operating	1,721	1,899	(-9)%	937	958	(-2)%
Total Operating Expenses	17,534	6,069	189%	12,926	3,135	312%
Loss from Operations	\$ (13,981)	\$ (2,334)	499%	\$ (11,263)	\$ (702)	1,505%
Interest Expense	(124)	(66)	88%	(62)	(43)	44%
Loss on Acquisition	(149,988)	—	100%	(149,988)	—	100%
Change in Fair Value of Derivative Liability	(193)	—	100%	(193)	—	100%
Total Other Expenses	(150,305)	(66)	227,635%	(150,243)	(43)	349,302%
Net Loss	<u>(164,286)</u>	<u>(2,400)</u>	<u>6,745%</u>	<u>(161,506)</u>	<u>(745)</u>	<u>21,579%</u>

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### *Net Sales*

Net sales increased \$0.6 million, or 8%, to \$7.6 million for the six months ended June 30, 2019 compared to \$7.1 million for the six months ended June 30, 2018.

Net sales increased \$0.3 million, or 7%, to \$4.1 million for the three months ended June 30, 2019 compared to \$3.8 million for the three months ended June 30, 2018.

Net sales increased in the six months ended June 30, 2019 as compared to the six months ended June 30, 2018 as a result of increased media and acquisition spend and a shift to higher unit priced products. Our TruDog brand shifted away from dental products during the first half of 2019 towards consumable food and topper sales. Dental products were effective for initial customer acquisition but return and retention rates were relatively low. Although food and topper products are not as effective in initial customer conversion as the dental products, topper products yield a better lifetime value as retention and repeat rates are higher. In the three months ended June 30, 2019, we saw a further increase in our acquisition and conversion rates as a result of increased media spend on Facebook and Google. A decline in sales through our online retailers Amazon and Chewy.com was the result of lower Amazon promotion spends and Chewy.com's customers buying directly from us. We expect to see sales to these online retailers grow in the second half of 2019 as we rebalance our sales efforts between DTC and online retail partners.

The increase in net sales in the three months ended June 30, 2019 as compared to the three months ended June 30, 2018 is a result of higher media spend on acquiring new customers as well as a higher retention rates of customers we previously acquired. We continue to see high retention rates of returning customers either through our subscription offers or from repeat purchases. We expect the share of returning sales to continue to grow as we focus our acquisition spend on high value, repeat buyers. Online retail partners sales dropped slightly as we continued to focus on driving traffic to our own sites.

### *Cost of Goods Sold and Gross Profit*

Cost of goods sold increased \$0.8 million, or 23%, to \$4.1 million for the six months ended June 30, 2019 compared to \$3.3 million for the six months ended June 30, 2018. As a percentage of revenue, cost of goods sold increased to 53% during the six months ended June 30, 2019 compared to 47% during the six months ended June 30, 2018. The increase in cost of goods sold was primarily due to a mix shift to food and topper products, which have higher costs and lower gross margin than dental products. We continue to negotiate for improved conversion costs from our manufacturing partners and expect to see further cost reductions as we rationalize the product offering and gain scale in the remaining products. The cost of hemp derived CBD oils has declined in the market, thus, reducing our ingredient costs. In the six-month period ended on June 30, 2018, the inventory reserve taken was \$0.2 million for slow moving and discontinued items.

Cost of goods sold increased \$1.0 million, or 75%, to \$2.4 million for the three months ended June 30, 2019 compared to \$1.4 million for the three months ended June 30, 2018. As a percentage of revenue, cost of goods sold increased to 59% during the three months ended June 30, 2019 compared to 36% during the three months ended June 30, 2018. During the three-months ended on June 30, 2019, we continued to discount discontinued items to clear out the inventory to focus on our top selling products. The inventory review at the end of the three-month period ended on June 30, 2019 led to an inventory reserve charge of \$0.2 million for the three months ended June 30, 2019 as compared to a reserve of \$0.1 million for the three months ended June 30, 2018.

During the six months ended June 30, 2019, gross profit decreased \$0.2 million, or 5%, to \$3.6 million compared to \$3.7 million during the six months ended June 30, 2018. Gross profit margin decreased to 47% from 53% for the six months ended June 30, 2019 compared to the six months ended June 30, 2018. The ongoing shift into food and topper products from the dental products sold in 2018 and discounting of discontinued products also reduced the gross margin for the six month period ended June 30, 2019.

During the three months ended June 30, 2019, gross profit decreased \$0.8 million, or 32%, to \$1.7 million compared to \$2.4 million for the three months ended June 30, 2018. Gross profit margin decreased to 41% from 64% for the three months ended June 30, 2019 compared to the three months ended June 30, 2018. The ongoing shift into food and topper products from the dental products and discounting of discontinued products reduced the gross margin for the three months ended June 30, 2019 along with the inventory reserve taken during the period.

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### *Operating Expenses*

During the six months ended June 30, 2019, general and administrative expenses increased approximately \$4.7 million, or 345% to \$6.0 million compared to \$1.4 million in the six months ended June 30, 2018.

During the three months ended June 30, 2019, general and administrative expenses increased approximately \$3.9 million, or 587%, to \$4.6 million compared to \$0.7 million in the three months ended June 30, 2018. The increase resulted from the expansion of our corporate staff and the incurrence of professional fees post-acquisitions as we began building the infrastructure to support our status as a public company.

During the six months ended June 30, 2019, we incurred share-based compensation of \$4.2 million, as compared to share based compensation of \$0 during the six months ended in June 30, 2018.

During the three months ended June 30, 2019, we incurred share-based compensation of \$4.0 million, as compared to share based compensation of \$0 during the three months ended in June 30, 2018. The increase in equity-based compensation was driven by awards issued related to the acquisitions on May 6, 2019.

During the six months ended June 30, 2019, sales and marketing expenses, including paid media, increased approximately \$2.8 million, or 99%, to \$5.6 million from \$2.8 million during the six months ended in June 30, 2018 as a result of increased new customer acquisition efforts. TruPet traditionally invested in Facebook advertisement to drive traffic to the site. We increased spending on Facebook and Google, and began to invest additional spend in other media outlets to build brand awareness.

During the three months ended June 30, 2019, sales and marketing expenses, including paid media, increased approximately \$1.9 million, or 126%, to \$3.4 million from \$1.5 million during the three months ended in June 30, 2018 primarily due to a shift in media spending towards Facebook and Google advertisements as well as retargeting lapsed customers.

During the six months ended June 30, 2019, other operating costs including customer service and warehousing costs decreased \$0.2 million, or 9%, to \$1.7 million compared to \$1.9 million for the six months ended June 30, 2018. We rationalized the operations in our warehouse at the end of 2018, reducing the staff and operating costs. We saw higher than normal shipping costs during the six months ended June 30, 2018 due to the product recall. During this period, we shipped partial orders and replacement product, increasing our shipping expenses. During the six months ended June 30, 2019, we began renovating a new facility in Tampa, Florida to house our warehouse, fulfillment and administrative departments. Rent and associated utilities for this period are reflecting both the rent for the new facility as well as the existing facility that houses these departments.

During the three months ended June 30, 2019, other operating costs including customer service and warehousing costs decreased by an immaterial amount, or 2%, to \$0.9 million compared to \$1.0 million for the three months ended June 30, 2018. We rationalized the operations in our warehouse at the end of 2018, reducing staff and operating costs. In addition, we continue to reduce our unit shipping costs as we gain scale and shipping efficiency. During the three months ended June 30, 2019, we began renovating a new facility in Tampa, Florida to house our warehouse, fulfillment and administrative departments. Rent and associated utilities for this period are reflecting both the rent for the new facility as well as the existing facility.

### *Research and Development*

During the six months ended June 30, 2019 and 2018, there were no research and development expenses incurred. We acquired two CBD related research contracts from Bona Vida on May 6, 2019. We expect to incur expenses in the third and fourth quarters of 2019 for these contracts as our research efforts continue.

### *Interest Expense, Net*

During the six months ended June 30, 2019, interest expense remained fairly constant at approximately \$0.1 million compared to the six months ended June 30, 2018. Interest expense increased by an immaterial amount primarily due to increased debt incurred under a note payable to a director, offset by the refinancing of the Company's line of credit agreement of \$4.6 million and the note payable to the director of \$1.6 million into a \$6.2 million line of credit on May 6, 2019 at a lower interest rate. The increased debt was necessary to finance working capital for the business.

During the three months ended June 30, 2019, interest expense changed immaterially compared to the three months ended June 30, 2018.

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### *Income Taxes*

No provision has been made for federal and state income taxes prior to the date of the acquisitions since the proportionate share of TruPet's income or loss was included in the personal tax returns of its members because TruPet was a limited liability company. Subsequent to the acquisitions, the Company, as a corporation is required to provide for income taxes.

The effective tax rate subsequent to the acquisitions 0%. The effective tax rate differs from the U.S. Federal statutory rate of 21% primarily because our previously reported losses have been offset by a valuation allowance due to uncertainty as to the realization of those losses.

### *Loss from Acquisition*

Note 2 in Notes to the Unaudited Condensed Consolidated Financial Statements for the three and six months ended June 30, 2019 included elsewhere in this prospectus details the impact of the transaction on May 6, 2019.

### ***Fiscal Year Ended December 31, 2018 Compared to Fiscal Year Ended December 31, 2017***

<i>Dollars in thousands</i>	<b>Twelve Months Ended</b>		
	<b>December 31, 2018</b>	<b>December 31, 2017</b>	<b>% Change</b>
Net Sales	\$ 14,785	\$ 7,932	86%
Cost of Goods Sold	7,489	4,310	74%
Gross Profit	7,296	3,622	101%
General & Administrative	3,298	2,414	37%
Share-Based Compensation	431	916	(53)%
Sales & Marketing	4,988	4,885	2%
Other Operating	3,737	749	*
Total Operating Expenses	12,454	8,964	39%
Loss from operations	\$ (5,158)	\$ (5,342)	(3)%
Interest Expense	(868)	(42)	*
Other Income	—	12	(100)%
Total Other Expenses	(868)	(30)	*
Net Loss	\$ (6,026)	\$ (5,372)	12%

\* Percentage not meaningful.

### *Net Sales*

Net sales increased \$6.9 million, or 86%, to \$14.8 million for the fiscal year ended December 31, 2018 compared to \$7.9 million for the fiscal year ended December 31, 2017.

The increase in net sales in the fiscal year ended December 31, 2018 is attributed to several operational changes we made to the business. In March 2018, we increased prices by 2% to 18% on over 65% of our product range based on competitive analysis and an understanding of our customers' price sensitivity. Fine tuning of our customer acquisition algorithms allowed us to acquire customers more effectively. We increased retention of previously acquired customers through improved post purchase communication and the loyalty program expansion. We reviewed our shipping costs and free shipping programs resulting in customers paying a higher net portion of shipping expenses.

### *Cost of Goods Sold and Gross Profit*

Cost of goods sold increased \$3.2 million, or 74%, to \$7.5 million in the fiscal year ended December 31, 2018 compared to \$4.3 million in the fiscal year ended December 31, 2017. As a percentage of revenue, cost of goods sold decreased to 51% in the fiscal year ended December 31, 2018 compared to 54% in the fiscal year ended December 31, 2017. The increase in cost of goods sold was primarily due to the growth in net sales. The product recall in the first half of 2018 increased our cost of goods sold as we replaced the recalled products with new product.

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In the fiscal year ended December 31, 2018, gross profit increased \$3.7 million, or 101%, to \$7.3 million compared to \$3.6 million in the fiscal year ended December 31, 2017. Gross profit margin increased to 49% in the fiscal year ended December 31, 2018 from 46% in the fiscal year ended December 31, 2017. The price increases in March 2018 accounted for the majority of the gross margin increase. The price increases were partially offset by the cost of replacement product as part of the recall.

### *Operating Expenses*

In the fiscal year ended December 31, 2018, general and administrative expenses increased approximately \$0.9 million, or 37% to \$3.3 million compared to \$2.4 million in the fiscal year ended December 31, 2017.

In the fiscal year ended December 31, 2018, we incurred share-based compensation of \$0.4 million, as compared to \$0.9 million in the fiscal year ended December 31, 2017.

In the fiscal year ended December 31, 2018, sales and marketing expenses, including paid media, increased approximately \$0.1 million, or 2%, to \$5.0 million from \$4.9 million in the fiscal year ended December 31, 2017 as a result of increased new customer acquisition efforts. TruPet traditionally invested in Facebook advertisement to drive traffic to the site. We increased spending on Facebook and Google and began to invest additional spend in other media outlets to build brand awareness.

In the fiscal year ended December 31, 2018, other operating costs including customer service and warehousing costs increased \$3.0 million, or 399%, to \$3.7 million compared to \$0.7 million in the fiscal year ended December 31, 2017. During this period, we shipped partial orders and replacement product, increasing our shipping expenses.

### *Research and Development*

The Company did not incur research and development expenses in either the fiscal year ended December 31, 2018 or 2017.

### *Interest Expense, Net*

Interest expense increased \$0.8 million, to \$0.9 million in fiscal year 2018 compared to an immaterial amount in fiscal year 2017. The increase was primarily due to increased debt incurred under a note payable to a director, corporate credit cards, a line of credit agreement and an advance on future receivables. The increased debt was necessary to finance working capital for the business.

## **Liquidity and Capital Resources**

Since our founding, we have financed our operations primarily through sales of member units as a limited liability company, sales of shares of common stock and warrants, as a corporation, preferred stock and cash flows generated by operations. On December 31, 2018, we had cash and cash equivalents of \$3.9 million which represented an increase of \$3.8 million from December 31, 2017.

The Company has incurred significant losses over the last two years and has a significant accumulated deficit. These operating losses create an uncertainty about the Company's ability to continue as a going concern for a period of twelve months from the date of our unaudited condensed consolidated financial statements.

Management conducted a comprehensive review of the Company's affairs including, but not limited to:

- The Company's financial position at June 30, 2019 which includes \$0.6 million of working capital;
- The loss from operations which includes \$4.2 million related to non-cash stock compensation;
- Sales and profitability forecasts for the Company for the next fiscal year; and
- The continued support of the Company's major stockholders and lenders.

To address the future additional funding requirements management has undertaken the following initiatives:

- To continue to monitor the Company's ongoing working capital requirements and minimum expenditure commitments; and
- Continue their focus on maintaining an appropriate level of corporate overhead in line with the Company's available cash resources.

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Management is confident that it will be able to meet its minimum expenditure commitments and support its planned level of overhead expenditures. There can be no assurance however that the Company will be able to raise additional capital when needed, or at terms deemed acceptable, if at all. The accompanying unaudited condensed consolidated financial statements do not include any adjustments related to the recoverability and classification of asset amounts or the classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

The following table presents a summary of our cash flow for the periods reflected below:

<i>Dollars in thousands</i>	<u>June 30, 2019</u>	<u>June 30, 2018</u>	<u>December 31, 2018</u>	<u>December 31, 2017</u>
Cash flows provided by (used in):				
Operating activities	\$ (8,481)	\$ (2,026)	\$ (6,903)	\$ (3,967)
Investing activities	1,870	(31)	(31)	(9)
Financing activities	<u>13,927</u>	<u>2,013</u>	<u>10,723</u>	<u>3,841</u>
Net increase (decrease) in cash, cash equivalents and restricted cash	<u>\$ 7,316</u>	<u>\$ (44)</u>	<u>\$ 3,789</u>	<u>\$ (135)</u>

### *Cash flows from Operating Activities*

Cash provided by (used in) operating activities consisted of net loss adjusted for non-cash items, including the loss on acquisition, stock-based compensation expense, change fair value of in derivative liability, depreciation and amortization, changes in working capital and other activities.

Cash used in operating activities increased \$6.5 million, or 319%, during the six months ended June 30, 2019 compared to the six months ended June 30, 2018. Cash used in operating activities was \$8.5 million for the six months ended June 30, 2019, which consisted of the net loss of \$164.3 million, offset by \$150.0 million from the loss from the acquisitions, \$4.2 million in stock-based compensation expense and a combined \$1.4 million of net cash generated via changes in operating assets and current liabilities. Cash used in operating activities was \$2.0 million for the six months ended June 30, 2018, which consisted of net loss of \$2.4 million, offset by a combined \$0.4 million net cash generated via changes in operating assets and current liabilities.

The decrease in working capital (deficit) during the six months ended June 30, 2019 was primarily due to an increase of accrued liabilities of \$2.0 million offset by an increase in prepaid expenses of \$0.9 million.

The decrease in working capital (deficit) during the six months ended June 30, 2018 was primarily due to an increase in accounts payable of \$0.5 million offset by an increase in inventories of \$0.3 million.

Cash used in operating activities increased \$2.9 million, or 74%, during the year ended December 31, 2018 compared to the year ended December 31, 2017. Cash used in operating activities was \$6.9 million during the year ended December 31, 2018, which consisted of a net loss of \$6.0 million, offset by \$0.4 million non-cash compensation expense and a net reduction in working capital of \$1.3 million. The net decrease in working capital was primarily due to a decrease in accrued liabilities and an increase in inventories and other assets necessary to support the growth of the business. Cash used in operating activities was \$4.0 million during the year ended December 31, 2017, which consisted of a net loss of \$5.4 million, offset by \$0.9 million non-cash compensation expense and a net increase in working capital of \$0.5 million.

### *Cash flows from Investing Activities*

Cash from investing activities increased by \$1.9 million during the six months ended June 30, 2019 from an immaterial amount during the six months ended June 30, 2018. The change in cash from investing activities included is the result of \$2.0 million cash acquired in the acquisitions offset by an increase in security deposits paid.

Cash flow used in investing activities was immaterial during each of the years ended December 31, 2018 and 2017.

### *Cash flows from Financing Activities*

Cash from financing activities increased by \$11.9 million, to \$13.9 million, during the six months ended June 30, 2019 from \$2.0 million during the six months ended June 30, 2018. The primary drivers of the overall cash from financing activities were proceeds from a private placement of \$15.7 million offset by payments to eliminate the balance due under the Business Cash Advance Agreement of \$1.9 million. The Company refinanced debt acquired in the merger of \$6.2 million with the proceeds from the issuance of new debt of \$6.2 million.

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Cash flow from financing activities increased \$6.9 million to \$10.7 million during the year ended December 31, 2018 from \$3.8 million provided during the year ended December 31, 2017. During 2018, the Company increased its borrowing under its line of credit and borrowed from a director of the Company. Additionally, cash proceeds of \$4.7 million were raised in a private placement of equity. The cash provided by financing activities was used primarily to fund the growth of operations during the year.

### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements, as defined by applicable regulations of the SEC, that are reasonably likely to have a current or future material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources.

### **Change in Accountants**

On September 6, 2019 the Audit Committee notified RBSM LLP of the Audit Committee's approval to dismiss RBSM as the Company's independent registered public accounting firm upon filing of the quarterly report on Form 10-Q for the period ending June 30, 2019.

During the Company's fiscal years ended August 31, 2018 and August 31, 2017, the transition period from September 1, 2018 to December 31, 2018 resulting from the Company's May 2019 change to its fiscal year ended August 31 to now end December 31 (the "Transition Period") and through the subsequent interim period as of September 6, 2019, there were (i) no disagreements (as that term is defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) between the Company and RBSM on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which, if not resolved to the satisfaction of RBSM would have caused RBSM to make reference thereto in its reports and (ii) no "reportable events" (as that term is defined in Item 304(a)(1)(v) of Regulation S-K) except as described below. There was a "reportable event" (as that term is defined in Item 304(a)(1)(v) of Regulation S-K) during the Transition Period related to material weaknesses in the Company's internal control over financial reporting as disclosed in the Company's Transition Report on Form 10-KT. As disclosed in the Transition Period Report, the Company's management concluded that material weaknesses existed as of December 31, 2018 related to the Company's inadequate design and operating effectiveness of controls with respect to its entity level programs designed to communicate to its employees and consultants the Company's accounting policies and procedures and small accounting staff that resulted in a lack of segregation of duties and insufficient review procedures.

The Company provided RBSM with a copy of this disclosure prior to filing Form 8-K/A and requested that RBSM provide the Company with a letter addressed to the Securities and Exchange Commission stating whether or not RBSM agrees with the above disclosures. A copy of RBSM's letter, dated September 6, 2019, is attached as Exhibit 16.1 to this Form 8-K/A.

### **Critical Accounting Policies**

Our financial statements and accompanying notes have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis. The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. We regularly evaluate the accounting policies and estimates that we use to prepare our financial statements. A complete summary of these policies is included in the notes to our financial statements. In general, management's estimates are based on historical experience, on information from third party professionals, and on various other assumptions that are believed to be reasonable under the facts and circumstances. Actual results could differ from those estimates made by management.

### **Significant Accounting Policies**

Our discussion and analysis of our results of operations and liquidity and capital resources are based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates and judgments, including those related to basis of presentation, use of

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estimates, cash and cash equivalents, inventory, revenue recognition, income taxes, fair value of financial instruments, fair value measurements, derivative financial instruments, basic and diluted loss per share, related parties, discontinued operations, and investments (see Note 1 to the Company's unaudited condensed consolidated financial statements included elsewhere in this prospectus). We base our estimates on historical and anticipated results and trends and on various other assumptions that we believe are reasonable under the circumstances, including assumptions as to future events. These estimates form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. By their nature, estimates are subject to an inherent degree of uncertainty. Actual results that differ from our estimates could have a significant adverse effect on our operating results and financial position. We believe that the significant accounting policies and assumptions as detailed in Note 1 to the financial statements contained herein may involve a higher degree of judgment and complexity than others.

## BUSINESS

We are a rapidly-growing animal health and wellness company at the forefront of pet nutrition. We have an alternative and holistic approach to animal health that is accelerating into hemp-derived cannabidiol (“CBD”) products. We launched our predecessor company TruPet with the vision to lead the pet industry’s shift towards health and wellness products that support longer and better lives for pets. We empower our customers with the right knowledge and information so that they proactively make the best decisions when it comes to pet health and wellness. We have a demonstrated, multi-year track record of success selling trusted animal health and wellness products leveraging our established digital footprint.

We have a deep portfolio of premium animal health and wellness products sold under the TruDog, TruCat, TruGold, Orapup, Rawgo! or Hound Dog brand names across multiple forms and classes, including foods, treats, toppers, dental products, chews, tinctures, grooming products and supplements. We offer our customers near 30 active stock keeping units (“SKUs”) through two distribution channels: direct-to-consumer, or DTC, and retail partners. Through our digital footprint, including social networks, online advertisements, emails, as well as direct mail, we reach a diverse base of customers across a broad range of demographics and gather valuable market and consumer behavior data. Our unique DTC strategy, one-on-one customer relationships and data-driven approach enable us to develop products that best meet our customers’ needs. We have leveraged this unique digital engagement and success to penetrate the retail partner channel, including online ecommerce, gas stations and convenience stores, specialty stores and mall kiosks and anticipate expanding our distribution channels to include big box retailers, club stores and veterinary distributors in the near future. Our network allows us to rapidly scale with retail partners once we have confirmed consumer acceptance of new products.

Our established supply and distribution infrastructure allows us to develop, manufacture and commercialize new products generally in under 12 weeks. We will continue to deliver innovation to expand our product offerings and improve the health and well-being of pets. We leverage our proprietary behavioral database, customer feedback and analytics capabilities to derive valuable insights and launch new products. We currently have 20 canine products in our product pipeline that we plan to launch over the next six months. In addition to our domestic capabilities, we have partnered with a leading Israeli research and development center, Cannasoul, to create a portfolio of indication-specific intellectual property focused on hemp-derived CBD formulations.

We position our products and brands to capitalize on mainstream trends of pet humanization and increased consumer focus on the health and well-being of their pets. Pet parents want to feed their pets the highest quality natural products, yet 80% of pets consume products with insufficient nutrition or harmful ingredients. Additionally, we believe that the evolving CBD regulatory landscape in the United States and globally provides tailwinds to our business which will support and accelerate our growth.

Our experienced management and board members have an established track record across the retail, consumer packaged goods, pet health and wellness industries, and they share a common vision to build the premier provider of health and wellness pet products.

### Product Line

Our products consist of raw-diet dog food, hemp-based CBD chews and oils, oral care products, supplements as well as dog and cat treats. All of our products sold through TruPet are made according to our nutritional philosophy of fresh, meat-based nutrition and minimal processing. On April 1, 2019, we signed a license agreement for the use of the “Elvis Presley’s Hounddog” name for a new line of hemp-derived CBD supplement products. We anticipate Elvis Presley’s Hounddog product line to include hemp-derived CBD oils, CBD soft chews, CBD infused bites and CBD infused food toppers. See “—Our Trademarks and Other Intellectual Property.”

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The unique attributes of our product portfolio appeal to a diverse class of consumer needs. Consequently, our brands resonate throughout a broad cross-section of pet parent demographics.



All of our products are sold under TruDog, TruCat, Rawgo!, Orapup or Hound Dog brand name, with ingredients, packaging and labeling customized by SKU.



### **Supply, Manufacturing and Logistics**

Our products sold under the TruPet brand are sourced and manufactured in the United States, using healthy, natural ingredients. Many products are preserved using either freeze drying or gentle air dehydration to eliminate the need for artificial preservatives and added chemicals. Our treats and chews are oven-baked, using natural ingredients for maximum nutrition. TruDog raw dog foods meet AAFCO guidelines and are small-batch tested for common contaminants prior to leaving the manufacturer. The proprietary blends of our TruPet line of supplements for dogs are formulated with a focus on using natural ingredients that meet a dog's unique biological needs.

All of our CBD soft chews and flavor-infused tinctures are formulated using pure, all natural, phytocannabinoid-rich ("PCR") hemp-derived CBD. All CBD isolates and oils are authenticated by an independent third party via issuance of a Certificate of Analysis ("COA"), which cannabinoid content and profile, microbiological content, heavy metal content, pesticide content, and residual solvent content. We recognize the importance of compliance and partnered with one of the industry's leading cGMP certified extraction facilities. This ensures the consistency and quality of our CBD product lines and brands.

Through its proprietary engineering process, our U.S.-based supplier isolates and removes any unwanted compounds while creating the maximum potency level of phytocannabinoids and terpenes. The cold, enclosed and continuous manufacturing processes prevent the degradation of natural molecules during extraction and purification. Made and derived from non-GMO, U.S.-grown hemp, its PCR hemp oil, and isolate powder are subjected to a rigorous testing system, both in-house and verified through independent, third party labs, which ensures accurate levels of phytocannabinoids and detects any trace amounts of THC. Our products contain only the highest level of naturally derived CBD sourced from hemp that contains less than 0.3% THC.

We believe that a key differentiator of our finished products is the quality of ingredients we source from the industry's leading suppliers, each of whom we have carefully vetted and qualified.

Fulfillment of orders from our online customers is managed by a well-established third-party logistics partner. We utilize logistics service providers as a part of our global supply chain, primarily for shipping and logistics support. Our online ecosystem allows us to efficiently manage and customize the online shopping experience for customers,

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including a customer dashboard where shoppers can manage and track orders and order history. Our products are made in the United States and shipped by trusted carriers for expeditious and reliable delivery.

### **Product Innovation**

We offer a broad portfolio of pet health and wellness products to our customers, including an array of products that we develop, manufacture and distribute. We use third-party consultants and animal health research and development experts to expand our proprietary value-branded portfolio and develop next-generation versions of our current pet products.

On April 21, 2019, we entered into an agreement with Cannasoul Analytics Ltd. (“Cannasoul”) to complete the research and development of a hemp-based treatment for the veterinary market, with an initial focus on the treatment of stress in dogs. The research and development plan include strain examination and selection as well as product development and clinical trials. We will receive the right to license all intellectual property derived from Cannasoul’s research and development efforts. See “—Our Trademarks and Other Intellectual Property.”

On August 1, 2019, the Company entered into a research agreement with Green Element BV to test the efficacy of CBD products for their ability to reduce anxiety in canines. Another purpose of the research agreement will be work to determine the most effective dosing parameters for canines based on individual factors such as weight and breed.

### **Customers**

Approximately 89% and 77%, respectively, of total net sales during the fiscal years ended December 31, 2018 and 2017 were generated from online sales with roughly 52% of the online sales for the fiscal year ended December 31, 2018 coming from recurring orders. Of the online orders, approximately 32%, 30% and 17% came from persons aged 65+, 55-64, and 45-54, respectively, with the remaining orders being made by persons aged 44 and younger. We currently sell our products on our own website and the e-commerce websites of Amazon, Chewy’s and Healthy Pets.

### **Sales and Marketing**

Our marketing strategy is designed to educate consumers about the benefits of our portfolio and build awareness of our products. We deploy a broad set of marketing tools across media, mail and public relations to reach consumers through multiple touch points. Our marketing initiatives include the use of social marketing, social influence marketing, direct response marketing, inbound marketing, email marketing, Search Engine Optimization (“SEO”), Search Engine Marketing (“SEM”), radio, paid media (Facebook, Instagram & Youtube), affiliate marketing, and content marketing, among other proven strategies to generate and convert sales prospects into loyal, satisfied customers.

Although we sell our products in over 30 retail stores and continue to increase our presence in additional retail outlets throughout the United States, we believe that the traditional retail environment is currently experiencing notable economic instability due largely to the global shift in consumer purchasing behaviors – with online shopping/ecommerce sites rapidly overtaking brick-and-mortar stores as consumer preferred shopping venues. For example, online retail sales in the United States increased 14% in 2018, according to an Internet Retailer analysis of data from the U.S. Department of Commerce. Given this trend in retail, we have adopted a robust DTC sales model that is anchored by an ecommerce website whereby we educate, sell and ship our various products directly to consumers. Our DTC model has allowed us to drive new consumers directly to our brands and develop a recurring revenue model.

We also promote our loyalty program called the TruDog Love Club (“TLC”). TLC is a membership club where members enjoy certain benefits including auto-shipments, free shipping, VIP access to TruDog’s Happiness Concierge and invitations to secret sales only for TLC members. TLC members also earn reward points with every TLC order which can be used to purchase TruDog products. Our TLC program generates recurring revenue which totaled approximately \$6.8 million for the fiscal year ended December 31, 2018.

### **Competition**

The pet health and wellness industry is highly competitive. Competitive factors in the pet health and wellness industry include product quality, ingredients, brand awareness and loyalty, product variety, product packaging and design, reputation, price, advertising, promotion, and nutritional claims. We believe that we compete effectively with respect to each of these factors.

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In our raw-diet food and treats segment, we have a separate set of competitors for the DTC and traditional distribution channels. In the DTC channel, our competitors include: Darwins, My Ollie, and Chewy.com. Our competitors in the traditional distribution channel include: Stella and Chewy's, Sojo's, I and Love and You, Nature's Variety Instinct, The Honest Kitchen, and Spot Farms.

Within our hemp-derived CBD segment, we face fragmented competition due to the infancy of the pet related CBD market. Given the rapid growth of the U.S. CBD industry, hundreds of companies have entered the market; however, most CBD companies focus on the human CBD market. Our competitors within the pet CBD market include: Therabis, Honest Paws, Charlotte's Web, Pet Releaf, Holistapet, and Canna-Pet. We anticipate the pet CBD market to continue growing at a rapid rate and believe retaining market share will require increased marketing in addition to maintaining high level quality and integrity of product offerings.

### **Employees**

As of June 30, 2019, we had 72 employees. Our employees are not represented by any labor union or any collective bargaining arrangement with respect to their employment with us. We have never experienced any work stoppages or strikes as a result of labor disputes. We believe that our employee relations are good.

### **Properties**

Our principal place of business is located at 164/166 East Douglas Road, Oldsmar, FL 34677, which consists of approximately 12,000 square feet of office and warehousing space. We also have a lease at 172 East Douglas Road, Oldsmar, FL 34677, which consists of approximately 6,000 square feet of additional warehouse space. The relevant leases at both locations are scheduled to expire on April 30, 2022. In addition, we have a lease at 4025 Tampa Road, Oldsmar, FL 34677, which consists of approximately 9,201 square feet and houses our customer care center. The relevant lease is scheduled to expire on October 31, 2022.

On August 30, 2019, we entered into a Membership Agreement with WeWork, pursuant to which we lease offices located at 575 Lexington Ave New York, NY 10022 effective as of September 1, 2019. The term of the agreement is for twelve months which shall automatically be renewed for successive one month terms unless terminated by either party.

On October 1, 2019, we entered into a temporary lease agreement for a 300 square feet office space located at 4555 Lake Forest Drive, Cincinnati, OH 45242.

We do not own any properties or land.

We believe our facilities are adequate and suitable for our current needs and that, should it be needed, suitable additional or alternative space will be available.

### **Government Regulation**

The regulation of animal food products containing cannabidiol ("CBD") in the United States, including chews, oils, and other CBD products, is complex, multi-faceted, and currently undergoing significant change. The U.S. Food and Drug Administration ("FDA"), the U.S. Federal Trade Commission ("FTC"), the U.S. Department of Agriculture ("USDA") and other regulatory authorities at the federal, state and local levels, as well as authorities in foreign countries, extensively regulate, among other things, the research, development, testing, composition, manufacture, import, export, labeling, storage, distribution, promotion, marketing, and post-market reporting of animal foods, including those that contain CBD. We, along with our third-party contractors, are required to navigate a complex regulatory framework in the countries in which we wish to manufacture, import, export, or sell our products.

The various federal, state and local regulations regarding animal foods containing CBD are evolving, and we continue to monitor those developments. However, we cannot predict the timing, scope or terms of any other state, federal or local regulations relating to animal foods containing CBD.

#### ***Regulation of CBD as a Controlled Substance by the U.S. Drug Enforcement Administration***

Historically, the DEA regulated CBD pursuant to the Controlled Substances Act ("CSA"), which establishes a framework of controls over certain substances depending on whether they are classified in one of five risk-based schedules. Schedule I substances are the most stringently controlled, as they have been determined to have a high potential for abuse, there are no currently accepted medical uses in the U.S., and there is a lack of accepted safety for use of the substance under medical supervision.

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The CSA classifies “marihuana,” previously defined to include all parts of the cannabis plant (with a few exceptions including fiber produced from mature stalks, any other preparation of mature stalks and certain preparations of the plant incapable of germination), as a Schedule I controlled substance. Pursuant to this definition, the DEA interpreted CBD to fall within the statutory definition of “marihuana” as a compound or derivative of the cannabis plant not derived from mature stalks, fiber, oil, cake, or sterilized seeds. In addition, the DEA’s implementing regulations defined “marihuana extract” as any extract containing one or more cannabinoids derived from the cannabis plant, other than the separate resin (whether crude or purified) obtained from the plant. The DEA previously acknowledged that its regulations classifying “marihuana extract” as a Schedule I controlled substance encompass CBD as a cannabinoid extract derived from cannabis, and based on both the CSA and its implementing regulations, the DEA historically interpreted CBD to be a Schedule I controlled substance.

### ***Federal Regulation of Hemp***

In February 2014, Congress enacted the Agricultural Act of 2014 (“2014 Farm Bill”) to allow under federal law for the limited growth and cultivation of industrial hemp, which was defined as including all parts of the cannabis plant, whether growing or not, with a delta-9 tetrahydrocannabinol (“THC”) concentration of not more than 0.3 percent on a dry weight basis. This statute also allowed, as permitted by state law, growing and cultivating industrial hemp under the auspices of a state agricultural pilot program and in institutions of higher education and state departments of agriculture.

In December 2018, Congress enacted the Agriculture Improvement Act of 2018 (“2018 Farm Bill”) to more broadly allow for the production of hemp pursuant to state and tribal plans overseen by the USDA. Under the new law, states or Indian tribes may submit to the USDA through the state department of agriculture a plan under which the state or Indian tribe will monitor and regulate the production of industrial hemp. For those states or territories that do not yet have an approved state or tribal plan, the production of hemp will be subject to a USDA-established plan. The USDA must promulgate regulations and guidelines to implement this framework, and one year after the USDA plan is established, the hemp provisions of the 2014 Farm Bill will be repealed.

In addition, the 2018 Farm Bill amended the statutory definition of “marihuana” under the CSA to specifically exclude “hemp” (which is defined as any part of the cannabis plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis). Under this definition, as long as CBD meets the statutory definition of “hemp,” then it is no longer a Schedule I controlled substance under the CSA. While the statute provides that no state or Indian tribe may prohibit the transportation or shipment of hemp or hemp products produced in accordance with the applicable subtitle of the 2018 Farm Bill through the state or territory, as applicable, the 2018 Farm Bill did not change the FDA’s authority to regulate cannabis-containing products governed by the Federal Food, Drug, and Cosmetic Act (“FDCA”).

### ***Implementation and Enforcement of the 2018 Farm Bill***

The USDA has not yet promulgated regulations implementing the 2018 Farm Bill or otherwise establishing a plan for production of hemp under the statutory framework. The DEA also has not amended its regulation defining “marihuana extract” as a Schedule I controlled substance in a way that may be interpreted to include CBD or to align with the 2018 Farm Bill, although the DEA has in the past stated that it will not extend this regulation beyond its statutory authority in the CSA.

For example, there is significant uncertainty regarding implementation of the statutory provisions impacting the transportation of hemp and hemp products in interstate commerce. Currently, state laws that apply to cannabis and cannabis-derived substances, including CBD, vary widely from state to state. The 2018 Farm Bill provides that states may not interfere with the interstate transportation or shipment of hemp or hemp products that are produced in accordance with the applicable subtitle of the 2018 Farm Bill. Since the USDA has not yet promulgated the regulatory framework required under the 2018 Farm Bill, there is uncertainty as to whether any hemp has or could have been produced in accordance with the applicable subtitle. On May 28, 2019, the USDA Office of General Counsel published a legal memorandum articulating the agency’s belief that, prior to the USDA’s promulgation of regulations under the 2018 Farm Bill, the interstate commerce provisions of the statute apply to hemp grown in compliance with other federal laws, including the 2014 Farm Bill. Accordingly, until the 2018 Farm Bill framework is in place, the USDA has interpreted the 2018 Farm Bill to prevent a state or Indian tribe from prohibiting the transportation of hemp grown and cultivated consistent with the 2014 Farm Bill through that state or tribal territory. Certain states, however, have employed a different interpretation of the interstate commerce provisions of the 2018 Farm Bill and

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have taken enforcement action against the transportation of hemp through their states as violating state law. This issue is the subject of currently active litigation, where courts in different states have come down on both sides. As the USDA and federal courts continue to develop this issue, the current ability of states to take enforcement action against interstate transportation of hemp and hemp products remains uncertain.

We continue to devote attention to monitoring these developments. However, we cannot predict the outcome of the active litigation or how the various federal, state and local authorities will regulate the interstate transportation of hemp and hemp products.

### ***FDA Regulation of Animal Foods***

The FDA regulates foods, including foods intended for animals, under the FDCA and its implementing regulations. The FDCA defines “food” as articles used for food or drink for man or other animals, which includes products that are intended primarily for nutritional use, taste, or aroma and the components of such products. For animal foods in particular, this definition applies based on their intended use regardless of labelling as animal food, treats, or supplements. The FDA also imposes certain requirements on animal foods relating to their composition, manufacturing, labeling, and marketing. Among other things, the facilities in which our products and ingredients are manufactured must register with the FDA, comply with current good manufacturing practices (“cGMPs”) and comply with a range of food safety requirements.

Although pet foods are not required to obtain premarket approval from the FDA, any substance that is added to or is expected to become a component of a pet food must be used in accordance with a food additive regulation, unless it is generally recognized as safe (“GRAS”) under the conditions of its intended use or if it appears on an FDA-recognized list of acceptable animal food ingredients in the Official Publication of the Association of American Feed Control Officials. A food may be adulterated if it uses an ingredient that is neither GRAS nor an approved food additive, and that food may not be legally marketed in the United States. FDA has confirmed that the use of cannabis or cannabis-derived compounds in animal food products is subject to these food additive requirements. At this time, there are no approved food additive petitions or regulations for any cannabis-derived food additive, and while the FDA has issued a “no questions” response to certain GRAS notifications for hemp seed products, these GRAS determinations do not encompass hemp and CBD products more generally.

Additionally, the FDCA prohibits the introduction or delivery for introduction into interstate commerce of any food that contains an approved drug for which substantial clinical investigations have been instituted and made public (unless certain exceptions apply). Under this prohibition, the FDA has stated that animal foods containing CBD are adulterated because CBD is an active ingredient in an FDA-approved drug that was the subject of substantial clinical investigations before it was marketed as a food, and that none of the exceptions apply.

Although the FDA has stated that it interprets the FDCA to prohibit the introduction or delivery for introduction into interstate commerce of any animal food to which CBD has been added and has taken enforcement action against marketers of certain CBD products (some in collaboration with the FTC), the FDA is in the process of evaluating its regulatory approach to products containing cannabis and cannabis-derived compounds. The FDA has formed an internal working group to evaluate the issue and on May 31, 2019 held a public hearing to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds. The hearing featured extensive discussion from a variety of stakeholders regarding the use of hemp and CBD in FDA-regulated products, including pet foods. At the hearing, FDA stated that while it does not have a policy of enforcement discretion with respect to any CBD products, the agency’s biggest concern is the marketing of products that put the health and safety of consumers at risk, such as those claiming to prevent, diagnose, mitigate, treat, or cure serious diseases in the absence of requisite drug approvals.

The labeling of pet foods is regulated by both the FDA and state regulatory authorities. FDA regulations require proper identification of the product, a net quantity statement, a statement of the name and place of business of the manufacturer or distributor and proper listing of all the ingredients in order of predominance by weight. The FDA also considers certain specific claims on pet food labels to be medical claims and therefore subject to prior review and approval by the FDA. For example, pet food products that are labeled or marketed with claims that may suggest that they are intended to treat or prevent a specific disease in pets would potentially meet the statutory definitions of both a food and a drug. The FDA recently issued guidance containing a list of specific factors it will consider in determining whether to initiate enforcement action against such products if they do not comply with the regulatory

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requirements applicable to drugs, including, among other things, whether the product is only made available through or under the direction of a veterinarian and does not present a known safety risk when used as labeled. The FDA may classify some of our products differently than we do and may impose more stringent regulations which could lead to possible enforcement action.

Under the FDCA, the FDA may require the recall of an animal food product if there is a reasonable probability that the product is adulterated or misbranded, and the use of or exposure to the product will cause serious adverse health consequences or death. In addition, pet food manufacturers may voluntarily recall or withdraw their products from the market. If the FDA believes that our products are adulterated or misbranded in violation of the FDCA, the agency may take further enforcement action, including:

- restrictions on the marketing or manufacturing of a product;
- required modification of promotional materials or issuance of corrective marketing information;
- issuance of safety alerts, press releases, or other communications containing warnings or other safety information about a product;
- warning or untitled letters;
- product seizure or detention;
- refusal to permit the import or export of products;
- fines, injunctions, or consent decrees; and
- imposition of civil or criminal penalties.

### **Our Trademarks and Other Intellectual Property**

We believe that our intellectual property has substantial value and has contributed significantly to the success of our business. Our trademarks are valuable assets that reinforce our brand, our sub-brands and our consumers' perception of our products. The current registrations of these trademarks in the U.S. and foreign countries are effective for varying periods of time and may be renewed periodically, provided that we, as the registered owner, or our licensees where applicable, comply with all applicable renewal requirements including, where necessary, the continued use of the trademarks in connection with the goods or services identified in the applicable registrations. In addition to trademark protection, we have registered 113 domain names, including [www.trupet.com](http://www.trupet.com), [www.trudog.com](http://www.trudog.com), [www.rawgo.com](http://www.rawgo.com), [www.orapup.com](http://www.orapup.com) and [www.bonavida.com](http://www.bonavida.com), that are important to the successful implementation of our marketing and advertising strategy. We rely on and carefully protect unpatented proprietary expertise, recipes and formulations, continuing innovation and other trade secrets to develop and maintain our competitive position.

We have entered into an intellectual property license with Elvis Presley Enterprises, LLC, pursuant to which we have licensed the image, likeness, and persona of Elvis Presley and an associated trademark ("Houndog") for use in the U.S. and Canada (subject to a territorial restriction in the geographical area surrounding Memphis, Tennessee) in connection with the advertisement, promotion and sale, via approved distribution channels, of certain of our CBD-infused animal health and wellness products. The initial term of the license runs until December 31, 2025, after which we have two consecutive renewal option periods, each for an additional six years. In exchange for the intellectual property licensed thereunder, we are required to meet certain minimum net sales figures per year, and to pay the licensor a royalty (ranging from 5-10%) based on net sales of products associated with the licensed intellectual property, subject to an annual minimum guarantee. The licensor has the right to terminate the license for any breach by us, material or otherwise.

We have also entered into an agreement with Cannasoul Analytics Ltd. ("Cannasoul"), pursuant to which we have engaged Cannasoul to conduct certain research, product development and pre-clinical trials for hemp-based treatments for the veterinary market, with an initial focus on treatment of stress (the "Project"), and we have obtained a license to use any intellectual property developed by Cannasoul in the framework of the Project in connection with products for the veterinary market. In consideration of the services and license provided, we were required to pay Cannasoul consideration of \$150,000 at signing, and between \$150,000 and \$200,000 upon reaching certain milestones in the Project. In addition, we were required to pay (on a quarterly basis) 10% of the revenues received by the Company from the sale of any products developed or tested under the agreement or that incorporate any intellectual property developed pursuant to the agreement. Cannasoul owns all IP developed in connection with the Project and we are granted an exclusive, worldwide, royalty-bearing license to use such IP for the veterinary market.

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We are required to meet certain minimum sales (“Minimum”) to maintain the exclusivity of such license. Cannasoul has the right to terminate the agreement (including the license) if in any given year our sales are less than 10% of the Minimum.

**Legal Proceedings**

We are from time to time subject to litigation and other proceedings that arise in the ordinary course of our business. Subject to the inherent uncertainties of litigation and although no assurances are possible, we believe that there are no pending lawsuits or claims that, individually or in the aggregate, will have a material adverse effect on our business, financial condition or our yearly results of operations.

**MANAGEMENT**

**Board of Directors and Executive Officers**

Set forth below are the name, age, position and description of the business experience of our executive officers and directors.

<u>NAME</u>	<u>AGE</u>	<u>POSITION</u>
Damian M. Dalla-Longa	35	Chief Executive Officer and Director
Andreas Schulmeyer	55	Chief Financial Officer
Anthony Santarsiero	36	President
Michael Galego	40	Chairman of the Board of Directors
Michael Young	40	Director
Jeff D. Davis	58	Director
Lori R. Taylor	50	Director

*Damian M. Dalla-Longa.* Mr. Dalla-Longa has served as our Chief Executive Officer since September 14, 2019 and was formerly Co-Chief Executive Officer of the Company, alongside Ms. Taylor, from May 6, 2019 to September 14, 2019. Prior to the Company’s acquisition of Bona Vida, Inc., Mr. Dalla-Longa served as its Chief Executive Officer since October 2018. Previously, Mr. Dalla-Longa was a Partner at Albaron Partners, a middle-market private equity fund focused on acquiring and operating medical practices and other healthcare businesses, where he has served since August 2017. Prior to August 2017, Mr. Dalla-Longa served as a Sector Head at Magnetar Capital, a privately owned hedge fund sponsor, and an Investment Analyst at King Street Capital Management, a global investment management company. Mr. Dalla-Longa holds a Bachelor of Science in Economics from the University of Pennsylvania and a Master of Business Administration from the Wharton School at the University of Pennsylvania. We believe Mr. Dalla-Longa’s qualifications to serve as a director of our Company include his experience investing in, and operating, commodity-related and consumer-facing business and his institutional knowledge of the animal health and wellness space within the hemp-derived CBD industry.

*Andreas Schulmeyer.* Andreas Schulmeyer has served as our Chief Financial Officer since June 12, 2019. Mr. Schulmeyer is Founder and Principal of Faultline Solutions LLC, where he has served since July 2014, advising clients on the challenges in cross border and grocery e-commerce and leading cross border e-commerce launch projects for small and medium retailers. From December 2015 to February 2018, Mr. Schulmeyer served as Head of e-Commerce International for L Brands Inc., the parent company of Victoria’s Secret, Bath & Body Works, Henry Bendel and La Senza, where he was responsible for establishing and managing local e-Commerce sites outside of North America. Prior to his time at L Brands Inc., Mr. Schulmeyer served as Chief Financial Officer for Wal-Mart Stores Inc.’s Global e-Commerce business from January 2011 to July 2014, during which time he was responsible for all financial aspects of the business, including annual planning, capital investments and M&A approvals, and as Chief Financial Officer for Walmart Asia from August 2008 to December 2010, during which time he was responsible for overseeing the retail businesses in China, India and Japan. Mr. Schulmeyer joined Walmart from PepsiCo, where he spent 12 years in the finance function across four continents. Mr. Schulmeyer holds a Bachelor of Science in Aerospace Engineering from the University of Illinois, a Master of Science in Aeronautics and Astronautics as well as Management Studies from the Massachusetts Institute of Technology.

*Anthony Santarsiero.* Mr. Santarsiero has served as our President since May 6, 2019. Mr. Santarsiero is President of TruPet, LLC, where he has been responsible for overseeing the company’s financials and day-to-day operations since January 2014. Prior to his time at TruPet, LLC, Mr. Santarsiero founded RV Genie and RV Clear Price, online platforms designed to assist private parties, dealerships, manufacturers and suppliers navigate the RV industry and interact directly with consumers, where he served as President since January 2013. Mr. Santarsiero has also served as Sales and Marketing Manager at GSI Inc. from May 2013 to March 2014, International Sales Manager and Director of E-Commerce Platform at BriteLyt Inc. from May 2013 to March 2014, Sales Manager and Business Manager at Dimmitt Automotive Group from June 2012 to August 2013 and was founder and Chief Executive Officer of Terra Paws from January 2010 and May 2012. We believe Mr. Santarsiero’s qualifications to serve as President and Chief Operating Officer of our Company include his extensive experience in the animal health and wellness space and customer and retail industries.

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*Michael Galego.* Mr. Galego has served as the Chairman of the Board of Directors since March 15, 2019. Mr. Galego is Chief Executive Officer of Apolo Capital Advisory Corp., where he has served since September 2018. He previously served as Chief Executive Officer of the Agricultural Division of the Stronach Group, Deputy General Counsel and Secretary of Pacific Exploration and Production Corp., formerly Pacific Rubiales Energy Corp., and General Counsel and Secretary of CGX Energy Inc. Recently, Mr. Galego was a member of the Board of Directors of Woulfe Mining Corp. Mr. Galego began his legal career as an associate in the business law department of Osler, Hoskin & Harcourt LLP. Mr. Galego holds a Bachelor of Arts (Honours) in political science and economics from York University and a Bachelor of Law (LL.B) from the University of Windsor. We believe Mr. Galego's qualifications to serve as a director of our Company include his legal experience in the M&A and corporate finance field, his demonstrated business acumen and his experience on other public company boards of directors.

*Michael Young.* Mr. Young served as the Chairman of the Board of Directors from December 13, 2019 to March 15, 2019. Mr. Young is a founding partner of Cottingham Capital, an investment company focused on real estate and technology investment, where he has served as Managing Partner since its inception in January 2017. Prior to January 2017, Mr. Young served as the Managing Director and Co-Head of Trading of GMP Securities, L.P., a Canadian investment bank. Mr. Young served on the boards of Aerues Inc., an anti-microbial copper coating technology company, and XIB I Capital Corp., a capital pool company, and was previously on the boards of Nuuvera Corp. and ICC Labs. Mr. Young holds a finance diploma from George Brown College. We believe Mr. Young's qualifications to serve as a director of our Company include his extensive senior level executive management and trading experience in the Canadian and U.S. capital markets and his experience on other public company boards of directors.

*Jeff D. Davis.* Mr. Davis has served as a director of the Company since March 15, 2019. Mr. Davis founded Molio Inc., a venture-backed, creative and media analytics agency, where he has served as Chief Executive Officer since February 2015. Prior to founding Molio Inc., Mr. Davis served as director and Chief Executive Officer of Orabrush Inc., an e-commerce business focused on oral care products. Mr. Davis has also served in a variety of positions at Procter & Gamble, where he spent time in numerous product sectors including consumer-packaged goods, pharmaceuticals and beauty. Mr. Davis holds a Bachelor of Science in Marketing and a Bachelor of Arts in German from the University of Utah.

*Lori R. Taylor.* Ms. Taylor has served as a director of the Company since March 15, 2019 and was formerly a Co-Chief Executive Officer of the Company, alongside Mr. Dalla-Longa, from May 6, 2019 to September 14, 2019. Ms. Taylor founded TruPet, LLC, a direct to consumer dog food and supplement company, where she served as its Chief Executive Officer from August 2013 to April 2019. Ms. Taylor also founded RevMedia Marketing LLC, a full-service marketing consultation and product innovation firm, and has served as its Chief Executive Officer since April 2009. Ms. Taylor holds a bachelor's degree in Marketing, Business Logistics and Journalism from the University of Missouri. We believe Ms. Taylor's qualifications to serve as a director of our Company include her experience in the consumer and retail industries, her experience in brand management, product development and marketing and her expertise in corporate strategy and development.

### **Board of Directors**

The number of members of our board of directors will be determined from time-to-time by resolution of the board of directors. Currently, our board of directors consists of five persons. Our directors hold office until the earlier of their death, resignation, retirement, disqualification or removal or until their successors have been duly elected and qualified.

Our securities are not listed on a U.S. securities exchange and, therefore, we are not subject to the corporate governance requirements of any such exchange, including those related to the independence of directors. However, at this time, after considering all of the relevant facts and circumstances, our Board of Directors has determined that Mr. Young, Mr. Davis and Mr. Galego are independent from our management and qualify as "independent directors" under the standards of independence under the applicable FINRA listing standards. Upon our listing on any national securities exchange or any inter-dealer quotation system, it will elect such independent directors as is necessary under the rules of any such securities exchange.

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### **Committees of the Board**

We have an audit committee, a compensation committee and a nominating and governance committee. Each such committee of the board of directors has or will have the composition and responsibilities described below.

#### *Audit Committee*

The audit committee assists the board in overseeing our accounting and financial reporting processes and the audits of our financial statements. The audit committee's responsibilities include, among other matters: appointing, approving the compensation of, and assessing the independence of our registered public accounting firm; overseeing the work of our registered public accounting firm, including through the receipt and consideration of reports from such firm; reviewing and discussing with management and the registered public accounting firm our annual and quarterly financial statements and related disclosures; coordinating our board of directors' oversight of our internal control over financial reporting, disclosure controls and procedures; discussing our risk management policies; meeting independently with our internal auditing staff, if any, registered public accounting firm and management; reviewing and approving or ratifying any related person transactions; and preparing the audit committee report required by the SEC.

The members of our audit committee are Messrs. Galego, Young and Davis, and Mr. Galego serves as chairperson of this committee.

#### *Compensation Committee*

The compensation committee's responsibilities include, among other matters: reviewing and approving, or recommending for approval by the board of directors, the compensation of our Chief Executive Officer and our other executive officers; overseeing and administering our cash and equity incentive plans; reviewing and making recommendations to our board of directors with respect to director compensation; reviewing and discussing annually with management our "Compensation Discussion and Analysis," to the extent required; reviewing and discussing the voting recommendations of our stockholders on matters involving executive compensation, to the extent required; and preparing the annual compensation committee report required by SEC rules, to the extent required.

The members of our compensation committee are Messrs. Galego, Young and Davis, and Mr. Young serves as chairperson of this committee.

#### *Nominating and Governance Committee*

The nominating and corporate governance committee's responsibilities include, among other matters: identifying individuals qualified to become board of directors members; recommending to our board of directors the persons to be nominated for election as directors and to each board committee; developing and recommending to our board of directors corporate governance guidelines, and reviewing and recommending to our board of directors proposed changes to our corporate governance guidelines from time to time; and overseeing a periodic evaluation of our board of directors.

The members of our nominating and corporate governance committee are Messrs. Galego, Young and Davis, and Mr. Davis serves as chairperson of this committee.

### **Family Relationships**

There are no family relationships among any of our executive officers or directors.

### **Risk Oversight**

Our audit committee is responsible for overseeing our risk management process. Our audit committee focuses on our general risk management policies and strategy, the most significant risks facing us, and oversees the implementation of risk mitigation strategies by management. Our board of directors is also apprised of particular risk management matters in connection with its general oversight and approval of corporate matters and significant transactions.

### **Compensation Committee Interlocks and Insider Participation**

None of our executive officers serves as a member of the board of directors or compensation committee (or other committee performing equivalent functions) of any entity that has one or more executive officers serving on our board of directors or compensation committee.

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**Code of Ethics and Code of Conduct**

We plan to adopt a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A copy of the code will be posted on our website at <https://www.betterchoicecompany.com>. Our code of business conduct and ethics is a “code of ethics” as defined in Item 406(b) of Regulation S-K. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this prospectus.

**EXECUTIVE AND DIRECTOR COMPENSATION**

The following is a discussion and analysis of the compensation arrangements for our named executive officer, or NEO. We are currently considered a “smaller reporting company” for purposes of the SEC’s executive compensation disclosure rules. In accordance with such rules, we are providing a Summary Compensation Table and an Outstanding Equity Awards at Fiscal Year-End Table as well as narrative disclosures regarding our executive compensation program. For 2018, our named executive officer was David Lelong our former President, Chief Executive Officer and Chief Financial Officer.

**Summary Compensation Table**

The following table sets forth information concerning the compensation of our named executive officers for the transition period ended December 31, 2018 and the fiscal year ended August 31, 2018.

Name and Principal Position	Period	Salary	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Nonqualified Deferred Compensation Earnings	All Other Compensation	Total
		(\$)	(\$)	(\$)	(\$) <sup>(1)</sup>	(\$)	(\$)	(\$)	
David Lelong <i>President, CEO and CFO</i>	<sup>(2)</sup>	\$32,000	\$ 0	\$ 0	\$ 154,983	\$ 0	\$ 0	\$ 0	\$ 186,983
	<sup>(3)</sup>	\$96,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 96,000

(1) The value in this column reflects the aggregate grant date fair value of the stock option award computed in accordance with ASC Topic 718. Information regarding the valuation assumptions used in the calculations are included in Note 10 of the Company’s financial statements for the period ended December 31, 2018 contained in the Company’s Form 10-KT.

(2) Transition period ended December 31, 2018.

(3) Fiscal year ended August 31, 2018.

**Employment Agreements**

Effective February 1, 2018, the Board approved an annual salary of \$96,000 for Mr. Lelong. On February 2, 2019, the Company and Mr. Lelong entered into a six month employment agreement (the “2019 Employment Agreement”). Under the terms of the 2019 Employment Agreement, Mr. Lelong receives a salary of \$8,000 per month for his services. Additionally, beginning on the effective date of the 2019 Employment Agreement and every 30 days thereafter, the Company will pay Mr. Lelong the lesser of (i) \$19,333, or (ii) the remaining balance of accrued salary owed to Mr. Lelong. Interest on any accrued salary amount remaining owed to Mr. Lelong shall accrue monthly at a rate of 18% per annum. As of December 31, 2018, we owed Mr. Lelong \$124,000 in accrued salary. Additionally, on December 31, 2018, Mr. Lelong received an equity award in the form of 19,231 stock options that vest in quarterly installments over a one-year period beginning on January 1, 2019, subject to Mr. Lelong’s continuous service with the Company through the vesting date(s). Mr. Lelong resigned from his position as CEO on March 14, 2019 and President and CFO on May 28, 2019. Mr. Lelong continued to provide services to the Company as an employee through March 4, 2019.

The 2019 Employment Agreement provides for severance benefits for certain terminations that arise prior to and following a change of control of the Company (as such term is defined in the 2019 Employment Agreement). Upon a termination without cause, resignation for good reason, (as such terms are defined in the 2019 Employment Agreement), subject to his execution and non-revocation of a general release of claims, Mr. Lelong is entitled to (i) a payment equal to 12 months of his base salary (or 18 months if the termination occurs following a change of control) (ii) acceleration of the vesting of all outstanding equity awards granted pursuant to the Company’s equity incentive plan, and (iii) continued benefits, including health insurance for Mr. Lelong and his spouse for a period of six months (or 18 months if the termination occurs following a change of control) following the termination date. Additionally, in the event of a change of control, Mr. Lelong will be entitled to receive 100% of his target bonus, if any, for such fiscal year.

For purposes of the 2019 Employment Agreement:

- “cause” means (i) executive is convicted of, or pleads guilty or nolo contendere to, a felony related to our business; (ii) executive, in carrying out his duties hereunder, has acted with gross negligence or intentional misconduct resulting, in any case, in material harm to us; (iii) executive misappropriates Company funds or otherwise defrauds us including a material amount of money or property; (iv) executive breaches his

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fiduciary duty to the Company resulting in material profit to him, directly or indirectly; (v) executive materially breaches any agreement with the Company and fails to cure such breach within 10 days of receipt of notice, unless the act is incapable of being cured; (vi) executive breaches any non-compete or confidential information provision of the 2019 Employment Agreement; (vii) executive becomes subject to a preliminary or permanent injunction issued by a United States District Court enjoining executive from violating any securities law administered or regulated by the SEC; (viii) executive becomes subject to a cease and desist order or other order issued by the SEC after an opportunity for a hearing; (ix) executive refuses to carry out a resolution adopted by the Board at a meeting in which executive was offered a reasonable opportunity to argue that the resolution should not be adopted; or (x) executive abuses alcohol or drugs in a manner that interferes with the successful performance of his duties;

- “change of control” has the same meaning given to such term in Treasury Regulation Section 1.409A-3(i)(5); and
- “good reason” means any one or more of the following: (i) a material diminution in executive’s authority, duties or responsibilities due to no fault of executive other than temporarily while executive is physically or mentally incapacitated or as required by applicable law; (ii) we require executive to change his principal business office to a location other than the New York, New York metropolitan area, or (iii) any other action or inaction that constitutes a material breach by us under the 2019 Employment Agreement.

**Outstanding Equity Awards at Fiscal Year-End**

The following table sets forth outstanding equity awards held by our named executive officer at December 31, 2018:

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
David Lelong	—	19,231 <sup>(a)</sup>	—	\$ 6.76	12/21/23	—	—	—	—

(a) Options vest in four quarterly installments over a one-year period beginning on January 1, 2019.

**Director Compensation**

The following table provided compensation information for the fiscal year ended December 31, 2018 for our non-employee director:

Name	Fees Earned or Paid in Cash	Stock Awards	Option Awards <sup>(1)</sup>	Non-equity Incentive Plan Compensation	All Other Compensation	Total Compensation
Michael Young	\$ 0	\$ 0	\$ 154,983	\$ 0	\$ 0	\$ 154,983

(1) The value in this column reflects the aggregate grant date fair value of the stock option award computed in accordance with ASC Topic 718. Information regarding the valuation assumptions used in the calculations is included in Note 10 of the Company’s financial statements for the period ended December 31, 2018 contained in the Company’s Form 10-KT.

During the fiscal year ended December 31, 2018, Michael Young was our only non-employee director. For his services as a director and Chairman of the Board, Mr. Young will receive \$25,000 as an annual retainer fee effective January 1, 2019. On December 31, 2018, Mr. Young received an equity award in the form of 19,231 stock options that vest in quarterly installments over a one-year period beginning on January 1, 2019.

**SECURITY OWNERSHIP OF PRINCIPAL STOCKHOLDERS AND MANAGEMENT**

The following table sets forth information about the beneficial ownership of our capital stock by (i) each of our directors, (ii) each of our executive officers (iii) all our directors and executive officers as a group, and (iv) each person or group known by us to own more than 5% of our common stock. The percentages reflect beneficial ownership, as determined in accordance with the SEC's rules, as of September 30, 2019, and are based on 45,427,659 shares of common stock outstanding. Except as noted below, the address for all beneficial owners in the table below is 166 Douglas Road E, Oldsmar, FL 34677.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership <sup>(1)</sup>				% of Total Voting Power
	Common Stock		Series E Preferred Stock		
	Shares	%	Shares	%	
<b>Directors and Executive Officers:</b>					
Damian Dalla-Longa <sup>(2)</sup>	2,109,891	4%	—	*	4%
Andreas Schulmeyer <sup>(3)</sup>	101,789	*	—	*	0%
Anthony Santarsiero <sup>(4)</sup>	1,248,875	2%	—	*	2%
Michael Galego <sup>(5)</sup>	276,864	1%	—	*	1%
Michael Young <sup>(6)</sup>	1,248,572	2%	—	*	2%
Jeff Davis <sup>(7)</sup>	145,833	*	—	*	0%
Lori Taylor <sup>(8)</sup>	5,967,443	11%	—	*	11%
All directors and executive officers as a group (7 persons) <sup>(9)</sup>	11,099,267	21%	—	*	21%
<b>5% or Greater Stockholders:</b>					
Blue Sky Holdings Trust <sup>(10)</sup>	5,632,027	11%	—	*	11%
John M. Word III	4,756,824	9%	—	*	9%

\* Represents less than 1% of the number of shares of our common stock outstanding prior to and upon the completion of the offering, as applicable.

- (1) Beneficial ownership of shares and percentage ownership are determined in accordance with the SEC's rules. In calculating the number of shares beneficially owned by an individual or entity and the percentage ownership of that individual or entity, shares underlying options, warrants or restricted stock units held by that individual or entity that are either currently exercisable or exercisable within 60 days from the date hereof are deemed outstanding. These shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other individual or entity. Unless otherwise indicated and subject to community property laws where applicable, the individuals and entities named in the table above have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them.
- (2) (2)Includes (i) 1,759,891 shares of common stock and (ii) 335,416 shares of common stock underlying options exercisable within 60 days of October 25, 2019.
- (3) Includes (i) 5,956 shares of common stock and (ii) 120,832 shares of common stock underlying options exercisable within 60 days of October 25, 2019.
- (4) Includes (i) 957,209 shares of common stock and (ii) 291,666 shares of common stock underlying options exercisable within 60 days of October 25, 2019.
- (5) Includes (i) 131,031 shares of common stock and (ii) 145,833 shares of common stock underlying options exercisable within 60 days of October 25, 2019.
- (6) Includes (i) 1,102,739 shares of common stock and (ii) 145,833 shares of common stock underlying options exercisable within 60 days of October 25, 2019.
- (7) Consists of 145,833 shares of common stock underlying option exercisable within 60 days of October 25, 2019.
- (8) Includes (i) 5,632,027 shares of common stock held directly by Blue Sky Holdings Trust which are beneficially owned by Lori Taylor and (ii) 335,416 shares of common stock underlying options exercisable within 60 days of October 25, 2019 held directly by Lori Taylor. Lori Taylor is the trustee, compliance officer, and protector of Blue Sky Holdings Trust. The address of Blue Sky Holdings Trust is 552 Locust Run Road, Cincinnati, OH 45245.
- (9) Includes 1,535,413 shares of common stock underlying option exercisable within 60 days of October 25, 2019.
- (10) The address of the Blue Sky Holdings Trust is 552 Locust Run Road, Cincinnati, OH 45245. Lori Taylor, one of our directors, is the trustee, compliance officer, and protector of Blue Sky Holdings Trust.

**SELLING STOCKHOLDERS**

This prospectus covers shares of our common stock issued in the Private Placements (including the common stock issuable upon exercise of the warrants issued therein) and shares issued in connection with the Acquisition. The shares sold in the Private Placements were sold directly by us to “accredited investors” as defined in Rule 501(a) under the Securities Act pursuant to an exemption from registration under the Securities Act, with Canaccord Genuity LLC acting as sole placement agent. See “Summary—Recent Developments.”

When we refer to the selling stockholders in this prospectus, we mean those persons listed in the table below, as well as the permitted transferees, pledgees, donees, assignees, successors and others who later come to hold any of the selling stockholders’ interests other than through a public sale.

The selling stockholders may from time to time offer and sell pursuant to this prospectus any or all of the shares of common stock set forth in the following table. There is no requirement for the selling stockholders to sell their shares, and we do not know when, or if, or in what amount the selling stockholders may offer the securities for sale pursuant to this prospectus.

The table below has been prepared based upon the information furnished to us by the selling stockholders as of \_\_\_\_\_, 2019. The selling stockholders identified below may have sold, transferred or otherwise disposed of some or all of their shares since the date on which the information in the following table is presented in transactions exempt from or not subject to the registration requirements of the Securities Act. Information concerning the selling stockholders may change from time to time and, if necessary, we will supplement this prospectus accordingly. We cannot give an estimate as to whether the selling stockholders will in fact sell any or all of their shares of common stock.

To our knowledge and except as noted below or elsewhere in this prospectus, none of the selling stockholders has, or within the past three years has had, any material relationship with us or any of our affiliates.

	Beneficial Ownership Prior to Registration		Shares Registered Pursuant to this Prospectus (Maximum Number that May be Sold)	Beneficial Ownership after Registration Assuming All Shares are Sold	
	Shares	%		Shares	%
<b>Selling Stockholders</b>					

\* Less than one percent

Beneficial ownership of shares and percentage ownership are determined in accordance with the SEC’s rules. In calculating the number of shares beneficially owned by an individual or entity and the percentage ownership of that individual or entity, shares underlying options, warrants or restricted stock units held by that individual or entity that are either currently exercisable or exercisable within 60 days from the date of this prospectus are deemed outstanding. These shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other individual or entity. Unless otherwise indicated and subject to community property laws where applicable, the individuals and entities named in the table above have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them. We have based our calculations of the percentage of beneficial ownership on 45,427,659 shares of common stock outstanding as of September 30, 2019.

**CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS**

During the period beginning on January 1, 2018 to the date of this prospectus, we have entered into or participated in the following transactions with related persons:

**Security Issuances*****TruPet Acquisition***

In connection with the TruPet acquisition, on May 6, 2019, we issued an aggregate of 15,027,533 shares of common stock to new investors and certain of our directors and executive officers in exchange for all remaining outstanding membership interests of TruPet. See “Summary—Recent Developments—Acquisitions—TruPet Acquisition.”

***Bona Vida Acquisition***

In connection with the Bona Vida acquisition, on May 6, 2019, we issued an aggregate of 18,003,273 shares of common stock to new investors and certain of our directors and executive officers in exchange for all outstanding shares of common stock of Bona Vida. See “Summary—Recent Developments—Acquisitions—Bona Vida Acquisition.”

***May Private Placement***

On May 6, 2019, we issued an aggregate of 5,744,991 shares of common stock and 5,744,991 warrants to purchase our common stock at an exercise price of \$4.25 per share at an offering price of \$3.00 per share to new investors and certain of our directors. See “Summary—Recent Developments—May Private Placement.”

The following table sets forth the aggregate number of securities acquired by the listed holders of more than 5% of any class of our voting shares or their affiliated entities and certain of our executive officers and directors.

<b>Participants</b>	<b>TruPet Acquisition</b>	<b>Bona Vida Acquisition</b>	<b>May Private Placement</b>	
	<b>Common Stock</b>	<b>Common Stock</b>	<b>Common Stock</b>	<b>Warrants</b>
<b>5% or Greater Shareholders<sup>(1)</sup></b>				
Blue Sky Holdings Trust	5,632,027	—	—	—
John M. Word III	4,056,824	—	333,333	333,333
<b>Officers and Directors<sup>(2)</sup></b>				
Damian M. Dalla-Longa	—	1,659,891	—	—
Andreas Schulmeyer	—	—	—	—
Anthony Santarsiero	957,209	—	—	—
Michael Galego	—	105,390	—	—
Michael Young	—	584,913	—	—
Jeff D. Davis	—	—	—	—
Lori R. Taylor	5,632,027	—	—	—

(1) Additional details regarding these shareholders and their equity holdings are provided in the section titled “Security Ownership of Principal Stockholders and Management.”

(2) Additional details regarding these shareholders and their equity holdings are provided in the section titled “Security Ownership of Principal Stockholders and Management.”

**Registration Rights Agreement*****TruPet Acquisition***

In connection with the TruPet acquisition, we entered into a registration rights agreement for the benefit of the recipients of common stock issued as the acquisition consideration. See “Description of Capital Stock—Registration Rights Agreements—TruPet Registration Rights Agreement.”

***Bona Vida Acquisition***

In connection with the TruPet acquisition, we entered into a registration rights agreement for the benefit of the recipients of common stock issued as the acquisition consideration. See “Description of Capital Stock—Registration Rights Agreements—Bona Vida Registration Rights Agreement.”

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### **May Private Placement**

In connection with the May Private Placement, we entered into a registration rights agreement for the benefit of the investors in the May Private Placement. See “Description of Capital Stock—Registration Rights Agreements—May Private Placement Registration Rights Agreement.”

### **Related Party Loans**

During fiscal year 2017, we received loans in the aggregate amount of \$0.2 million from our then Chief Executive Officer, David Lelong, to fund operations. These advances were unsecured, non-interest bearing and due on demand. At August 31, 2018, the balance due to Mr. Lelong under these loans was \$0.

### **Director Compensation**

Our independent directors receive compensation for their service as members of our board of directors. See “Executive and Director Compensation—Director Compensation,” for information on director compensation paid during 2018. Effective as of the second quarter of 2019, our independent directors each receive an annual retainer of \$50,000 payable quarterly.

### **Employment Agreements**

We have entered into employment agreements with our Chief Executive Officer, Damian Dalla-Longa and our former Co-Chief Executive Officer, Lori Taylor, our Chief Financial Officer, Andreas Schulmeyer and our President and Director of Operations, Anthony Santarsiero.

Mr. Dalla-Longa’s employment agreement provides for a base salary of \$300,000 per year, a signing bonus of \$100,000, a minimum annual bonus of 25% of Mr. Dalla-Longa’s base salary, the grant of 1,200,000 stock options, which options were granted to Mr. Dalla-Longa on May 2, 2019 and will vest monthly over the two-year period following the grant date, and certain severance benefits upon a qualifying termination of employment.

Ms. Taylor’s employment agreement provided for a base salary of \$300,000 per year, a signing bonus of \$155,000, a minimum annual bonus of 25% of Ms. Taylor’s base salary, the grant of 1,150,000 stock options, which options were granted to Ms. Taylor on May 2, 2019 and will vest monthly over the two-year period following the grant date, and certain severance benefits upon a qualifying termination of employment. On September 13, 2019, in connection with her decision to resign as Co-Chief Executive Officer of the Company, the Company entered into a separation agreement with Ms. Taylor. Subject to the effectiveness and irrevocability of the release of claims set forth in the separation agreement, Ms. Taylor’s cooperation with the Company during the period beginning on September 13, 2019 and ending on November 12, 2019 (the “Termination Date”), and Ms. Taylor’s continued compliance with the restrictive covenants set forth in her employment agreement, the separation agreement provides that Ms. Taylor will receive continued payment of her base salary of \$300,000 during the 12 month period following the Termination Date, as well as continued payment of healthcare benefits during the 24 month period following the Termination Date. The separation agreement also provides that the stock options previously granted to Ms. Taylor became fully vested on the Termination Date and such stock options will remain outstanding following the Termination Date and will not expire until the expiration of their term on May 2, 2029.

Mr. Schulmeyer’s employment agreement provides for a base salary of \$250,000 per year, a minimum annual bonus of 25% of Mr. Schulmeyer’s base salary, the grant of 500,000 stock options, which options were granted to Mr. Schulmeyer on June 29, 2019 and will vest monthly over the two-year period following the grant date, and certain severance benefits upon a qualifying termination of employment.

Mr. Santarsiero’s employment agreement provides for a base salary of \$250,000 per year, a signing bonus of \$25,000, a minimum annual bonus of 25% of Mr. Santarsiero’s base salary, the grant of 1,000,000 stock options, which options were granted to Mr. Santarsiero on May 2, 2019 and will vest monthly over the two-year period following the grant date, and certain severance benefits upon a qualifying termination of employment.

### **2019 Plan**

We granted new equity awards consisting of stock options to our board of directors and executive officers under the 2019 Plan, with respect to 5,450,000 shares of common stock. These grants are subject to customary vesting or forfeiture restrictions.

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### **Indemnification Agreements**

We have entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, will require us to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer, as applicable.

### **Policies and Procedures for Review of Related Party Transactions**

A "Related Party Transaction" is a transaction, arrangement or relationship in which we or any of our subsidiaries was, is or will be a participant, the amount of which involved exceeds \$120,000 in any one fiscal year, and in which any related person had, has or will have a direct or indirect material interest. A "Related Person" means:

- any person who is, or at any time during the applicable period was, one of our executive officers, one of our directors, or a nominee to become one of our directors;
- any person who is known by us to be the beneficial owner of more than 5.0% of any class of our voting securities;
- any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of a director, executive officer or a beneficial owner of more than 5.0% of any class of our voting securities, and any person (other than a tenant or employee) sharing the household of such director, executive officer or beneficial owner of more than 5.0% of any class of our voting securities; and
- any firm, corporation or other entity in which any of the foregoing persons is employed or is a general partner or principal or in a similar position or in which such person has a 5% or greater beneficial ownership interest in any class of the Company's voting securities.

Our board of directors intends to adopt a related party transactions policy. Pursuant to this policy, our audit committee will review all material facts of all Related Party Transactions and either approve or disapprove entry into the Related Party Transaction, subject to certain limited exceptions. In determining whether to approve or disapprove entry into a Related Party Transaction, our audit committee shall take into account, among other factors, the following: (i) whether the Related Party Transaction is on terms no less favorable than terms generally available to an unaffiliated third-party under the same or similar circumstances and (ii) the extent of the Related Person's interest in the transaction. Further, the policy will require that all Related Party Transactions required to be disclosed in our filings with the SEC be so disclosed in accordance with applicable laws, rules and regulations.

## DESCRIPTION OF CAPITAL STOCK

As of September 30, 2019, our authorized capital stock consists of 88,000,000 shares of common stock, \$0.001 par value per share, of which 45,427,659 shares are issued and outstanding; and 4,000,000 shares of preferred stock, \$0.001 par value per share, of which 3,706,000 shares are designated, including (a) 1,000 shares designated as Series A preferred stock, of which none are outstanding, (b) 805,000 shares designated as Series B preferred stock, of which none is outstanding, and (c) 2,900,000 shares are designated as of Series E preferred stock, and 1,707,920 shares of Series E preferred stock are issued and outstanding.

The following summary of our capital stock and certificate of incorporation and bylaws does not purport to be complete and is qualified in its entirety by reference to the provisions of applicable law and to our certificate of incorporation and bylaws, which will be provided upon request and are available on our website, <https://www.betterchoicecompany.com>. The information on our website is deemed not to be incorporated in this prospectus or to be part of this prospectus.

### **Common Stock**

#### ***Voting Rights***

Holders of shares of our common stock are entitled to one vote per share held of record on all matters to be voted upon by the stockholders. At each election for directors every stockholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by such stockholder for as many persons as there are directors to be elected at that time and for whose election such stockholder has a right to vote.

#### ***Dividend Rights***

Holders of shares of our common stock are entitled to ratably receive dividends when and if declared by our board of directors out of funds legally available for that purpose, subject to any statutory or contractual restrictions on the payment of dividends and to any prior rights and preferences that may be applicable to any outstanding preferred stock.

#### ***Liquidation Rights***

Upon our voluntary or involuntary liquidation, dissolution, distribution of assets or other winding up, holders of shares of our common stock are entitled to receive ratably the assets available for distribution to the stockholders after payment of liabilities and the liquidation preference of any of our outstanding shares of preferred stock.

#### ***Other Matters***

The shares of common stock have no preemptive or conversion rights and are not subject to further calls or assessment by us. There are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of our common stock are fully paid and non-assessable.

### **Preferred Stock**

Our amended and restated certificate of incorporation authorizes our board of directors, subject to any limitations prescribed by law, without further stockholder approval, to establish and to issue from time to time one or more series of preferred stock, par value \$0.001 per share, covering up to an aggregate of 20,000,000 shares of preferred stock. Each series of preferred stock will cover the number of shares and will have the powers, preferences, rights, qualifications, limitations and restrictions determined by the board of directors, which may include, among others, dividend rights, liquidation preferences, voting rights, conversion rights, preemptive rights and redemption rights.

#### ***Series E Preferred Stock***

##### ***Voting Rights***

Holders of shares of our Series E preferred stock are entitled to the whole number of votes equal to the number of shares of common stock into which such holder's Series E preferred stock would be convertible on the record date for the vote or consent of stockholders, and otherwise has voting rights and powers equal to the voting rights and powers of the common stock. To the extent that under the DGCL the vote of the holders of the Series E preferred stock, voting separately as a class or series as applicable, is required to authorize a given action of ours,

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the affirmative vote or consent of the holders of all of the shares of the Series E preferred stock, voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of required holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, will constitute the approval of such action by both the class or the series, as applicable. To the extent that under the DGCL holders of the Series E preferred stock are entitled to vote on a matter with holders of shares of common stock, voting together as one class, each share of Series E preferred stock will entitle holders to cast that number of votes per share as is equal to the number of shares of common stock into which it is then convertible. These rights are subject to maximum beneficial ownership percentages specified in the Series E Certificate of Designation.

### *Dividend Rights*

Holders of shares of our Series E preferred stock are entitled to ratably receive cumulative dividends on each share of Series E preferred stock, accruing on a quarterly basis in arrears, at the rate of 10.0% per annum on the stated value of \$0.99 per share (as adjusted), as set forth in the Series E Certificate of Designation. All accrued dividends on each share of Series E preferred stock will be paid upon conversion of the share of Series E preferred stock for which the applicable dividend is due. At our option, dividends on the Series E preferred stock may be paid in cash or stock. We also must declare a dividend on the Series E preferred stock on a pro rata basis with our common stock.

### *Liquidation Rights*

Upon our voluntary or involuntary liquidation, dissolution or winding up, holders of Series E preferred stock are entitled to receive in cash out of our assets whether from capital or from earnings available for distribution to its stockholders, before any amount is paid to the holders of our common stock.

### *Conversion Rights*

Subject to a maximum ownership percentage, at any time, each holder of Series E preferred stock is entitled to convert any portion of such holder's outstanding Series E preferred stock into validly issued, fully paid and non-assessable shares of common stock at a rate of \$0.78 per share, subject to adjustment under certain conditions.

### *Other Matters*

The Series E preferred stock has a stated value of \$0.99 per share. Under certain default conditions, the Series E preferred stock is subject to mandatory redemption at 125%, and the conversion price resets to 75% of the market price of our common stock. All outstanding shares of our Series E preferred stock are fully paid and non-assessable.

### **Anti-Takeover Effects of Provisions of Our Certificate of Incorporation, Our Bylaws and Delaware Law**

Some provisions of Delaware law, our certificate of incorporation and our bylaws could make the following transactions more difficult: an acquisition of us by means of a tender offer; an acquisition of us by means of a proxy contest or otherwise; or the removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions that provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

### ***Undesignated Preferred Stock***

The ability of our board of directors, without action by the stockholders, to issue up to 16,294,000 shares of undesignated preferred stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

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### ***Stockholder Meetings***

Our bylaws provide that a special meeting of stockholders may be called only by our chairperson of the board, chief executive officer or when requested in writing by the holders of not less than 10 percent of all the voting power entitled to vote at the meeting.

### ***Requirements for Advance Notification of Stockholder Nominations and Proposals***

Our bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors. Additionally, vacancies and newly created directorships may be filled only by a vote of a majority of the directors then in office, even though less than a quorum, and not by the stockholders.

### ***Removal of Directors***

Our bylaws provide that our board of directors may be removed from office by our stockholders with or without cause, but only at a meeting of the shareholders called expressly for that purpose, upon the approval of the holders of at least a majority in voting power of the outstanding shares of stock entitled to vote in the election of directors.

### ***Stockholders Not Entitled to Cumulative Voting***

Our certificate of incorporation does not permit stockholders to cumulate their votes in the election of directors.

### ***Delaware Anti-Takeover Statute***

We are subject to Section 203 of the DGCL, which prohibits persons deemed to be “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an “interested stockholder” is a person who, together with affiliates and associates, owns, or, in certain cases, within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation’s voting stock. Generally, a “business combination” includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors.

### ***Choice of Forum***

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative form, the Court of Chancery of the State of Delaware will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for: (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer (or affiliate of any of the foregoing) of us to us or the our shareholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or our certificate of incorporation or bylaws, or (iv) any other action asserting a claim arising under, in connection with, and governed by the internal affairs doctrine; provided that the exclusive forum provisions will not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of, and consented to, the provisions of our bylaws described in the preceding sentence.

### ***Amendment of Bylaw Provisions***

Our certificate of incorporation provides that our board of directors has the power to make, amend, alter or repeal our bylaws. Our bylaws provide that they may be repealed or amended, and new bylaws maybe adopted, by our board of directors or the stockholders in accordance with Section 109 of the DGCL.

### ***Amendment of Charter Provisions***

Our certificate of incorporation reserves our right to amend, alter, change or repeal any provision contained in our certificate of incorporation, in the manner prescribed by statute, and all rights conferred upon stockholders in our certificate of incorporation are granted subject to this reservation. Any amendments may be passed by a majority of the outstanding voting power and not by a majority of each class or series of outstanding capital stock.

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The provisions of Delaware law, our certificate of incorporation and our bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

### **Conflicts of Interest**

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation or its officers, directors or stockholders. Our bylaws provides that no contract or other transaction between us and one or more of our directors or any other corporation, firm, association or entity in which one or more of our directors are directors or officers or are financially interested, will be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or one of its committees which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if: (a) the fact of such relationship or interest is disclosed or known to our board of directors or committee thereof which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; (b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or (c) the contract or transaction is fair and reasonable to us at the time it is authorized by our board of directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of our board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

### **Limitation of Liability and Indemnification Matters**

Our certificate of incorporation limits the liability of our directors for monetary damages for breach of their fiduciary duty as directors, except to the extent such exemption or limitation thereof is not permitted under the DGCL and applicable law. Delaware law provides that such a provision may not limit the liability of directors:

- for any breach of their duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- for unlawful payment of dividend or unlawful stock repurchase or redemption, as provided under Section 174 of the DGCL; or
- for any transaction from which the director derived an improper personal benefit.

Any amendment, repeal or modification of these provisions will be prospective only and would not affect any limitation on liability of a director for acts or omissions that occurred prior to any such amendment, repeal or modification.

Our certificate of incorporation also require us to pay any expenses incurred by any director or officer in defending against any such action, suit or proceeding in advance of the final disposition of such matter to the fullest extent permitted by law, subject to the receipt of an undertaking by or on behalf of such person to repay all amounts so advanced if it shall ultimately be determined that such person is not entitled to be indemnified as authorized by our amended and restated bylaws or otherwise. We have entered or will enter into indemnification agreements with each of our directors and executive officers. These agreements require us to indemnify these individuals to the fullest extent permitted under Delaware law against liability that may arise by reason of their service to us and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. We believe that the limitation of liability provision in our certificate of incorporation and the indemnification agreements facilitate our ability to continue to attract and retain qualified individuals to serve as directors and officers.

### **Registration Rights Agreements**

#### ***May Private Placement Registration Rights Agreement***

Pursuant to the May Private Placement Registration Rights Agreement, as amended by that certain First Amendment to the Registration Rights agreement dated June 10, 2019, we agreed to prepare and file a registration statement with

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the SEC no later than August 16, 2019 for purposes of registering the resale of the shares of common stock held by the selling stockholders purchased in the May Private Placement (including the common stock issuable upon exercise of the warrants issued in the May Private Placement). We agreed to use our commercially reasonable efforts to cause the registration statement of which this prospectus is a part to be declared effective by the SEC prior to the 162<sup>nd</sup> day after the closing date of the May Private Placement (or the 192<sup>nd</sup> day if the SEC reviews the registration statement).

We also agreed to use our commercially reasonable efforts to keep the registration statement, of which this prospectus constitutes a part, effective until the earlier of (a) a registration statement with respect to the sale all of registrable securities being declared effective by the SEC under the Securities Act and such registrable securities having been disposed of or transferred by the holder thereof in accordance with such effective registration statement, (b) such registrable securities having been previously sold or transferred in accordance with Rule 144 of the Securities Act (or another exemption from the registration requirements of the Securities Act), (c) such securities becoming eligible for resale without volume or manner-of-sale restrictions and without current public information requirements pursuant to Rule 144 and (d) the third anniversary of the closing of the May Private Placement.

In addition, we have a limited ability to suspend use of the registration statement of which this prospectus is a part, if we (a) determine that we would be required to make disclosure of material information in the registration statement of which this prospectus is a part that we have a bona fide business purpose for preserving as confidential, (b) determine we must amend or supplement the registration statement of which this prospectus is a part so that it does not include 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 the case of the Prospectus in light of the circumstances under which they were made, not misleading or (c) have experienced or are experiencing some other material non-public event, including a pending transaction involving us, the disclosure of which at such time, in our good faith judgment, would adversely affect us. However, we may not suspend use for a period that exceeds 120 calendar days in any 360-day period.

We have also agreed, among other things, to indemnify the selling stockholders who purchased shares of common stock and warrants in the May Private Placement, their officers, directors, members, employees and agents, successors and assigns, and each person who controls such selling stockholders from certain liabilities incurred by us in connection with the registration of the common stock purchased in the May Private Placement (including the common stock issuable upon exercise of the warrants issued in therein) held by the selling stockholders.

### ***Bona Vida Registration Rights Agreement***

Pursuant to the Bona Vida Registration Rights Agreement, we agreed to use our commercially reasonable efforts to file a registration statement to register the shares of common stock issued as part of the consideration for the Bona Vida acquisition as soon as practicable. The number of shares of common stock issued as part of the consideration for the Bona Vida acquisition to be included as part of any registration statement is determined as follows: (i) we first include with such registration statement all the shares of common stock sold in the May Private Placement (including the common stock issuable upon exercise of the warrants issued therein); and (ii) to the extent we may register a greater number of shares of our common stock than those comprising the shares of common stock sold in the May Private Placement (including the common stock issuable upon exercise of the warrants issued therein), the recipients of common stock issued as part of the consideration for the Bona Vida acquisition will be entitled to participate on a pro rata basis.

In addition, we have agreed, among other things, to use commercially reasonable efforts to cause such registration statement to become and remain effective and to use commercially reasonable efforts to cause the common stock received in the Bona Vida acquisition to be quoted on each trading market and/or in each quotation service on which our common stock is then quoted.

We have also agreed, among other things, to indemnify the selling stockholders who received shares of our common stock in the Bona Vida acquisition from certain liabilities and to pay all fees and expenses incurred by us in connection with the registration of shares of our common stock received in the Bona Vida acquisition.

### ***TruPet Registration Rights Agreement***

Pursuant to the TruPet Registration Rights Agreement, we agreed to use our commercially reasonable efforts to file a registration statement to register the shares of common stock issued as part of the consideration for the TruPet acquisition as soon as practicable. The number of shares of common stock issued as part of the consideration for the

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TruPet acquisition to be included as part of any registration statement is determined as follows: (i) we first include with such registration statement all the shares of common stock sold in the May Private Placement (including the common stock issuable upon exercise of the warrants issued therein); and (ii) to the extent we may register a greater number of shares of our common stock than those comprising the shares of common stock sold in the May Private Placement (including the common stock issuable upon exercise of the warrants issued therein), the recipients of common stock issued as part of the consideration for the TruPet acquisition will be entitled to participate on a pro rata basis.

In addition, we have agreed, among other things, to use commercially reasonable efforts to cause such registration statement to become and remain effective and to use commercially reasonable efforts to cause the shares of our common stock received in the TruPet acquisition to be quoted on each trading market and/or in each quotation service on which our common stock is then quoted.

We have also agreed, among other things, to indemnify the selling stockholders who received shares of our common stock in the TruPet acquisition from certain liabilities and to pay all fees and expenses incurred by us in connection with the registration of shares of our common stock received in the TruPet acquisition.

### ***December Private Placement Registration Rights Agreement***

On December 12, 2018, we completed a private placement (the “December Private Placement”), in which we sold shares of our common stock and 1,425,641 warrants to purchase a half share of our common stock at an exercise price of \$3.90 per share at an offering price of \$1.95 per share in reliance on exemptions from registration under the Securities Act. The warrants are exercisable for 24 months from the closing of the December Private Placement. The shares of common stock we sold in the December Private Placement were sold to certain of the selling stockholders identified in this prospectus. The net proceeds from the December Private Placement, after deducting our offering expenses and the payment of the placement fee, were approximately \$2.7 million which we used for general corporate purposes.

Pursuant to a registration rights agreement entered into in connection with the December Private Placement, we agreed to use our commercially reasonable efforts to file a registration statement within 60 days of the closing of the December Private Placement. We also agreed, among other things, to use commercially reasonable efforts to cause such registration statement to become and remain effective and to use commercially reasonable efforts to cause the common stock (including the common stock issuable upon exercise of the warrants issued in the December Private Placement) held by the selling stockholders purchased in the December Private Placement to be quoted on each trading market and/or in each quotation service on which our common stock is then quoted.

We have also agreed, among other things, to indemnify the selling stockholders who purchased shares and warrants in the December Private Placement from certain liabilities and to pay all fees and expenses incurred by us in connection with the registration of the common stock purchased in the December Private Placement held by the selling stockholders.

### **Lock-Up Periods**

In connection with the acquisitions, certain of our stockholders agreed that for a period of six months after the closing date of the acquisitions, subject to certain exceptions, they would not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any shares of our common stock or securities convertible into or exchangeable or exercisable for any shares of our common stock. These lock-up agreements expire on November 6, 2019 and thereafter, up to an additional 33,030,807 shares of common stock will be eligible for sale in the public market. If the restrictions under the lock-up agreements are waived, our common stock will be available for sale into the market subject to the following paragraph, which could reduce the market value for our common stock.

On September 17, 2019, we entered into a consulting agreement with Bruce Linton. As part of the consulting agreement, we agreed to use our commercially reasonable efforts to cause each of our directors and officers to enter into a lock-up agreement, upon customary terms and conditions, between each officer or director and Mr. Linton for a period of no more than one year from September 1, 2019. As of October 25, 2019, 14,392,931 shares of common stock were subject to lock-up agreements. The lock-up agreement will expire on September 16, 2020.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Equity Stock Transfer, LLC.

## SHARES ELIGIBLE FOR FUTURE SALE

As of September 30, 2019, we have 45,427,659 shares of common stock outstanding. We have filed a registration statement, of which this prospectus is a part, in respect of the 46,765,215 shares being offered by the selling stockholders named herein. These shares may not be sold pursuant to this prospectus until the registration statement is declared effective. All of the shares of our common stock sold by the selling stockholders pursuant to the registration statement of which this prospectus is a part will be freely tradable without restriction or further registration under the Securities Act subject to lock-up agreements described herein, unless such shares are purchased by “affiliates” as that term is defined in Rule 144 under the Securities Act, which will be subject to the resale limitations of Rule 144.

The remaining 4,145,156 outstanding shares of our common stock will be deemed to be “restricted securities” as that term is defined in Rule 144. Subject to certain contractual restrictions, including the lock-up agreed to by certain of our stockholders, holders of restricted shares will be entitled to sell those shares in the public market if and when those shares are registered or if they qualify for an exemption from registration under Rule 144 or any other applicable exemption under the Securities Act.

Prior to the registration statement of which this prospectus is a part, there has been a limited established public market for our common stock. No assurance can be given as to the likelihood that an active trading market for our common stock will develop, the liquidity of any such market, the ability of our stockholders to sell their shares or the prices that our stockholders may obtain for any of their shares. Further, we cannot predict the effect, if any, that sales of shares or availability of any shares for sale will have on the market price of our common stock prevailing from time to time. Issuances or sales of substantial amounts of our common stock, or the perception that such issuances or sales could occur, could cause the market price of our common stock to decline significantly and make it more difficult for us to raise additional capital through a future sale of securities.

### Rule 144

In general, under Rule 144, a person (or persons whose shares are aggregated) who is not an affiliate of ours and has not been one of our affiliates at any time during the three months preceding a sale, and who has beneficially owned the restricted securities proposed to be sold for at least one year, including the holding period of any prior owner other than an affiliate, is entitled to sell his or her securities without registration and without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. In addition, under Rule 144, once we have been subject to the reporting requirements of the Exchange Act for at least 90 days, a person (or persons whose securities are aggregated) who is not an affiliate of ours and has not been one of our affiliates at any time during the three months preceding a sale, may sell his or her securities without registration, subject to the continued availability of current public information about us after only a six-month holding period. Any sales by affiliates under Rule 144, even after the applicable holding periods, are subject to requirements and/or limitations with respect to volume, manner of sale, notice and the availability of current public information about us.

### Rule 701

In general, under Rule 701 of the Securities Act, any of our stockholders who purchased shares from us in connection with a qualified compensatory stock plan or other written agreement before we became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, is eligible to resell those shares in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirements of Rule 144, and a non-affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirements of Rule 144 and without regard to the volume of such sales or the availability of public information about the issuer.

### Registration Rights

For the registration rights held by the selling stockholders listed in this prospectus see “Description of Capital Stock—Registration Rights Agreements.”

### Outstanding Equity Awards

As of the date hereof, stock options to purchase a total of 6,000,000 shares of common stock were outstanding. The weighted average exercise price of such options is \$5.12 per share.

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The aggregate number of shares of our common stock that are available for issuance under awards granted pursuant to the 2019 Plan (as has been adjusted for the acquisitions) is the sum of (i) 6,000,000 shares of common stock plus (ii) an annual increase on the first day of each calendar year beginning on January 1, 2020 and ending on and including January 1, 2029, equal to the lesser of (A) 10% of the shares of common stock outstanding (on an as-converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of shares of common stock as determined by our board of directors. The shares may be authorized but unissued shares, or shares purchased in the open market. If an award under the 2019 Plan is forfeited, expires or is settled for cash, any shares subject to such award may, to the extent of such forfeiture, expiration or cash settlement, be used again for new grants under the 2019 Plan. Of such outstanding awards, options to purchase 5,250,000 shares of common stock were granted in connection with the acquisitions pursuant to the 2019 Plan. The weighted average exercise price of such options is \$5.00 per share.

### Equity Compensation Plan Information

The following table sets forth information as of December 31, 2018 with respect to compensation plans under which equity securities are authorized for issuance:

<u>Plan Category</u>	<u>Number of Securities to be Issued upon the Exercise of Outstanding Options, Warrants and Rights</u>	<u>Weighted Average Exercise Price of Outstanding Options, Warrants and Rights</u>	<u>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans</u>
Equity compensation plans approved by security holders	—	—	—
Equity compensation plans not approved by security holders	38,462 <sup>(1)</sup>	\$ 6.76	—
Total	38,462	\$ 6.76	—

(1) Represents the stock options granted in December 2018 pursuant to individual agreements with the option holders.

### Lock-Up Periods

For a description of certain lock-up periods to which holders of our capital stock will be subject in certain circumstances, see “Description of Capital Stock—Lock-Up Periods.”

**MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS**

The following discussion is a summary of the material U.S. federal income tax consequences to Non-U.S. Holders (as defined below) of the purchase, ownership and disposition of our common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the "IRS"), in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder of our common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the purchase, ownership and disposition of our common stock.

This discussion is limited to Non-U.S. Holders that hold our common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder's particular circumstances, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons subject to the alternative minimum tax;
- persons holding our common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our common stock under the constructive sale provisions of the Code;
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation;
- persons subject to special tax accounting rules as a result of any item of gross income with respect to our common stock being taken into account in an applicable financial statement;
- tax-qualified retirement plans; and
- "qualified foreign pension funds" as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds.

If an entity treated as a partnership for U.S. federal income tax purposes holds our common stock, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships holding our common stock and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

**THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK ARISING UNDER U.S. FEDERAL NON-INCOME TAX LAWS, INCLUDING THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS, OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.**

### **Definition of a Non-U.S. Holder**

For purposes of this discussion, a “Non-U.S. Holder” is any beneficial owner of our common stock that is neither a “U.S. person” nor an entity treated as a partnership for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more “United States persons” (within the meaning of Section 7701(a)(30) of the Code) or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

### **Distributions**

As described in the section entitled “Dividend Policy,” we do not currently anticipate paying dividends to holders of our common stock in the foreseeable future. However, if we do make distributions of cash or property on our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a Non-U.S. Holder’s adjusted tax basis in its common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under “—Sale or Other Taxable Disposition.”

Subject to the discussions below on effectively connected income, backup withholding and FATCA, dividends paid to a Non-U.S. Holder of our common stock will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder furnishes a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). If a Non-U.S. Holder holds our common stock through a financial institution or other intermediary, the Non-U.S. Holder will be required to provide appropriate documentation to the intermediary, which then will be required to provide certification to the applicable withholding agent, either directly or through other intermediaries. A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Holder’s conduct of a trade or business within the United States.

Any such effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the regular graduated rates applicable to U.S. tax residents. A Non-U.S. Holder that is a corporation for U.S. federal income tax purposes also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

### **Sale or Other Taxable Disposition**

Subject to the discussions below regarding backup withholding and FATCA, a Non-U.S. Holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our common stock unless:

- the gain is effectively connected with the Non-U.S. Holder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable);

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- the Non-U.S. Holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our common stock constitutes a United States real property interest (“USRPI”) by reason of our status as a United States real property holding corporation (“USRPHC”) for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not currently anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. Holder of our common stock will not be subject to U.S. federal income tax pursuant to the third bullet point above if our common stock is “regularly traded,” as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. Holder owned, actually and constructively, 5% or less of our common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder’s holding period.

Non-U.S. Holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

### **Information Reporting and Backup Withholding**

Payments of dividends on our common stock will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on our common stock paid to a Non-U.S. Holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our common stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of our common stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder’s U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

### **Additional Withholding Tax on Payments Made to Foreign Accounts**

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such Sections commonly referred to as the Foreign Account Tax Compliance Act, or “FATCA”) on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, our common stock paid to a “foreign financial institution” or a “non-financial foreign entity” (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the

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non-financial foreign entity either certifies it does not have any “substantial United States owners” (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain “specified United States persons” or “United States-owned foreign entities” (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our common stock. While withholding under FATCA would have applied also to payments of gross proceeds from the sale or other disposition of stock on or after January 1, 2019, recently proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on the proposed Treasury Regulations until final Treasury Regulations are issued.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our common stock.

## PLAN OF DISTRIBUTION

### General

We are registering the shares of common stock covered by this prospectus to permit the selling stockholders to conduct public secondary trading of these shares from time to time after the date of this prospectus. We will not receive any of the proceeds of the sale of the shares offered by this prospectus. The aggregate proceeds to the selling stockholders from the sale of the shares will be the purchase price of the shares less any discounts and commissions. Each selling stockholder reserves the right to accept and, together with their respective agents, to reject, any proposed purchases of shares to be made directly or through agents.

The selling stockholders and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of common stock offered by this prospectus on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These sales may be at fixed or negotiated prices. The prices at which the selling stockholders may sell the shares of common stock may be determined by the prevailing market price for the shares at the time of sale, may be different than such prevailing market prices or may be determined through negotiated transactions with third parties. The selling stockholders may use any one or more of the following methods when selling the shares of common stock offered by this prospectus:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- any other method permitted pursuant to applicable law; or
- under Rule 144, Rule 144A or Regulation S under the Securities Act, if available, rather than under this prospectus.

There is currently a limited public trading market for our common stock. Broker-dealers engaged by the selling stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121.

The shares may be sold directly or through broker-dealers acting as principal or agent, or pursuant to a distribution by one or more underwriters on a firm commitment or best-efforts basis. In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of our common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge our common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction). In connection with an underwritten offering, underwriters or agents may receive compensation in the

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form of discounts, concessions or commissions from the selling stockholders or from purchasers of the offered shares for whom they may act as agents. In addition, underwriters may sell the shares to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents.

The selling stockholders and any broker-dealers or agents that are involved in selling the shares may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts. If a selling stockholder is deemed to be an underwriter, the selling stockholder may be subject to certain statutory liabilities including, but not limited to Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act. Selling stockholders who are deemed underwriters within the meaning of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act. The SEC staff is of a view that selling stockholders who are registered broker-dealers or affiliates of registered broker-dealers may be underwriters under the Securities Act. In compliance with FINRA guidelines, the maximum commission or discount to be received by a member of FINRA or an independent broker-dealer may not exceed 8% for the sale of any securities registered hereunder. We will not pay any compensation or give any discounts or commissions to any underwriter in connection with the securities being offered by this prospectus. The selling stockholders have advised us that they have not entered into any written or oral agreements, understandings or arrangements with any underwriter or broker-dealer regarding the sale of the resale shares. There is no underwriter or coordinating broker acting in connection with the proposed sale of the resale shares by the selling stockholders.

We are required to pay certain fees and expenses incurred by us incident to the registration of the shares. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act. Each selling stockholder has in turn agreed to indemnify us for certain specified liabilities. See “Description of Capital Stock—Registration Rights Agreements.”

In order to comply with the securities laws of some states, if applicable, the shares of common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless they have been registered or qualified for sale or an exemption from registration or qualification requirements is available and in compliance.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale shares may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the selling stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of shares of the common stock by the selling stockholders or any other person. The anti-manipulation rules under the Exchange Act may apply to sales of common stock in the market and to the activities of the selling stockholders and their affiliates. Regulation M may restrict the ability of any person engaged in the distribution of the common stock to engage in market-making activities with respect to the particular shares of common stock being distributed for a period of up to five business days before the distribution. These restrictions may affect the marketability of the common stock and the ability of any person or entity to engage in market-making activities with respect to the common stock. We will make copies of this prospectus available to the selling stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale.

In accordance with FINRA Rule 5110(g)(1), Canaccord Genuity LLC and any persons related to Canaccord Genuity LLC who purchased or otherwise acquired shares (i) in the May Private Placements (ii) subsequent to the initial filing of the registration statement of which this prospectus is a part and deemed to be underwriting compensation by FINRA, and/or (iii) that are excluded from underwriting compensation pursuant to FINRA Rule 5110(d)(5), will agree not to sell, transfer, assign, pledge, hypothecate or subject to any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of such shares, for the 180-day period prescribed by FINRA Rule 5110(g)(1), except as otherwise provided in FINRA Rule 5110(g)(2).

## LEGAL MATTERS

The validity of our common stock and certain legal matters will be passed upon for us by Latham & Watkins LLP.

## EXPERTS

Our consolidated financial statements as of December 31, 2018 and August 31, 2018 included in this prospectus, have been audited by RBSM LLP, an independent registered public accounting firm, as stated in their report appearing herein, and M&K CPAS, PLLC, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing. The financial statements of Bona Vida and TruPet included in this prospectus, have been audited by MNP LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock being offered by the selling stockholders named in this prospectus. This prospectus does not contain all of the information in the registration statement and its exhibits. For further information with respect to us and the common stock offered by this prospectus, we refer you to the registration statement and its exhibits. Where we make statements in this prospectus as to the contents of any contract or any other document, for the complete text of that document, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

You can read our Securities and Exchange Commission filings, including the registration statement of which this prospectus is a part, over the Internet at the Securities and Exchange Commission's website at [www.sec.gov](http://www.sec.gov). Please call the Securities and Exchange Commission at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

We file periodic reports, proxy statements, and other information with the SEC. These documents may be accessed through the SEC's electronic data gathering, analysis and retrieval system, or EDGAR, via electronic means, including the SEC's home page on the Internet ([www.sec.gov](http://www.sec.gov)).

Our website is located at <https://www.betterchoicecompany.com>. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this prospectus.

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Shareholders of Better Choice Company Inc. and subsidiaries (formerly Sport Endurance, Inc.)

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Better Choice Company Inc. and subsidiaries (formerly Sport Endurance, Inc.) (collectively, the “Company”) as of December 31, 2018 and August 31, 2018, and the related consolidated statements of operations, changes in stockholders’ deficit and cash flows for the four months ended December 31, 2018 and year ended August 31, 2018, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2018 and August 31, 2018, and the results of its operations and its cash flows for the four months ended December 31, 2018 and year ended August 31, 2018, in conformity with U.S. generally accepted accounting principles. The consolidated balance sheets as of August 31, 2017, and the related consolidated statements of operations, changes in stockholders’ deficit and cash flows for the year ended August 31, 2017 and related notes were audited by another accounting firm.

**Basis for Opinion**

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

*/s/ RBSM LLP*

We have served as the Company’s auditor since 2018.

New York, NY  
July 24, 2019

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors

Sport Endurance, Inc.

We have audited the accompanying balance sheets of Sport Endurance, Inc. as of August 31, 2017 and 2016 and the related statements of operations, stockholders' equity (deficit), and cash flows for the years then ended August 31, 2017 and 2016. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements for the periods described above present fairly, in all material respects, the financial position of Sport Endurance, Inc., as of August 31, 2017 and 2016, and the results of its operations, stockholders' equity (deficit) and cash flows for the periods described above in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has insufficient working capital, which raises substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters also are described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ M&K CPAS, PLLC

www.mkacpas.com

Houston, Texas

November 29, 2017

**Better Choice Company Inc.**  
**(formerly Sport Endurance, Inc.)**  
**CONSOLIDATED BALANCE SHEETS**

	December 31, 2018	August 31, 2018	August 31 2017
<b>ASSETS</b>			
Current assets			
Cash and cash equivalents	\$ 355,104	\$ 199,674	\$ 1,442
Inventory	9,402	9,402	14,882
Total current assets	364,506	209,076	16,324
Investment in TruPet	2,200,000	—	—
Total Assets	<u>\$ 2,564,506</u>	<u>\$ 209,076</u>	<u>\$ 16,324</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>			
Current liabilities			
Accounts payable and accrued liabilities	\$ 137,994	\$ 106,445	\$ 132,566
Dividends payable	53,501	20,280	—
Derivative liability	7,379,893	2,317,412	312,878
Accrued officer salary	124,000	140,000	120,000
Notes payable and accrued interest - related party	—	—	233,011
Convertible notes, net of unamortized debt discounts of \$0, \$752,990 and \$153,234, respectively	—	274,214	400,743
Total current liabilities	7,695,388	2,858,351	1,199,198
Commitments and contingencies	—	—	—
Stockholders' deficit			
Preferred stock, \$0.001 par value, 20,000,000 shares authorized, 16,294,000, 19,194,000, and 19,999,000 shares undesignated and unissued as of December 31, 2018, August 31, 2018, and August 31, 2017, respectively			
Series A Preferred stock, \$0.001 par value, 1,000 shares designated, 1,000 shares issued and outstanding as of December 31, 2018, August 31, 2018, and August 31, 2017	1	1	1
Series B Convertible Preferred stock, \$0.001 par value, 805,000 shares designated, 0, 803,969.73 and 0 shares issued and outstanding as of December 31, 2018, August 31, 2018 and August 31, 2017, respectively	—	804	—
Series E Convertible Preferred stock, \$0.001 par value, 2,900,000 shares authorized, 2,846,355.54, 0, and 0 shares issued and outstanding as of December 31, 2018, August 31, 2018, and August 31, 2017, respectively	2,846	—	—
Common stock, \$0.001 par value, 580,000,000 shares authorized; 3,415,859, 3,064,763, and 3,008,730 shares issued and outstanding as of December 31, 2018, August 31, 2018, and August 31, 2017, respectively	3,416	3,065	3,009
Additional paid-in capital	5,335,004	3,406,146	1,927,960
Subscription receivable	—	—	(5,372)
Accumulated deficit	(10,472,149)	(6,059,291)	(3,108,472)
Total stockholders' deficit	(5,130,882)	(2,649,275)	(1,182,874)
Total liabilities and stockholders' deficit	<u>\$ 2,564,506</u>	<u>\$ 209,076</u>	<u>\$ 16,324</u>

See accompanying notes to the consolidated financial statements.

**Better Choice Company Inc.**  
**(formerly Sport Endurance, Inc.)**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	For the Transition Period Ended December 31, 2018	For the Comparable Period Ended December 31, 2017 Unaudited	For the Year Ended August 31, 2018	For the Year Ended August 31, 2017
Revenue	\$ —	\$ 214	\$ 475	\$ 1,734
Cost of goods sold	—	27	211	334
Gross profit	—	187	264	1,400
Operating expenses:				
Selling, general and administrative	292,060	105,734	528,151	525,438
Total operating expenses	292,060	105,734	528,151	525,438
Operating loss	(292,060)	(105,547)	(527,887)	(524,038)
Other income (expense):				
Interest on notes payable	(14,184)	(24,221)	(111,407)	(48,372)
Interest on notes payable - related parties	—	(1,516)	(2,291)	(2,011)
Interest expense - amortization of discount on notes payable	(118,708)	(177,573)	(532,907)	(780,293)
Interest expense - fair value of derivative in excess of notes payable	—	—	(447,680)	—
Gain on exchange/restructuring of debt	472,267	—	1,033,669	—
Loss on restructuring of debt	—	(122,878)	(6,409)	—
Loss on conversion of debt	—	—	(474,648)	—
Excess value of derivative liabilities over net proceeds of sale of common stock at inception	(3,638,849)	—	—	—
(Loss) gain on change in fair value of derivative liability	(821,324)	28,523	(45,348)	(388,544)
Total other expense	(4,120,798)	(297,665)	(587,021)	(1,219,220)
Net loss from continuing operations before tax	(4,412,858)	(403,212)	(1,114,908)	(1,743,258)
Provision for income tax	—	—	—	—
Net loss from continuing operations after tax	(4,412,858)	(403,212)	(1,114,908)	(1,743,258)
Net loss from discontinued operations, net of taxes	—	—	(1,835,911)	—
Net loss	(4,412,858)	(403,212)	(2,950,819)	(1,743,258)
Preferred stock dividend	(64,840)	—	(20,280)	—
Net loss available to common shareholders	\$ (4,477,698)	\$ (403,212)	\$ (2,971,099)	\$ (1,743,258)
Net loss per share - continuing operations: basic and diluted	\$ (1.47)	\$ (0.13)	\$ (0.37)	\$ (0.58)
Net loss per share - discontinued operations: basic and diluted	NA	NA	\$ (0.60)	NA
Net loss per share - available to common shareholders: basic and diluted	\$ (1.49)	\$ (0.13)	\$ (0.98)	\$ (0.58)
Weighted average shares outstanding - basic	2,999,076	3,018,450	3,046,232	2,996,871
Weighted average shares outstanding - diluted	2,999,076	3,018,450	3,046,232	2,996,871

See accompanying notes to the consolidated financial statements.

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**Better Choice Company Inc.**  
**(formerly Sport Endurance, Inc.)**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT**

	Preferred Stock Series A		Preferred Stock Series B		Preferred Stock Series E		Common Stock		Additional Paid-In Capital	Common Stock Subscriptions Receivable	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount				
Balance, August 31, 2016	1,000	\$ 1	—	\$ —	—	\$ —	2,991,358	\$ 2,992	\$ 793,270	\$ (5,372)	\$ (1,365,214)	\$ (574,323)
Issuance of commitment shares	—	—	—	—	—	—	1,346	1	68,949	—	—	68,950
Derivative reclass from liability to equity upon redemption	—	—	—	—	—	—	—	—	1,015,757	—	—	1,015,757
Issuance of shares for conversion of note payable and accrued interest	—	—	—	—	—	—	16,026	16	49,984	—	—	50,000
Net loss for the period	—	—	—	—	—	—	—	—	—	—	(1,743,258)	(1,743,258)
Balance, August 31, 2017	1,000	\$ 1	—	\$ —	—	\$ —	3,008,730	\$ 3,009	\$ 1,927,960	\$ (5,372)	\$ (3,108,472)	\$ (1,182,874)
Conversion of notes payable and accrued interest to common stock	—	—	—	—	—	—	56,034	56	702,538	—	—	702,594
Conversion of notes payable and accrued interest to Preferred Stock Series B	—	—	803,969.73	804	—	—	—	—	795,928	—	—	796,732
Write-off subscriptions receivable	—	—	—	—	—	—	—	—	—	5,372	—	5,372
Preferred stock dividend	—	—	—	—	—	—	—	—	(20,280)	—	—	(20,280)
Net loss for the period	—	—	—	—	—	—	—	—	—	—	(2,950,819)	(2,950,819)
Balance, August 31, 2018	<u>1,000</u>	<u>\$ 1</u>	<u>803,969.73</u>	<u>\$ 804</u>	<u>—</u>	<u>\$ —</u>	<u>3,064,764</u>	<u>\$ 3,065</u>	<u>\$ 3,406,146</u>	<u>\$ —</u>	<u>\$ (6,059,291)</u>	<u>\$ (2,649,275)</u>
Exchange of notes, interest, Series B Preferred and Warrants with Series E Preferred Stock	—	—	(803,969.73)	(804)	2,846,355.54	2,846	—	—	2,019,920	—	—	2,021,962
Purchase and retirement of common stock	—	—	—	—	—	—	(1,048,904)	(1,049)	(26,222)	—	—	(27,271)
Sale of common stock, net of issuance costs	—	—	—	—	—	—	1,400,000	1,400	—	—	—	1,400
Preferred stock dividend	—	—	—	—	—	—	—	—	(64,840)	—	—	(64,840)
Net loss for the period	—	—	—	—	—	—	—	—	—	—	(4,412,858)	(4,412,858)
Balance, December 31, 2018	<u>1,000</u>	<u>\$ 1</u>	<u>—</u>	<u>\$ —</u>	<u>2,846,355.54</u>	<u>\$ 2,846</u>	<u>3,415,859</u>	<u>\$ 3,416</u>	<u>\$ 5,335,004</u>	<u>\$ —</u>	<u>\$ (10,472,149)</u>	<u>\$ (5,130,882)</u>

See accompanying notes to the consolidated financial statements.

**Better Choice Company Inc.**  
**(formerly Sport Endurance, Inc.)**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Transition Period Ended December 31, 2018	Comparable Period Ended December 31, 2017 Unaudited	Year Ended August 31, 2018	Year Ended August 31, 2017
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net loss - continuing operations	\$ (4,412,858)	\$ (403,212)	\$ (1,114,908)	\$ (1,743,258)
Adjustments to reconcile net loss to net cash used in operating activities:				
Gain on exchange transaction	(472,267)	—	—	—
Change in fair market value of derivative liabilities	821,324	(28,523)	45,348	388,544
Excess value of derivative liabilities	3,638,849	—	447,680	—
Amortization of discount on convertible debt	118,708	177,573	532,907	780,293
Gain on restructure of debt	—	—	(1,033,669)	—
Loss on restructure of debt	—	122,878	6,409	—
Loss on conversion of debt to equity	—	—	474,648	—
Penalty on debt extension	—	—	—	306,345
Subscription receivable write-off	—	—	2,172	—
Changes in operating assets and liabilities:				
Accounts receivable	—	—	—	45
Inventory	—	27	5,480	(8,484)
Accrued officer salary	(16,000)	32,000	20,000	96,000
Interest payable - related party	—	566	(2,011)	2,011
Accounts payable and accrued liabilities	97,846	(30,859)	(226,502)	138,749
Net cash used in operating activities - continuing operations	(224,398)	(129,550)	(842,446)	(39,755)
Net cash provided by operating activities - discontinued operations	—	—	39,178	—
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Investment in TruPet	(2,200,000)	—	—	—
Net cash used in investing activities	(2,200,000)	—	—	—
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Proceeds from notes payable - related party	—	35,500	35,500	—
Repayments of notes payable - related party	—	(75,000)	(266,500)	186,000
Proceeds from convertible debt	—	241,250	1,232,500	—
Principal payments made on convertible debt	—	—	—	(155,000)
Cash paid for the purchase of common stock	(27,271)	—	—	—
Cash from the sale of common stock	2,607,099	—	—	—
Net cash provided by financing activities	2,579,828	201,750	1,001,500	31,000
Net increase in cash and cash equivalents - continuing operations	155,430	72,200	159,054	(8,755)
Net increase in cash and cash equivalents - discontinued operations	—	—	39,178	—
Cash and cash equivalents at beginning of year	199,674	1,442	1,442	10,197
Cash and cash equivalents at end of year	<u>\$ 355,104</u>	<u>\$ 73,642</u>	<u>\$ 199,674</u>	<u>\$ 1,442</u>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>				
Interest paid	<u>\$ —</u>	<u>\$ 950</u>	<u>\$ 4,302</u>	<u>\$ —</u>
Income taxes paid	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

See accompanying notes to the consolidated financial statements.

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	Transition Period Ended December 31, 2018	Comparable Period Ended December 31, 2017 Unaudited	Year Ended August 31, 2018	Year Ended August 31, 2017
<b>NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>				
Common stock issued for conversion of notes payable	\$ —	\$ 55,000	\$ 702,592	\$ 50,000
Preferred stock Series B issued for cancellation of notes payable and accrued interest	\$ —	\$ —	\$ 1,860,249	\$ —
Preferred Stock Series E issued for cancellation of notes payable, accrued interest, Series B Preferred Stock and warrants	\$ 2,022,766	\$ —	\$ —	\$ —
Accrued interest capitalized into principal of convertible notes	\$ —	\$ —	\$ 15,823	\$ 39,382
Note payable for loan of BTC	\$ —	\$ —	\$ 5,000,000	\$ —
BTC loan to third party	\$ —	\$ —	\$ 5,500,000	\$ —
Discount on notes payable due to beneficial conversion feature	\$ —	\$ 126,557	\$ 1,132,663	\$ 677,437
Settlement of derivative	\$ 2,003,390	\$ 23,447	\$ —	\$ 1,015,757
Stock issued for commitment fee	\$ —	\$ —	\$ —	\$ 68,950
Accrued preferred stock dividends	\$ 64,840	\$ —	\$ 20,280	\$ —
Fair value of warrants issued with sale of common stock allocated to additional paid in capital	\$ 2,605,699	\$ —	\$ —	\$ —

See accompanying notes to the consolidated financial statements.

**Better Choice Company, Inc.**  
**(formerly Sport Endurance, Inc.)**  
**Notes to the Consolidated Financial Statements**

**Note 1 – Nature of Business and Significant Accounting Policies**

Nature of Business

Better Choice Company, Inc. (the “Company”) was originally incorporated in the State of Nevada on January 3, 2001 (“Inception”). The Company was dormant until it was revived in 2009 with a name change to Sport Endurance, Inc. on August 6, 2009. Effective March 11, 2019, we changed our name to Better Choice Company Inc. after reincorporating in Delaware.

The Company previously marketed for sale three sport nutritional products which it suspended in March 2018. On March 14, 2018, the Company, through its wholly-owned subsidiary Yield Endurance, Inc. (“Yield”), entered into a series of agreements under which Yield borrowed \$5 million of bitcoin (“BTC”). The Company simultaneously entered into transactions with Madison Partners LLC and Prism Funding Co. LP to lend the BTC to third parties. On August 21, 2018, the Company entered into a series of restructuring agreements to unwind the BTC transactions thereby exiting the BTC and cryptocurrency markets; see note 3.

Effective March 11, 2019, Sport Endurance, Inc. merged into its wholly-owned subsidiary, Better Choice Company Inc., a Delaware corporation. As a result, the name of Sport Endurance, Inc. was changed to Better Choice Company Inc. Pursuant to the merger, each outstanding share of common stock of Sport Endurance, Inc. converted into one share of common stock of Better Choice Company Inc. and each outstanding share of Series E Convertible Preferred Stock (the “Series E”) of Sport Endurance, Inc. converted into one share of Series E Convertible Preferred Stock of Better Choice Company Inc.

On December 17, 2018, the Company made a \$2,200,000 investment in TruPet LLC, an online seller of pet foods, flea and tick products, pet nutritional products and related pet supplies. On February 2, 2019 and February 28, 2019, respectively, the Company entered into definitive agreements to acquire the remainder of TruPet LLC and all of the outstanding shares of Bona Vida, Inc., an emerging hemp based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space. The definitive agreements are based on various conditions being met including completion of a financing (See Note 4).

On March 14, 2019, the Company filed a certificate of amendment of certificate of incorporation (the “Amendment”) with the Delaware Secretary of State to effect a one-for-26 reverse split of the Company’s common stock. The Amendment took effect on March 15, 2019. No fractional shares will be issued or distributed as a result of the Amendment. These financial statements give retroactive effect to the reverse stock split for all periods presented, unless otherwise specified. On April 22, 2019, the Company filed a certificate of amendment of certificate of incorporation with the Delaware Secretary of State which reduced its number of authorized shares of common stock from 580,000,000 to 88,000,000 and authorized shares of preferred stock from 20,000,000 to 4,000,000.

Basis of Presentation

The audited consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles and applicable rules and regulations of the United States Securities and Exchange Commission (“SEC”).

Effective March 15, 2019, the board of directors of the Company approved a change in our fiscal year end from August 31 to December 31. As a result of this change, we are filing this Transition Report on Form 10-KT for the four month transition period ended December 31, 2018. References to any of our previous fiscal years mean the fiscal years ending on August 31.

All amounts referred to in the notes to the consolidated financial statements are in United States Dollars (\$) unless stated otherwise.

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and

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liabilities, and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Management utilizes various other estimates, including but not limited to determining the collectability of accounts receivable, the fair value of warrants issued, the fair value of conversion features, the recognition of revenue, the valuation allowance for deferred tax assets and other legal claims and contingencies. The results of any changes in accounting estimates are reflected in the financial statements in the period in which the changes become evident. Estimates and assumptions are reviewed periodically and the effects of revisions are reflected in the period that they are determined to be necessary.

### Cash and Cash Equivalents

Cash and equivalents include investments with initial maturities of three months or less. The Company maintains its cash balances at credit-worthy financial institutions that are insured by the Federal Deposit Insurance Corporation (“FDIC”) up to \$250,000. Deposits with these banks may exceed the amount of insurance provided on such deposits; however, these deposits typically may be redeemed upon demand and, therefore, bear minimal risk. At December 31, 2018 and August 31, 2018, the uninsured balances amounted to \$95,412 and \$0, respectively.

### Inventory

Inventory consists of finished goods and is stated at the lower of cost by the first-in, first-out method or net realizable value. The Company currently has approximately 2,432 containers of “Ultra Peak T” included in inventory at December 31, 2018 and August 31, 2018.

### Revenue Recognition

#### Adoption of ASU 2014-09, Revenue from Contracts with Customers

On September 1, 2018, the Company adopted Financial Accounting Standards Board (“FASB”) Accounting Standards Codification Topic 606, Revenue from Contracts with Customers (“ASC 606”) using the modified retrospective (cumulative effect) transition method. Under this transition method, results for reporting periods beginning September 1, 2018 or later are presented under ASC 606, while prior period results continue to be reported in accordance with previous guidance. The cumulative effect of the initial application of ASC 606 was immaterial, no adjustment was recorded to the opening balance of retained earnings. The timing of revenue recognition for our revenue stream was not materially impacted by the adoption of this standard. The Company believes its business processes, systems and controls are appropriate to support recognition and disclosure under ASC 606. Overall, the adoption of ASC 606 did not have a material impact on the Company’s balance sheet, statement of operations and statement of cash flows for the period ended December 31, 2018. ASC 606 also requires additional disclosures about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to fulfill a contract. As described below, the analysis of contracts under ASC 606 supports the recognition of revenue at a point in time, resulting in revenue recognition timing that is materially consistent with the Company’s historical practice of recognizing product revenue when title and risk of loss pass to the customer.

### Policy

The Company recognizes revenue upon product delivery. All of our products are shipped through a third party fulfillment center to the customer and the customer takes title to product and assumes risk and ownership of the product when it is delivered. Shipping charges to customers and sales taxes collectible from customers, if any, are included in revenues.

For revenue from product sales, the Company recognizes revenue in accordance with ASC 606. A five-step analysis must be met as outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. Provisions for discounts and rebates to customers, estimated returns and allowances, and other adjustments are provided for in the same period the related sales are recorded.

### Contract Assets

The Company does not have any contract assets such as work-in-process. All trade receivables on the Company’s balance sheet are from contracts with customers.

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### Contract Costs

Costs incurred to obtain a contract are capitalized unless short term in nature. As a practical expedient, costs to obtain a contract that are short term in nature are expensed as incurred. The Company does not have any contract costs capitalized as of December 31, 2018.

### Contract Liabilities - Deferred Revenue

The Company's contract liabilities may consist of advance customer payments and deferred revenue. Deferred revenue results from transactions in which the Company has been paid for products by customers, but for which all revenue recognition criteria have not yet been met. Once all revenue recognition criteria have been met, the deferred revenues are recognized.

### Income Taxes

The Company utilizes ASC 740, Accounting for Income Taxes, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

The Company accounts for uncertain tax positions in accordance with the provisions of ASC 740, "Income Taxes". Accounting guidance addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the consolidated financial statements, under which a company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position.

The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. Accordingly, the Company would report a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. The Company elects to recognize any interest and penalties, if any, related to unrecognized tax benefits in tax expense.

The Tax Cuts and Jobs Act (the "Tax Act") was enacted on December 22, 2017. The Tax Act reduces the U.S. federal corporate tax rate from 35% to 21%. As of the completion of these consolidated financial statements and related disclosures, we have made a reasonable estimate of the effects of the Tax Act. This estimate incorporates assumptions made based upon the Company's current interpretation of the Tax Act, and may change as the Company may receive additional clarification and implementation guidance and as the interpretation of the Tax Act evolves. In accordance with SEC Staff Accounting Bulletin No. 118, the Company will finalize the accounting for the effects of the Tax Act no later than the fourth quarter of fiscal year 2019. Future adjustments made to the provisional effects will be reported as a component of income tax expense in the reporting period in which any such adjustments are determined. See Note 12 for additional information. Based on the new tax law that lowers corporate tax rates, the Company revalued its deferred tax assets. Future tax benefits are expected to be lower, with the corresponding one time charge being recorded as a component of income tax expense.

### Fair Value of Financial Instruments

Under FASB ASC 820-10-05, the Financial Accounting Standards Board establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. This Statement reaffirms that fair value is the relevant measurement attribute. The adoption of this standard did not have a material effect on the Company's financial statements as reflected herein. The carrying amounts of cash and accrued expenses reported on the balance sheet are estimated by management to approximate fair value primarily due to the short term nature of the instruments.

### Fair Value Measurements

The Company follows Accounting Standards Codification ("ASC") 820-10 "Fair Value Measurement" of the Financial Accounting Standards Board's ("FASB") Accounting Standards Codification to measure the fair value of its financial instruments and disclosures about fair value of its financial instruments. ASC 820-10 establishes a

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framework for measuring fair value and expands disclosures about fair value measurements. To increase consistency and comparability in fair value measurements and related disclosures, ASC 820–10 establishes a fair value hierarchy which prioritizes the inputs to valuation techniques used to measure fair value into three (3) broad levels.

The three (3) levels of fair value hierarchy defined by ASC 820–10 are described below:

- Level 1- fair value measurements are those derived from quoted prices (unadjusted in active markets for identical assets or liabilities);
- Level 2- fair value measurements are those derived from inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly (i.e. as prices) or indirectly (i.e. derived from prices); and
- Level 3- fair value measurements are those derived from valuation techniques that include inputs for the asset or liability that are not based on observable market data (unobservable inputs).

Financial instruments classified as Level 1 - quoted prices in active markets include cash.

These financial instruments are measured using management’s best estimate of fair value, where the inputs into the determination of fair value require significant management judgment to estimation. Valuations based on unobservable inputs are highly subjective and require significant judgments. Changes in such judgments could have a material impact on fair value estimates. In addition, since estimates are as of a specific point in time, they are susceptible to material near-term changes. Changes in economic conditions may also dramatically affect the estimated fair values.

Fair value estimates discussed herein are based upon certain market assumptions and pertinent information available to management as of December 31, 2018 and August 31, 2018. The respective carrying value of certain financial instruments approximated their fair values due to the short-term nature of these instruments. These financial instruments include cash, accounts payable and accrued expenses.

### Derivative Financial Instruments

ASC 815 generally provides three criteria that, if met, require companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments. These three criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument subject to the requirements of ASC 815. ASC 815 also provides an exception to this rule when the host instrument is deemed to be conventional, as described.

The accounting treatment of derivative financial instruments requires that the Company record the embedded conversion option and warrants at their fair values as of the inception date of the agreement and at fair value as of each subsequent balance sheet date. Any change in fair value is recorded as non-operating, non-cash income or expense for each reporting period at each balance sheet date. The Company reassesses the classification of its derivative instruments at each balance sheet date. If the classification changes as a result of events during the period, the contract is reclassified as of the date of the event that caused the reclassification.

The pricing model we use for determining fair value of our derivatives is the Lattice Model. Valuations derived from this model are subject to ongoing internal and external verification and review. The model uses market-sourced inputs such as interest rates and stock price volatilities. Selection of these inputs involves management’s judgment and may impact net income (see note 11).

Conversion options are recorded as debt discount and are amortized as interest expense over the life of the underlying debt instrument using effective interest method.

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### Basic and Diluted Loss Per Share

The basic net loss per common share is computed by dividing the net loss by the weighted average number of common stock outstanding. Diluted net loss per common share is computed by dividing the net loss adjusted on an “as if converted” basis, by the weighted average number of common stock outstanding plus potential dilutive securities. Following shares were not included in the calculation of diluted loss per share because the effect would be anti-dilutive.

	<u>December 31,</u> <u>2018</u>	<u>August 31,</u> <u>2018</u>	<u>August 31,</u> <u>2017</u>
Conversion of notes payable	—	82,974	44,245
Conversion of Series B Convertible Preferred Stock	—	1,046,423	—
Conversion of Series E Convertible Preferred Stock	3,681,273	—	—
Options	38,462	—	—
Warrants to purchase common stock	700,000	463,631	—
	<u>4,419,735</u>	<u>1,593,028</u>	<u>44,245</u>

### Related Parties

Parties are considered to be related to the Company if the parties that, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with the Company. Related parties also include principal owners of the Company, its management, members of the immediate families of principal owners of the Company and its management and other parties with which the Company may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. All transactions with related parties are recorded at fair value of the goods or services exchanged.

### Discontinued Operations

ASC 360-10-45-9 requires that a long-lived asset (disposal group) to be sold shall be classified as held for sale in the period in which a set of criteria have been met, including criteria that the sale of the asset (disposal group) is probable and actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. This criteria was achieved on August 21, 2018. Since the business was started and discontinued during the year ended August 31, 2018, there was no impact on the comparable consolidated financial statements.

### Investments

The Company records minority interest equity investments at cost.

### Recently Issued Accounting Pronouncements

In February 2016, FASB issued ASU No. 2016-02, “Leases (Topic 842)”, which creates new accounting and reporting guidelines for leasing arrangements. The new guidance requires organizations that lease assets to recognize assets and liabilities on the balance sheet related to the rights and obligations created by those leases, regardless of whether they are classified as finance or operating leases. Consistent with current guidance, the recognition, measurement, and presentation of expenses and cash flows arising from a lease primarily will depend on its classification as a finance or operating lease. The guidance also requires new disclosures to help financial statement users better understand the amount, timing and uncertainty of cash flows arising from leases. The new standard is effective for annual reporting periods beginning after December 15, 2018, including interim periods within that reporting period, with early application permitted. The Company is currently evaluating the impact of the new pronouncement on its consolidated financial statements.

In July 2017, the FASB issued ASU 2017-11, “Earnings Per Share (Topic 260), Distinguishing Liabilities from Equity (Topic 480) and Derivatives and Hedging (Topic 815): I. Accounting for Certain Financial Instruments with Down Round Features; II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Non-controlling Interests with a Scope Exception”. Part I of this update addresses the complexity of accounting for certain financial instruments with down

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round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. Part II of this update addresses the difficulty of navigating Topic 480, Distinguishing Liabilities from Equity, because of the existence of extensive pending content in the FASB Accounting Standards Codification. This pending content is the result of the indefinite deferral of accounting requirements about mandatorily redeemable financial instruments of certain nonpublic entities and certain mandatorily redeemable non-controlling interests. The amendments in Part II of this update do not have an accounting effect. ASU 2017-11 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. The Company expects to implement ASU 2017-11 on January 1, 2019 and does not believe it will have a material impact on its consolidated financial statements.

ASU 2018-02 - On December 22, 2017, the U.S. federal government enacted a tax bill, H.R.1, An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (the “Tax Cuts and Jobs Act”). Stakeholders raised a narrow-scope financial reporting issue that arose as a consequence of the Tax Cuts and Jobs Act of 2017. The amendments in this Update allow a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the Tax Cuts and Jobs Act of 2017. The amendments in this Update affect any entity that is required to apply the provisions of Topic 220, Income Statement-Reporting Comprehensive Income, and has items of other comprehensive income for which the related tax effects are presented in other comprehensive income as required by the Generally Adopted Accounting Principles (“GAAP”). The amendments in this update are effective for all entities for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. Early adoption of the amendments in this Update is permitted, including adoption in any interim period, (1) for public business entities for reporting periods for which financial statements have not yet been issued and (2) for all other entities for reporting periods for which financial statements have not yet been made available for issuance. The amendments in this Update should be applied either in the period of adoption or retrospectively to each period (or periods) in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recognized.

This Accounting Standards Update is the final version of Proposed Accounting Standards Update 2018-210—Income Statement—Reporting Comprehensive Income (Topic 220), which has been deleted. We are currently evaluating the impact of adopting ASU 2017-13 on our consolidated financial statements.

ASU 2018-05 Accounting Standards Update adds SEC paragraphs pursuant to the SEC Staff Accounting Bulletin No. 118, which expresses the view of the staff regarding application of Topic 740, Income Taxes, in the reporting period that includes December 22, 2017 - the date on which the Tax Cuts and Jobs Act was signed into law. We are currently evaluating the impact of adopting ASU 2017-13 on our consolidated financial statements.

In June 2018, the FASB issued ASU 2018-07, Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting, which expands the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The guidance is effective for public entities, certain not-for-profit entities, and certain employee benefit plans for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. For all other entities, ASU 2018-07 is effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted, but no earlier than an entity’s adoption date of Topic 606. The Company is evaluating the impact of adopting this pronouncement.

In July 2018, the FASB issued ASU 2018-10 Leases (Topic 842), Codification Improvements and ASU 2018-11 Leases (Topic 842), Targeted Improvements, to provide additional guidance for the adoption of Topic 842. ASU 2018-10 clarifies certain provisions and correct unintended applications of the guidance such as the application of implicit rate, lessee reassessment of lease classification, and certain transition adjustments that should be recognized to earnings rather than to stockholders’ equity. ASU 2018-11 provides an alternative transition method and practical expedient for separating contract components for the adoption of Topic 842. In February 2016, the FASB issued ASU 2016-02 Leases (Topic 842) which requires an entity to recognize assets and liabilities arising from a lease for both financing and operating leases with terms greater than 12 months. ASU 2018-11, ASU 2018-10 and ASU 2016-02 (collectively, “the new lease standards”) are effective for fiscal years beginning after December 15, 2018, with early adoption permitted. The Company is currently evaluating the effect the new lease standards will have

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on its Condensed Consolidated Financial Statements; however, the Company anticipates recognizing assets and liabilities arising from any leases that meet the requirements under the new lease standards on the adoption date and including qualitative and quantitative disclosures in the Company's Notes to the Condensed Consolidated Financial Statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820) Changes to the Disclosure Requirements for Fair Value Measurement.

The amendments in this Update modify the disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement.

### **Removals**

The following disclosure requirements were removed from Topic 820:

1. The amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy
2. The policy for timing of transfers between levels
3. The valuation processes for Level 3 fair value measurements
4. For nonpublic entities, the changes in unrealized gains and losses for the period included in earnings for recurring Level 3 fair value measurements held at the end of the reporting period.

### **Modifications**

The following disclosure requirements were modified in Topic 820:

1. In lieu of a rollforward for Level 3 fair value measurements, a nonpublic entity is required to disclose transfers into and out of Level 3 of the fair value hierarchy and purchases and issues of Level 3 assets and liabilities.
2. For investments in certain entities that calculate net asset value, an entity is required to disclose the timing of liquidation of an investee's assets and the date when restrictions from redemption might lapse *only* if the investee has communicated the timing to the entity or announced the timing publicly.
3. The amendments clarify that the measurement uncertainty disclosure is to communicate information about the uncertainty in measurement as of the reporting date.

### **Additions**

The following disclosure requirements were added to Topic 820; however, the disclosures are not required for nonpublic entities:

1. The changes in unrealized gains and losses for the period included in other comprehensive income for recurring Level 3 fair value measurements held at the end of the reporting period.
2. The range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements. For certain unobservable inputs, an entity may disclose other quantitative information (such as the median or arithmetic average) in lieu of the weighted average if the entity determines that other quantitative information would be a more reasonable and rational method to reflect the distribution of unobservable inputs used to develop Level 3 fair value measurements.

In addition, the amendments eliminate *at a minimum* from the phrase *an entity shall disclose at a minimum* to promote the appropriate exercise of discretion by entities when considering fair value measurement disclosures and to clarify that materiality is an appropriate consideration of entities and their auditors when evaluating disclosure requirements.

The amendments in this Update are effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively

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to all periods presented upon their effective date. Early adoption is permitted upon issuance of this Update. An entity is permitted to early adopt any removed or modified disclosures upon issuance of this Update and delay adoption of the additional disclosures until their effective date.

The impact of this ASU on the Company's consolidated financial statements is not expected to be material.

There are various other updates recently issued, most of which represented technical corrections to the accounting literature or application to specific industries and are not expected to have a material impact on our consolidated financial position, results of operations or cash flows.

### **Note 2 – Going Concern**

#### *Going Concern Evaluation*

In connection with preparing consolidated financial statements for the transition period ended December 31, 2018, management evaluated whether there were conditions and events, considered in the aggregate, that raised substantial doubt about the Company's ability to continue as a going concern within one year from the date that the financial statements are issued.

The Company considered the following:

- Net loss of \$4,412,858 for the transition period ended December 31, 2018.
- At December 31, 2018, the Company had an accumulated deficit of \$10,472,149.
- At December 31, 2018, the Company had working capital deficit of \$7,330,882.

Ordinarily, conditions or events that raise substantial doubt about an entity's ability to continue as a going concern relate to the entity's ability to meet its obligations as they become due.

The Company evaluated its ability to meet its obligations as they become due within one year from the date that the financial statements are issued by considering the following:

On April 25, 2019, the Company entered into Subscription Agreements with accredited investors for the sale by the Company in a private placement (the "Private Placement") of (i) 4,946,640 shares of the Company's common stock at a purchase price of \$3.00 per share and (ii) warrants to purchase up to 4,946,640 shares of Common Stock, exercisable at any time after issuance at an exercise price equal to \$4.25 per share, subject to adjustments as provided under the terms of the warrants. The warrants are exercisable for 24 months from the initial issue date. On May 6, 2019, the Company closed the Private Placement. At the closing of the Private Placement, the Company issued 5,744,991 shares of its Common Stock at a purchase price of \$3.00 per share and warrants to purchase up to 5,744,991 shares of its Common Stock at an exercise price of \$4.25 per share (the "Warrants"). The Warrants are exercisable for 24 months from the Closing. The aggregate gross proceeds for the Private Placement were approximately \$17.2 million.

On May 6, 2019, the Company entered into a Loan Agreement (the "Loan Agreement") by and between the Company and Franklin Synergy Bank, a Tennessee banking corporation (the "Lender"), pursuant to which, at the Company's option and subject to the occurrence of the certain funding conditions, the Lender is obligated to provide advances to the Company in an aggregate amount less than or equal to \$6,200,000 (the "Loan").

On May 6, 2019, the Company completed the acquisition of (i) Bona Vida, Inc. in accordance with the terms of the Agreement and Plan of Merger, dated as of February 28, 2019, by and among the Company, BCC Merger Sub, Inc. ("Merger Sub"), and Bona Vida, Inc., as amended by Amendment No. 1 thereto made and entered into as of May 3, 2019, pursuant to which Merger Sub merged with and into Bona Vida, with Bona Vida surviving as a wholly owned subsidiary of the Company and (ii) TruPet LLC in accordance with the terms of the Securities Exchange Agreement, dated as of February 2, 2019, by and between the Company and TruPet LLC, as amended by Amendment No. 1 thereto made and entered into as of May 6, 2019, pursuant to which the Company agreed to acquire 93.3% of the outstanding TruPet membership interests with TruPet remaining as a wholly-owned subsidiary of the Company (the "Acquisitions"). Following the completion of the Acquisitions, the business conducted by the Company became primarily the businesses conducted by TruPet and Bona Vida, which is as an online seller of pet foods, pet nutritional products and related pet supplies and as an emerging hemp-based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space, respectively.

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Under the terms of the Bona Vida Merger Agreement, the Company issued 18,003,273 shares of its common stock, par value \$0.001 per share ("Common Stock"), to Bona Vida's stockholders for all shares of Bona Vida's common stock outstanding immediately prior to the Bona Vida Acquisition. The Company also offered to purchase each warrant held by Bona Vida warrant holders for CAD \$0.75 per share, with any outstanding warrants at closing being cancelled. Under the terms of the TruPet Merger Agreement, the Company issued 15,027,533 shares of its Common Stock to TruPet's members for 93.3% of the issued and outstanding membership interests of TruPet outstanding immediately prior to the TruPet Acquisition.

Following the completion of the Acquisitions, the business conducted by the Company became primarily the businesses conducted by TruPet and Bona Vida, which is as an online seller of pet foods, pet nutritional products and related pet supplies and as an emerging hemp-based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space, respectively.

Management concluded that above factors alleviates doubts about the Company's ability to generate enough cash from operations and other available sources to satisfy its obligations for the next twelve months from the issuance date.

The Company will take the following actions if it starts to trend unfavorably to its internal profitability and cash flow projections, in order to mitigate conditions or events that would raise substantial doubt about its ability to continue as a going concern:

- Raise additional capital through line of credit and/or loans financing for future mergers and acquisition.
- Implement additional restructuring and cost reductions.
- Raise additional capital through a private placement.

At July 1, 2019 and December 31, 2018, the Company had \$10,739,705 and \$355,104, respectively in cash and cash equivalents.

### **Note 3 – Discontinued Operations**

On August 21, 2018, the Company at the request of other parties to the March 2018 agreements cancelled all of the business agreements, related to Yield. The Company's guaranty of the \$5.5 million Note payable was cancelled and the warrants were modified. As a result, the Company entered into a Restructuring Agreement and conveyed to Madison its ownership interest in Yield, including the right to continue the business and affairs of Yield stemming from the March 2018 bitcoin transaction in which the Company sought to enter into bitcoin and other cryptocurrency lending arrangements.

Pursuant to the terms of the Restructuring Agreement, the parties agreed to modify the terms of the Former Agreements by (a) assigning to Madison all of the capital stock of Yield to provide for the continuation of the business of Yield as a subsidiary of Madison, (b) terminating the Guaranty Agreement by and between the Company and Prism, and (c) canceling 576,923 of the 961,538 warrants issued to Prism in connection with the NPA. On the Effective Date, the Company transferred its capital stock of Yield to Madison (the "Transfer") and terminated the Guaranty Agreement, thus, the Company's liability for the Senior Note, as defined below, issued pursuant to the NPA, was extinguished upon the Transfer.

In connection with the Restructuring Agreement, the Company entered into a Securities Purchase Agreement with Madison pursuant to which the Company transferred to Madison all of the capital stock of Yield. Further, the parties released each other from claims with respect to the original purchase of the BTC and the Former Agreements. No payments under the Bitcoin Agreement will be required to be made to the Company.

There are no continuing cash inflows or outflows to or from the discontinued operations.

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The following information presents the major classes of line items constituting the after-tax loss from discontinued operations in the consolidated statements of operations for the year ended August 31, 2018:

Share income	\$ (48,593)
Sales, general and administrative	368,032
Interest expense – accrued interest	117,534
Interest expense – excess value of warrants	2,988,090
Interest expense – amortization of discount on note payable	5,500,000
Mark to market BTC	509,730
Mark to market derivative liability	(4,051,087)
Reserve for uncollectible note receivable	4,490,270
Gain on disposal of discontinued operations	(8,038,065)
Loss from discontinued operations, net of tax	<u>\$ 1,835,911</u>

The following table presents the calculation of the gain on the sale of discontinued operations:

Assets of discontinued operations disposed in sale	\$ (9,415)
Liabilities of discontinued operations disposed in sale	9,648,488
Fair value of warrants to purchase 384,615 shares of common stock to buyer	(1,601,008)
Gain on disposal of discontinued operations	<u>\$ 8,038,065</u>

### Note 4 – Investment in TruPet

On December 17, 2018 the Company acquired a minority interest in TruPet. The Company invested \$2,200,000 into TruPet and acquired a Series A Membership Interest equal to approximately 6.7% of the Membership Interests. The Company is entitled to appoint one of the five managers and certain preferential informational rights. The Company entered into a definitive agreement to acquire the remainder of TruPet in February 2019. The definitive agreement is based on various conditions being met including completion of a financing. On May 6, 2019, the Company acquired the remaining 93.3% of the outstanding TruPet membership interests for 15,027,533 shares of its common stock. See note 13.

### Note 5 – Dividends Payable

On May 30, 2018, the Company issued 803,969.73 shares of its Series B Preferred Stock with a stated value of \$0.99 per share for a total stated value of \$795,930 (the “Series B Preferred Stock”). The Series B Preferred Stock accrued dividends at the rate of 10% per annum on the stated value. During the year ended August 31, 2018, the Company accrued dividends payable in the amount of \$20,280 on the Series B Preferred Stock.

At October 22, 2018, the Company had accrued dividends payable on the Series B Preferred stock in the amount of \$31,619. On October 22, 2018, the Company entered into an exchange agreement whereby, in part, the Series B Preferred Stock and accrued dividends were exchanged for Series E Preferred Stock (see note 10). The Series E Preferred Stock also accrued dividends at the rate of 10% per annum on the stated value. During the Transition Period ended December 31, 2018, the Company accrued dividends in the amount of \$53,501 on the Series E Preferred Stock.

### Note 6 – Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following:

	December 31, 2018	August 31, 2018	August 31, 2017
Trade accounts payable	\$ 120,774	\$ 39,052	\$ 106,726
Payroll and related	17,220	15,931	9,179
Accrued interest	—	51,462	16,661
	<u>\$ 137,994</u>	<u>\$ 106,445</u>	<u>\$ 132,566</u>

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**Note 7 – Related Party Transactions**

On April 29, 2016, the Company's Board ratified an oral agreement with Mr. Lelong, effective February 1, 2016, pursuant to which he will receive an annual salary of \$96,000 for serving as an executive officer of the Company. During the year ended August 31, 2017, the Company received loans in the aggregate amount of \$231,000 from Mr. Lelong. The Company recorded imputed interest in the amount of \$2,011 during the year ended August 31, 2017 related to the advances from Mr. Lelong.

During the year ended August 31, 2018, the Company paid salary to Mr. Lelong in the amount of \$76,000, and accrued an additional \$20,000 in salary payable; at August 31, 2018, the amount of accrued salary payable to Mr. Lelong was \$140,000.

During the Transition Period ended December 31, 2018, the Company paid salary to Mr. Lelong in the amount of \$32,000 and paid accrued salary in the amount of \$16,000; at December 31, 2018, the amount of accrued salary payable to Mr. Lelong was \$124,000.

During the year ended August 31, 2018, the Company received loans in the aggregate amount of \$35,500 from Mr. Lelong, and accrued interest in the amount \$2,291; the Company also repaid to Mr. Lelong principal and interest in the amounts of \$266,500 and \$4,302, respectively. At August 31, 2018, the balance due to Mr. Lelong under these loans is \$0.

**Note 8 – Derivative Liability**

The Company entered into convertible note agreements containing beneficial conversion features. One of the features is a ratchet reset provision which allows the note holders to reduce the conversion price should the Company issue equity with an effective price per share that is lower than the stated conversion price in the note agreement (see note 9). The Company accounts for the fair value of the conversion feature in accordance with ASC 815, Accounting for Derivatives and Hedging and EITF 07-05, the embedded derivatives should be bundled and valued as a single, compound embedded derivative, bifurcate treated as a derivative liability. The Company is required to carry the embedded derivative on its balance sheet at fair value and account for any unrealized change in fair value as a component in its results of operations.

The Company recognized that the conversion feature embedded within its convertible debts is a financial derivative. GAAP required that the Company's embedded conversion option be accounted for at fair value.

During the period ended December 31, 2018, the Company sold 1,400,000 shares of common stock and 700,000 two-year warrants to purchase one share of common stock at a price of \$3.90 per share for total proceeds of \$2,607,099, net of issuance costs. The warrant holders have an option to settle in cash in the event of a change of control of the Company. The Company considers these warrants a derivative liability, and calculated the fair value of this liability utilizing a Lattice Model that values the warrant based upon a probability weighted discounted cash flow model.

The following schedule shows the change in fair value of the derivative liabilities for the period ended December 31, 2018, August 31, 2018 and August 31, 2017:

	<u>Derivative Liability</u>
<b>Liabilities Measured at Fair Value</b>	
Balance as of August 31, 2016	\$ 254,952
Issuances	685,139
Redemptions / conversions	(1,015,757)
Revaluation loss	388,544
Balance as of August 31, 2017	\$ 312,878
Issuances	1,565,487
Redemptions / conversions	(1,207,308)
Reclass from sale of discontinued operations	1,601,007
Revaluation loss	45,348
Balance as of August 31, 2018	<u>\$ 2,317,412</u>
Issuances	6,244,548
Redemptions / conversions	—
Revaluation loss	1,135,345
Balance as of December 31, 2018	<u>\$ 7,379,893</u>

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Derivative liabilities incurred during the period ended August 31, 2018 were valued based upon the following assumptions and key inputs:

Assumption	August 31, 2018	August 2017
Expected dividends:	0%	0%
Expected volatility:	121.1-246.8%	37.8-276.9%
Expected term (years):	0.21-1.00 years	0.04-0.50 years
Risk free interest rate:	0.97-2.08%	0.26-0.98%
Stock price	0.35-1.11	0.51-1.97

Derivative liabilities incurred during the period ended December 31, 2018 were valued based upon the following assumptions and key inputs:

- The quoted stock price ranged from of \$6.76 to \$11.18 and would fluctuate with the Company's historic volatility.
- The projected volatility curve from an annualized analysis for each valuation period was based on the historical volatility of the Company and the term remaining for each Warrant – the volatility ranged from 198.1-207.8%.
- The full reset events projected to occur based on future financing events on March 31, 2019 and December 31, 2019 resulting in a potential reset exercise price.
- Adjustments to warrant exercise prices have not occurred to date due to reset events.
- A fundamental transaction was projected to potentially occur on 4/30/19 or 12/31/19. The likelihood of such an event was estimated at 85% for the 4/30/19 event as of December/January 2019 increasing to 95% by 12/31/18. The 12/31/19 event was estimated at 50% for all dates.
- The option to force early exercise was estimated at 0% since it was unlikely that the Company would meet the registration and trading volume requirements necessary to trigger the option.

### Note 9 – Convertible Notes Payable

	December 31, 2018	August 31, 2018	August 31, 2017
<i>May 2016 Convertible Notes</i>			

On May 11, 2016 the Company entered into Securities Purchase Agreements with certain purchasers ("the May 2016 Convertible Noteholders"). The Company issued 3.5% original issue discount ("OID") senior secured convertible promissory notes having an aggregate face amount of \$440,000 (the "May 2016 Convertible Notes"). These notes bear interest at a rate of 10% per annum and mature in six months. The Company received cash proceeds of \$424,600 net of the 3.5% original issue discount of \$15,400. At the Holders option the principal and accrued interest under the Notes are convertible into common stock at a rate of \$13 per share and have a full reset feature. The Notes are secured by all assets of the Company. The Company at any time may prepay in whole or in part the outstanding principal and accrued interest at 125% during the first 90 days and 130% for the period from the 91<sup>st</sup> day through maturity. During November 2016, the Company entered into forbearance agreements with the May 2016 Convertible Noteholders extending its time to pay the Notes until December 16, 2016. In December 2016, the Company entered into agreements with the May 2016 Convertible Noteholders to substantially restructure the terms of the May 2016 Convertible Notes; see January and February 2017 Convertible Notes below.

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	December 31, 2018	August 31, 2018	August 31, 2017
During the years ended August 31, 2018 and 2017, the Company charged to interest expense the amounts of \$0 and \$172,735, respectively, in connection with the amortization of the discount on these notes.	\$ —	\$ —	\$ —

*January and February 2017 Convertible Notes*

In December 2016, the Company entered into restructuring agreements with the May 2016 Convertible Noteholders in connection with the May 2016 Convertible Notes (see above) under the following terms: new notes (the “January and February 2017 Convertible Notes”) would be issued for the amounts due under the May 2016 Convertible Notes; penalties, fees, and accrued interest in the aggregate amount of \$212,702 were added to the principal amount due under the January and February 2017 Convertible Notes; 1,346 shares of common stock were issued as a commitment fee; the January and February 2017 Convertible Notes were issued at a discount of 3.5%, bear interest at the rate of 10% per annum, are convertible at a rate of \$13.00 per share, and contain a variable conversion rate whereby, should the Company subsequently sell common stock at a price less than the conversion price, the conversion price of the January and February 2017 Convertible Notes will be reduced to match the lower conversion price. In addition, the proceeds from one of the January and February 2017 Convertible Notes were used to fully redeem one of the May 2016 Convertible Notes. The aggregate original amount of principal due under the January and February 2017 Convertible Notes was \$614,258. Two of the January and February 2017 Convertible Notes in the aggregate amount of \$494,340 were due on March 31, 2017, and one of the January and February 2017 Convertible Notes in the amount of \$119,918 was due on August 17, 2017. In April 2017, the Company received forbearance letters from the Note Purchasers of the January and February 2017 Convertible Notes that were due on March 31, 2017 to extend the due date to April 17, 2017 in exchange for principal payments in the aggregate amount of \$75,000; on April 18, 2017, the Company received forbearance letters to further extend the due date to May 1, 2017 in exchange for principal payments in the aggregate amount of \$45,000; and on May 1 and 2, 2017, the company entered into forbearance agreements with the holders of the January and February 2017 Convertible Notes to extend the due date to June 2, 2017. On June 5 and June 13, 2017, the Company entered into forbearance agreements with the holders of two of the three January and February 2017 Convertible Notes to extend the due dates to December 27, 2017 in exchange for increase in principal in the aggregate amount of \$78,907. On August 17, 2017, the Company entered into a forbearance agreement with the holders of the third January and February Convertible Note to extend the due date to December 27, 2017 in exchange for \$10. At August 31, 2017, three of the January and February 2017 Convertible Notes were outstanding in the aggregate amount of \$553,976; these notes are due December 27, 2017. During the year ended December 31, 2017, the holders of the January and February 2017 Convertible Notes converted an aggregate of \$33,865 in principal and \$21,135 in accrued interest into 17,628 shares of common stock; the Company recorded an aggregate loss in the amount of \$122,878 on these conversions.

On January 17, 2018, the Note Purchasers of one of the January and February 2017 Convertible Notes in the principal amount of \$241,802 purchased the remaining two January and February 2017 Convertible Notes in the

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	December 31, 2018	August 31, 2018	August 31, 2017
aggregate principal amount of \$278,309. The Company then entered into an agreement with the Note Purchasers to exchange the three January and February 2017 Convertible Notes (the “January 2018 Note Exchange”) in the aggregate principal amount of \$520,111 for a new Convertible Note in the principal amount of \$542,343 (the “January 2018 Convertible Note”). The Company revalued the derivative liability associated with the conversion feature associated with January and February 2017 notes and compared it with the derivative liability on the January 2018 convertible note, and recorded an expense in the amount of \$396,611 related to the change in value. The Company recorded a loss in the amount of \$6,409 on the January 2018 Note Exchange related to modification of notes.			
During the year ended August 31, 2018 and 2017, the Company charged to interest expense the amounts of \$153,234 and \$154,848, respectively in connection with the amortization of the discount on these notes.	\$ —	\$ —	\$ 553,977
<i>November 2017 Convertible Note</i>			
On November 17, 2017, the Company entered into a Securities Purchase Agreement with the Note Purchaser. The Company issued a 3.5% original issue discount (“OID”) senior secured convertible promissory note having an aggregate face amount of \$250,000 (the “November 2017 Convertible Note”). This note bears interest at a rate of 10% per annum and matures in six months. The Company received cash proceeds of \$241,250 net of the 3.5% original issue discount of \$8,750. At the Note Purchaser’s option, the principal and accrued interest under the note are convertible into common stock at a rate of \$13.00 per share and have a full reset feature. The note is secured by all assets of the Company. The Company at any time may prepay in whole or in part the outstanding principal and accrued interest at 120% during the first 90 days and 130% for the period from the 91 <sup>st</sup> day through maturity. In addition, the Company granted the investor the Option to lend the Company \$48,250 on or before January 15, 2018. If the Option is exercised, the Company would issue the investor a \$50,000 3.5% original issue discount senior secured convertible promissory note. During the three months ended May 31, 2018, the Company accrued interest in the amount of \$12,283 on this note. On May 31, 2018, the Company converted the outstanding balance of principal and interest in the amounts of \$250,000 and \$13,125, respectively, into a total of 265,782.83 shares of Series B Preferred Stock; the Company recorded a gain on settlement of notes payable in the amount of \$130,252 in connection with this transaction.			
During the years ended August 31, 2018 and 2017, the Company charged to interest expense the amounts of \$135,307 and \$0 respectively, in connection with the amortization of the discount on these notes.	\$ —	\$ —	\$ —
<i>January 2018 Convertible Note</i>			
On January 17, 2018, the Company entered into an agreement with the Note Purchaser to exchange the three January and February 2017 Convertible Notes for a new Convertible Note (the “January 2018 Convertible Note”). The Company exchanged outstanding principal in the amount of \$520,111 and accrued interest of \$15,823 for the January 2018 Convertible Note with a face amount of \$542,343, and an original issue discount of \$18,982; the Company revalued the derivative liability associated with the conversion			

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	December 31, 2018	August 31, 2018	August 31, 2017
feature associated with January and February 2017 notes and compared it with the derivative liability on the January 2018 convertible notes, and recorded an expense in the amount of \$396,611 related to the change in value. A non-cash loss on restructuring of debt in the amount of \$6,409 was recognized on this transaction during the year ended August 31, 2018. The January 2018 Convertible Note is a senior secured promissory note, bears interest at a rate of 10% per annum, and matures in 12 months. At the Note Purchaser's option, the principal and accrued interest under the January 2018 Convertible Note are convertible into common stock at a rate of \$0.78 per share and have a full reset feature. The note is secured by all assets of the Company. The Company at any time may prepay in whole or in part the outstanding principal and accrued interest at 120% during the first 90 days and 130% for the period from the 91 <sup>st</sup> day through maturity. On January 29, 2018, the Note Purchaser converted \$28,148 in principal and \$1,808 in accrued interest into 38,405 shares of common stock. The Company recorded a loss of \$351,769 on the conversion of note payable and accrued interest. During the three months ended May 31, 2018, the Company accrued interest in the amount of \$13,125 on this note. On May 31, 2018, the Company converted the outstanding balance of principal and interest in the amounts of \$514,195 and \$18,610, respectively, into a total of 538,186.87 shares of Series B Preferred Stock; the Company recorded a gain in the amount of \$933,263 on this transaction, and amortized the remaining discount in the amount of \$68,855 to interest expense.			
During the years ended August 31, 2018 and 2017, the Company charged to interest expense the amounts of \$0 and \$0, respectively, in connection with the amortization of the discount on these notes.	\$ —	\$ —	\$ —

*February 2018 Convertible Note*

On February 15, 2018, the Company entered into a Securities Purchase Agreement with the Note Purchaser. The Company issued a 3.5% OID senior secured convertible promissory note with a face amount of \$250,000 (the "February 2018 Convertible Note"). The February 2018 Convertible Note bears interest at a rate of 10% per annum and matures in nine months. The Company received cash proceeds of \$241,250 net of the 3.5% original issue discount of \$8,750. At the Note Purchaser's option, the principal and accrued interest under the note are convertible into common stock at a rate of \$13.00 per share and have a full reset feature. The February 2018 Convertible Note is secured by all assets of the Company. The Company at any time may prepay in whole or in part the outstanding principal and accrued interest at 120% during the first 90 days and 130% for the period from the 91<sup>st</sup> day through maturity. In addition, the Company granted the Note Purchaser 19,231 warrants to purchase 19,231 shares of the Company's common stock with an exercise price of \$0.26. The warrants have a five-year term. A derivative liability in the amount of \$667,470 was created with regard to the conversion features and warrants associated with this note; \$241,250 was charged to discount on notes payable, and the balance of \$426,220 was charged to interest expense during the three months ended February 28, 2018. On March 26, 2018, the Company and the Note Purchaser agreed to eliminate the reset feature of this note. During the year ended August 31, 2018, the Company accrued interest in the amount of \$13,681 on this note; as of August 31, 2018, principal in the

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	<b>December 31, 2018</b>	<b>August 31, 2018</b>	<b>August 31, 2017</b>
amount of \$250,000 was outstanding under the February 2018 Convertible Note. During the three months ended November 30, 2018, the Company accrued interest in the amount of \$3,611 on this note. In October 2018, the February 2018 Convertible Note, accrued interest and warrants were converted to a new series of the Company's preferred stock; see note 10.			
During the Transition Period ended December 31, 2018, the Company charged to interest expense the amounts of \$16,298 in connection with the amortization of the discount on these notes. During the years ended August 31, 2018 and 2017, the Company charged to interest expense the amounts of \$51,388 and \$0, respectively, in connection with the amortization of the discount on these notes.	\$	—	\$ 250,000
<i>March 2018 Convertible Note</i>			
On March 9, 2018, the Company issued a 3.5% OID senior secured convertible promissory note with a face amount of \$777,202 (the "March 2018 Convertible Note"). The March 2018 Convertible Note bears interest at a rate of 10% per annum and matures in nine months. The Company received cash proceeds of \$750,000 net of the 3.5% original issue discount of \$27,202. At the Note Purchaser's option, the principal and accrued interest under the note are convertible into common stock at a rate of \$13.00 per share. The March 2018 Convertible Note is secured by all assets of the Company. The Company at any time may prepay in whole or in part the outstanding principal and accrued interest at 120% during the first 90 days and 130% for the period from the 91 <sup>st</sup> day through maturity. In addition, the Company granted the Note Purchaser 59,785 warrants to purchase 59,785 shares of the Company's common stock with an exercise price of \$0.26. The warrants have a five-year term. A derivative liability in the amount of \$771,460 was created with regard to the conversion features and warrants associated with this note, which was charged to discount on notes payable. On May 9, 2018, the Note Purchaser transferred their ownership in \$497,458 of principal and \$18,042 of accrued interest in the March 2018 Convertible Note to a third party. The Company revalued the derivative liability associated with the conversion feature of the March 2018 note at the time of this restructure, and recorded a gain on revaluation in the amount of \$40,072. During the year ended August 31, 2018, the Company accrued interest in the amount of \$37,780 on the March 2018 Convertible. As of August 31, 2018, principal in the amount of \$777,202 was outstanding under the March 2018 Convertible Note. During the three months ended November 30, 2018, the Company accrued interest in the amount of \$11,226 on this note. In October 2018, the March 2018 convertible note, accrued interest and warrants were converted to a new series of the Company's preferred stock; see note 10.			
During the Transition Period ended December 31, 2018, the Company charged to interest expense the amounts of \$102,410, in connection with the amortization of the discount on these notes. During the years ended August 31, 2018 and 2017, the Company charged to interest expense the amounts of \$192,978 and \$0, respectively, in connection with the amortization of the discount on these notes.	\$	—	\$ 777,202

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	December 31, 2018	August 31, 2018	August 31, 2017
Total	\$ —	\$ 1,027,202	\$ 553,977
Less: Unamortized discount	—	(752,988)	(153,234)
Total, net of discount	\$ —	\$ 274,214	\$ 400,743
Current portion	\$ —	\$ 1,027,202	\$ 553,977
Long term	—	—	—
Total	\$ —	\$ 1,027,202	\$ 553,977

March 2018 Note to Prism

Under the terms of a series of agreements (the “Former Agreements”), Yield issued Prism Funding Co, LP (“Prism”) a 10% OID Senior Secured Convertible Note (the “Senior Note”) in the principal amount of \$5,500,000 and received the BTC. The Senior Note was payable 30 days following written demand from Prism (the “Maturity Date”) and with interest at 10% per annum. Pursuant to the terms of the restructuring agreement entered into in August 2018, the Company’s liability for the Senior Note was extinguished upon the restructuring of the BTC loan (see note 3).

**Note 10 – Stockholders’ Deficit**Preferred stock

The Company is authorized to issue 20,000,000 shares of \$0.001 par value preferred stock as of December 31, 2018, August 31, 2018, and August 31, 2017. The Company has 1,000 shares of Series A preferred stock issued and outstanding as of December 31, 2018, August 31, 2018, and August 31, 2017.

Series B Convertible Preferred Stock

On May 30, 2018, the Company authorized 805,000 shares of Series B Convertible Preferred Stock. The Series B Convertible Preferred Stock has a stated value of \$0.99 per share; is convertible to common stock at a price of \$0.78 per share, based upon stated value; and accrues dividends at the rate of 10% per annum on the stated value. The Series B Convertible Preferred Stock has voting rights equal to those of the underlying common stock. Under certain default condition, the Series B Convertible Preferred Stock is subject to mandatory redemption at 125%, and the conversion price resets to 75% of the market price of the Company’s common stock.

On May 30, 2018, the Company issued 803,969.73 shares of Series B Convertible Preferred Stock for the conversion of debt. The Company began to accrue dividends on the Series B Convertible Preferred Stock on June 1, 2018. From June 1, 2018 through August 31, 2018, the Company accrued dividends in the amount of \$20,280 on the Series B Convertible Preferred Stock; from September 1, 2018 through October 22, 2018, the Company accrued dividends in the amount of \$11,339 on the Series B Convertible Preferred Stock. On October 22, 2018, all 803,969.73 outstanding shares of the Series B Convertible Preferred Stock and accrued dividends in the amount of \$31,619 were exchanged for shares of the Company’s Series E Convertible Preferred Stock. At December 31, 2018, August 31, 2018, and August 31, 2017, there were 0, 803,969.73 and 0 shares of the Series B Convertible Preferred Stock outstanding, respectively.

Series E Convertible Preferred Stock

On October 22, 2018, the Company authorized 2,900,000 shares of its Series E Convertible Preferred Stock. The Series E Convertible Preferred Stock has a stated value of \$0.99 per share; is convertible to common stock at a price of \$0.78 per share, based upon stated value; and accrues dividends at the rate of 10% per annum on the stated value. The Series E Convertible Preferred Stock has voting rights equal to those of the underlying common stock. Under certain default condition, the Series E Convertible Preferred Stock is subject to mandatory redemption at 125%, and the conversion price resets to 75% of the market price of the Company’s common stock.

On October 22, 2018, the Company entered into an Exchange Agreement whereby the following were exchanged for 2,846,355.54 shares of Series E Convertible Preferred Stock: (i) Convertible debt and accrued interest in the amounts of \$1,027,202 and \$66,299, respectively; (ii) 803,969.73 shares of Series B Convertible Preferred Stock; (iii) accrued dividends in the amount \$31,619 on the Series B Convertible Preferred Stock; and (iv) outstanding warrants to purchase 463,631 shares of the Company’s common stock. A derivative liability in the amount of \$2,003,390 related

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to the convertible debt and was also settled pursuant to the Exchange Agreement. The Company valued the 2,846,355.14 shares of Series E Convertible Preferred Stock at \$2,022,766, and recorded a gain in the amount of \$472,267 on the Exchange Agreement during the Transition Period ended December 31, 2018. The Company accrued dividends in the amount of \$53,501 on the Series E Preferred Stock during the Transition Period ended December 31, 2018. At December 31, 2018, August 31, 2018, and August 31, 2017, there were 2,846,355.54, 0 and 0 shares of the Series E Convertible Preferred Stock outstanding, respectively.

### Common stock

The Company was authorized to issue 580,000,000 shares of \$0.001 par value common stock as of December 31, 2018, August 31, 2018, and August 31, 2017. On April 22, 2019, the Company filed a certificate of amendment of incorporation with the State of Delaware which reduced the number of authorized shares of common stock to 88,000,000. The Company has 3,415,859, 3,064,763 and 3,008,730 shares of common stock issued and outstanding as of December 31, 2018, August 31, 2018 and August 31, 2017, respectively.

On March 14, 2019, the Company filed a certificate of amendment of Certificate of Incorporation with the Delaware Secretary of State to effect a one-for-26 reverse split of common stock effective March 15, 2019. All of the common stock amounts and per share amounts in these financial statements and footnotes have been retroactively adjusted to reflect the effect of this reverse split.

#### Transition Period Ended December 31, 2018:

On November 28, 2018, the Company repurchased 1,048,904 shares of the Company's common stock from two shareholders in a series of private transactions. The Shares were repurchased by the Company for the par value of the Shares or a total of \$27,271.

On December 12, 2018, the Company closed a private placement offering (the "December Offering") of 1,425,641 units (the "Units"), each unit consisting of (i) one share of the Company's common stock, par value \$0.001 per share and (ii) a warrant to purchase one half of a share of Common Stock. The Units were offered at a fixed price of \$1.95 per Unit for gross proceeds of \$2,779,840. Costs associated with the December Offering were \$122,741, and net proceeds were \$2,657,099. \$2,607,099 of the net proceeds were received by the Company during the period ended December 31, 2018 for the sale of 1,400,000 common shares, and \$50,000 of the net proceeds were received on January 8, 2019 for the sale of 25,641 common shares. The Warrants are exercisable over a two-year period at the initial exercise price of \$3.90 per share. The Company entered into a Securities Purchase Agreement, dated as of the Closing Date (the "SPA") with each investor in the December Offering.

In connection with the December Offering, the Company also entered into a Registration Rights Agreement, dated as of the Closing Date (the "Registration Rights Agreement") with each investor in the Offering. Pursuant to the Registration Rights Agreement, the Company agreed to use commercially reasonable efforts to file with the Securities and Exchange Commission a registration statement on Form S-1 (or other applicable form) within 60 days following the Closing Date to register the resale of the shares of Common Stock sold in the Offering and shares of Common Stock issuable upon exercise of the Warrants.

#### Year Ended August 31, 2018:

On September 28, 2017, the Company issued 8,013 shares of common stock, for the conversion of \$16,347 of principal and \$8,653 of accrued interest of convertible notes payable.

On November 15, 2017, the Company issued 9,615 shares of common stock, for the conversion of \$17,518 of principal and \$12,482 of accrued interest of convertible notes payable.

On January 29, 2018, the Company issued 38,405 shares of common stock, for the conversion of \$28,148 of principal and \$1,808 of accrued interest of convertible notes payable.

#### Year ended August 31, 2017

On January 4, 2017, the Company issued 1,346 shares of common stock, valued at \$68,950 as commitment shares to convertible note holders. These shares were issued at fair value based on the market price at issuance of \$46.80 per share.

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On May 2, 2017, the Company issued 8,013 shares of common stock, for the conversion of \$15,000 of principal and \$10,000 of accrued interest of convertible notes payable.

On June 2, 2017, the Company issued 8,013 shares of common stock, for the conversion of \$25,000 of principal of convertible notes payable.

### Warrants

The following table summarizes the significant terms of warrants outstanding at December 31, 2018:

<u>Range of exercise Prices</u>	<u>Number of warrants Outstanding</u>	<u>Weighted average remaining contractual life (years)</u>	<u>Weighted average exercise price of outstanding Warrants</u>	<u>Number of warrants Exercisable</u>	<u>Weighted average exercise price of exercisable Warrants</u>
\$3.90	700,000	1.96	3.90	700,000	\$ 3.90
Total	<u>700,000</u>	<u>1.96</u>	<u>3.90</u>	<u>700,000</u>	<u>3.90</u>

Transactions involving warrants are summarized as follows:

	<u>Number of Warrants</u>	<u>Weighted Average Exercise Price</u>
Warrants outstanding at August 31, 2016	—	—
Issued	—	—
Exercised	—	—
Cancelled / Expired	—	—
Warrants outstanding at August 31, 2017	—	—
Issued	1,040,554	\$ 0.26
Exercised	—	—
Cancelled / Expired	(576,923)	0.26
Warrants outstanding at August 31, 2018	463,631	\$ 0.26
Issued	700,000	3.90
Exercised	—	—
Cancelled / Expired	(463,631)	0.26
Warrants outstanding at December 31, 2018	<u>700,000</u>	<u>\$ 3.90</u>

During the year ended August 31, 2018, the Company issued an aggregate of 79,016 five-year warrants at an exercise price of \$0.26 in connection with convertible debt. The Company also issued 961,538 five-year warrants at an exercise price of \$0.26 in connection with discontinued operations; of these, 576,923 were cancelled pursuant to the restructuring of discontinued operations; see note 3.

On October 22, 2018, the Company exchanged 463,631 warrants along with certain additional securities for shares of Series E Convertible Preferred Stock.

On December 12, 2018, the Company closed the December Offering which included the issuance of 700,000 warrants (the "December Warrants") with an exercise price of \$3.90 per share. The holders of the December Warrants have an option to settle in cash in the event of a change of control of the Company. The Company considers the December 2018 warrants to be derivative liabilities, and calculated the fair value of the December 2018 warrants by utilizing a Lattice Model that values the warrant based upon a probability weighted discounted cash flow model.

At December 31, 2018, outstanding warrants had an intrinsic value of \$5,095,996. Intrinsic value is the difference between the exercise price of the warrants and the market price of the Company's stock, which was \$11.18 at December 31, 2018.

### Stock Options

On December 21, 2018, the Company issued 19,231 options to each of Michael Young, the Company's chairman, and to David Lelong, the Company's President, Chief Financial Officer and Secretary (an aggregate of 38,462 options). These options have a five-year term, an exercise price of \$6.76 and vest quarterly over a one-year period beginning January 1, 2019. The fair value of each grant of 19,231 options was \$154,983. The Company used the Black-Scholes pricing model to determine the fair value of the options.

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The following table summarizes the significant terms of options outstanding at December 31, 2018:

Range of exercise prices	Number of options outstanding	Weighted average remaining contractual life (years)	Weighted average exercise price of outstanding options	Number of options exercisable	Weighted average exercise price of exercisable options
\$6.76	38,462	4.98	\$ 6.76	0	N/A

Aggregate intrinsic value of options outstanding and exercisable at December 31, 2018 was \$170,002. Aggregate intrinsic value represents the difference between the Company's closing stock price on the last trading day of the fiscal period, which was \$11.18 as of December 31, 2018, and the exercise price multiplied by the number of options outstanding.

Transactions involving options are summarized as follows:

	Number of Options	Weighted Average Exercise Price
Options outstanding at August 31, 2016	—	\$ —
Granted	—	—
Exercised	—	—
Cancelled / Expired	—	\$ —
Options outstanding at August 31, 2017	—	—
Granted	—	—
Exercised	—	—
Cancelled / Expired	—	—
Options outstanding at August 31, 2018	—	\$ —
Granted	38,462	6.76
Exercised	—	—
Cancelled / Expired	—	—
Options outstanding at December 31, 2018	<u>38,462</u>	<u>\$ 6.76</u>

### Note 11 – Fair Value of Financial Instruments

Under FASB ASC 820-10-05, the Financial Accounting Standards Board establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. This Statement reaffirms that fair value is the relevant measurement attribute. The adoption of this standard did not have a material effect on the Company's financial statements as reflected herein. The carrying amounts of cash, accounts payable and accrued expenses reported on the balance sheet are estimated by management to approximate fair value primarily due to the short term nature of the instruments. The Company had no other items that required fair value measurement on a recurring basis.

The Company's financial assets and liabilities are measured using inputs from the three levels of the fair value hierarchy. The three levels are as follows:

Level 1 - Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 - Inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (e.g., interest rates, yield curves, etc.), and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

Level 3 - Unobservable inputs that reflect our assumptions about the assumptions that market participants would use in pricing the asset or liability.

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The following summarized the Company's financial liabilities that are recorded at fair value on a recurring basis at December 31, 2018, August 31, 2018 and August 31, 2017.

	December 31, 2018			
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Derivative liabilities	\$ —	\$ —	\$ 7,379,893	\$ 7,379,893
<b>August 31, 2018</b>				
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Derivative liabilities	\$ —	\$ —	\$ 2,317,412	\$ 2,317,412
<b>August 31, 2017</b>				
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Derivative liabilities	\$ —	\$ —	\$ 312,878	\$ 312,878

**Note 12 – Income Taxes**

Deferred income taxes result from the temporary differences primarily attributable to amortization of intangible assets and debt discount and an accumulation of net operating loss carryforwards for income tax purposes with a valuation allowance against the carryforwards for book purposes.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. Included in deferred tax assets are Federal, State and Local net operating loss carryforwards of approximately \$2,970,000, the majority of which will expire in 2037. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Due to significant changes in the Company's ownership, the Company's future use of its existing net operating losses may be limited.

The provision (benefit) for income taxes differs from the amount of income tax determined by applying the applicable Federal statutory income tax rates (21% for the period ended December 31, 2018 and year ended August 31, 2018 and 34% for the year ended August 31, 2017) to the loss before taxes as a result of the following differences:

	December 31, 2018	August 31, 2018	August 31, 2017
Federal income tax (benefit) at statutory rate	\$ (926,700)	\$ (619,672)	\$ (592,708)
State income tax (benefit), net of Federal	(441,286)	(295,082)	(191,758)
Permanent differences – change in value of derivative liability and other	1,314,116	619,000	—
Effect of change in Federal statutory rate	—	230,616	—
Changes in valuation allowance	53,870	65,138	784,466
Total	\$ —	\$ —	\$ —

Deferred income taxes reflect the tax impact of temporary differences between the amounts of assets and liabilities for financial reporting purposes and such amounts as measured by tax laws and regulations.

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Deferred income taxes include the net tax effects of net operating loss (NOL) carryforwards and the temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. As of December 31, 2018, August 31, 2018 and August 31, 2017 significant components of the Company's deferred tax assets are as follows:

	December 31, 2018	August 31, 2018	August 31, 2017
<b>Deferred Tax Assets (Liabilities):</b>			
Net operating loss carryforwards	\$ 920,390	\$ 820,494	\$ 741,267
Accrued compensation	39,680	44,800	54,000
Valuation allowance	(960,070)	(865,294)	(795,267)
Net deferred tax assets (liabilities)	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

### Note 13 – Subsequent Events

On January 4, 2019, the Company repurchased 935,897 shares of the Company's common stock from David Lelong, the Company's former Chief Executive Officer, in a private transaction. The Shares were repurchased by the Company for the par value of the pre-reverse split shares of \$0.001 per share or a total of \$24,333. Prior to the repurchase, the shares represented approximately 38% of the Company's outstanding common stock.

On January 8, 2019, the Company issued 25,641 shares of common stock for cash of \$50,000 pursuant to the December Offering.

On January 17, 2019, the Company adopted the 2019 Equity Incentive Plan which covers the potential issuance of 180,769 shares of common stock.

On January 18, 2019, an investor converted 49,155 shares of the Company's Series E Convertible Preferred Stock into 62,389 shares of common stock.

On February 1, 2019, the four holders of the Series E Convertible Preferred Stock, in exchange for \$10 each (a total of \$40), agreed to waive the right to receive any dividends which would accrue on the Series E for a one year period beginning on October 22, 2018.

On February 2, 2019, the Company approved the Company's entry into a six-month Employment Agreement, effective February 1, 2019, with its Chief Executive Officer Mr. David Lelong. Mr. Lelong shall accrue monthly at a rate of 18% per annum.

On February 6, 2019, an investor converted 49,523 shares of the Company's Series E Convertible Preferred Stock into 62,856 shares of common stock.

On February 11, 2019, an investor converted 54,000 shares of the Company's Series E Convertible Preferred Stock into 68,538 shares of common stock.

On February 12, 2019 the Company filed a Certificate of Withdrawal of Certificate of Designation for the Company's Series B Preferred Stock.

On February 19, 2019, the Company filed a Certificate of Amendment to Articles of Incorporation permitting the Company's Board of Directors to amend the certificate of designation for any class or series of the Company's preferred stock without the vote of such class or series, unless such certificate of designation specifically prohibits the Board from amending such certificate of designation.

On February 20, 2019, the Company filed a Certificate of Amendment to Certificate of Designation for the Company's Series A Preferred Stock permitting the Board to convert all outstanding shares of Series A into shares of the Company's common stock at the Board's discretion.

On February 22, 2019, the Company issued 115 shares of common stock in exchange for 1,000 shares of Series A.

On March 4, 2019, Mr. David Lelong resigned from his position as the Company's Chief Executive Officer effective immediately. Mr. Lelong remains as the President, Chief Financial Officer, Secretary and Treasurer of the Company.

On March 4, 2019, the Board of Directors of the Company appointed Mr. Damian Dalla-Longa and Ms. Lori Taylor as the Company's Co-Chief Executive Officers.

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On March 7, 2019, the Company filed a Certificate of Withdrawal of Certificate of Designation for the Company's Series A Preferred Stock. The filing of the Amendment in Nevada was approved by the Company's Board of Directors and there were no shares of Series A outstanding on the Effective Date.

On March 8, 2019, the Company issued a Canadian investment banker 141,026 shares of the Company's common stock for advisory services rendered.

Effective March 11, 2019, Sport Endurance, Inc. merged into its wholly-owned subsidiary, Better Choice Company Inc., a Delaware corporation. As a result, the name of Sport Endurance, Inc. was changed to Better Choice Company Inc. Pursuant to the merger, each outstanding share of common stock of Sport Endurance, Inc. converted into one share of common stock of Better Choice Company Inc. and each outstanding share of Series E Convertible Preferred Stock of Sport Endurance, Inc. converted into one share of Series E of Better Choice Company Inc.

On March 14, 2019, Mr. David Lelong notified the Company of his resignation as a member of the Company's Board of Directors effective immediately.

On March 15, 2019, the Board appointed the Company's Co-Chief Executive Officers, Mr. Damian Dalla-Longa and Ms. Lori Taylor, to the Board, as well as Mr. Jeff Davis and Michael Galego. Mr. Galego will be the Chairman of the Board.

On March 15, 2019, the Company effected a 1 for 26 reverse split of its common stock. An additional 682 shares of common stock were issued as a result of rounding up of any fractional shares as a result of the reverse split.

On April 1, 2019, the Company issued 200,000 shares of common stock in connection with a licensing agreement.

On April 22, 2019, the Company filed a certificate of amendment of certificate of incorporation with the State of Delaware which reduced the number of authorized shares of common stock to 88,000,000.

On April 25, 2019, the Company entered into Subscription Agreements with accredited investors for the sale by the Company in a private placement (the "Private Placement") of (i) 4,946,640 shares of the Company's common stock at a purchase price of \$3.00 per share and (ii) warrants to purchase up to 4,946,640 shares of Common Stock, exercisable at any time after issuance at an exercise price equal to \$4.25 per share, subject to adjustments as provided under the terms of the warrants. The warrants are exercisable for 24 months from the initial issue date. On May 6, 2019, the Company closed the Private Placement. At the closing of the Private Placement, the Company issued 5,744,991 shares of its Common Stock at a purchase price of \$3.00 per share and warrants to purchase up to 5,744,991 shares of its Common Stock at an exercise price of \$4.25 per share (the "Warrants"). The Warrants are exercisable for 24 months from the Closing. The aggregate gross proceeds for the Private Placement were approximately \$17.2 million.

On April 29, 2019, the board of directors of the Company approved the Company's New 2019 Incentive Award Plan (the "2019 Plan") which became effective on such date (the "Effective Date"), subject to the approval by the Company's stockholders. The 2019 Plan provides for the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, other stock or cash-based awards or a dividend equivalent award (each an "Award"). Non-employee directors of the Company and employees and consultants of the Company or any of its subsidiaries are eligible to receive awards under the 2019 Plan. The 2019 Plan authorizes the issuance of (i) 6,000,000 shares of common stock plus (ii) an annual increase on the first day of each calendar year beginning on January 1, 2020 and ending on and including January 1, 2029, equal to the lesser of (A) 10% of the shares of common stock outstanding (on an as-converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of shares of common stock as determined by the Board.

On May 2, 2019, the board of directors approved the grant to certain executives of the Company of non-qualified stock options to purchase shares of the Company's common stock under the 2019 Plan at a per-share exercise price equal to the fair market value of a share of the Company's common stock on the date of grant. In accordance with an agreement with the Company, the stock options vest and become exercisable monthly over 2 years in equal installments of 1/24 each month. The stock options will be accelerated upon a Change of Control, as defined in the 2019 Plan. Any exercise of stock options may, at the election of the executives, be exercised with a "cashless exercise" by using shares from any such exercise to pay the exercise price, which shares, for such purpose, being valued at the fair market value, as determined under the 2019 Plan, on the date of exercise.

On May 2, 2019, an investor converted 60,000 shares of the Company's Series E Convertible Preferred Stock into 76,154 shares of common stock.

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The following executive officers of the Company were granted the number of stock options under the 2019 Plan, in each case as listed after their names: Damian Dalla-Longa, 1,200,000 stock options; Lori Taylor, 1,150,000 stock options; and Anthony Santarsiero, 1,000,000 stock options.

On May 6, 2019, the Company entered into a Loan Agreement (the “Loan Agreement”) by and between the Company and Franklin Synergy Bank, a Tennessee banking corporation (the “Lender”), pursuant to which, at the Company’s option and subject to the occurrence of the funding conditions described below and other customary funding conditions, the Lender is obligated to provide advances to the Company in an aggregate amount less than or equal to \$6,200,000 (the “Loan”).

Under the Revolving Line of Credit Promissory Note entered into by the Company (the “Note”), all advances bear interest from the date of such advance until such amount is due and payable (whether on any payment date, at maturity, by acceleration or otherwise), at a fixed rate of interest equal to 3.70% per annum, which may be adjusted from time to time subject to certain conditions. In addition, the Company paid a fee of \$10,000 upon closing. The Company is also required to pay a late charge equal to 5% of the aggregate amount of any payments of principal and/or interest that are paid more than 10 days after the due date.

The Note may be permanently prepaid at any time in whole or in part without penalty or premium in accordance with, and subject to any limitations on prepayments set forth in, the Loan Agreement. The Company is also required to make mandatory prepayments of the Loan and interest and expenses thereon, subject to specified exceptions, upon defaulting on any payments of principal or interest on the Loan, the occurrence of certain specified defaults of the covenants in the Loan Agreement, the occurrence of a material adverse change in the business, operations or conditions of the Company and specified other events.

TruPet LLC and Bona Vida, Inc. became guarantors of the Company’s obligations under the Loan Agreement after the closing of the acquisitions described below. In addition, pursuant to a Security Agreement by and between the Company and Lender dated the date of the Loan Agreement (the “Security Agreement”), the Company has granted the Lender a security interest in all assets of the Company owned or later acquired. The Loan Agreement also contains certain events of default, representations, warranties and covenants of the Company and its subsidiaries. For example, the Loan Agreement contains representations and covenants that, subject to exceptions, restrict the Company’s ability to do the following, among other things: incur additional indebtedness, engage in certain asset sales or undergo a change in ownership.

On May 6, 2019, the Company completed the acquisition of (i) Bona Vida, Inc. in accordance with the terms of the Agreement and Plan of Merger, dated as of February 28, 2019, by and among the Company, BCC Merger Sub, Inc. (“Merger Sub”), and Bona Vida, Inc., as amended by Amendment No. 1 thereto made and entered into as of May 3, 2019, pursuant to which Merger Sub merged with and into Bona Vida, with Bona Vida surviving as a wholly owned subsidiary of the Company and (ii) TruPet LLC in accordance with the terms of the Securities Exchange Agreement, dated as of February 2, 2019, by and between the Company and TruPet LLC, as amended by Amendment No. 1 thereto made and entered into as of May 6, 2019, pursuant to which the Company agreed to acquire 93.3% of the outstanding TruPet membership interests with TruPet remaining as a wholly-owned subsidiary of the Company (the “Acquisitions”). Following the completion of the Acquisitions, the business conducted by the Company became primarily the businesses conducted by TruPet and Bona Vida, which is as an online seller of pet foods, pet nutritional products and related pet supplies and as an emerging hemp-based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space, respectively.

Under the terms of the Bona Vida Merger Agreement, the Company issued 18,003,273 shares of its common stock, par value \$0.001 per share (“Common Stock”), to Bona Vida’s stockholders for all shares of Bona Vida’s common stock outstanding immediately prior to the Bona Vida Acquisition. The Company also offered to purchase each warrant held by Bona Vida warrant holders for CAD \$0.75 per share, with any outstanding warrants at closing being cancelled. Under the terms of the TruPet Merger Agreement, the Company issued 15,027,533 shares of its Common Stock to TruPet’s members for 93.3% of the issued and outstanding membership interests of TruPet outstanding immediately prior to the TruPet Acquisition.

Following the completion of the Acquisitions, the business conducted by the Company became primarily the businesses conducted by TruPet and Bona Vida, which is as an online seller of pet foods, pet nutritional products and related pet supplies and as an emerging hemp-based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space, respectively.

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On May 6, 2019, the Company entered into executive employment agreements with each of Damian Dalla-Longa, Co-Chief Executive Officer, Lori Taylor, Co-Chief Executive Officer, and Anthony Santarsiero, President and Director of Operations, each of which is effective as of May 6, 2019.

On May 10, 2019, an investor converted 689,394 shares of the Company's Series E Convertible Preferred Stock into 682,500 shares of common stock.

On May 13, 2019, the Company issued 100,000 shares of common stock to Damian Dalla-Longa, Co-Chief Executive Officer, pursuant to a change-of-control provision in the employment agreement between Mr. Dalla-Longa and Bona Vida.

On May 17, 2019, the Company filed an Amended and Restated Certificate of Designations, Preferences and Rights of the Series E Convertible Preferred Stock of Better Choice Company Inc. with the Delaware Secretary of State to increase the limit on beneficial ownership of certain holders of Series E Convertible Preferred Stock.

On May 21, 2019, the Board of Directors of the Company approved a change to the Company's fiscal year end from August 31 to December 31 of each year. The fiscal year change for the Company is effective beginning with the Company's 2019 fiscal year, which now began January 1, 2019 and ends December 31, 2019.

On May 22, 2019, an investor converted 236,364 shares of the Company's Series E Convertible Preferred Stock into 300,000 shares of common stock.

On May 28, 2019, David Lelong resigned as Chief Financial Officer, President, Secretary and Treasurer of the Company, effective immediately.

On May 28, 2019, Anthony Santarsiero, 35, has been appointed as President and Director of Operations of the Company.

On June 10, 2019, the Company entered into a First Amendment to Registration Rights Agreement (the "Registration Rights Agreement Amendment") with the stockholders signatory thereto, which amends the Registration Rights Agreement, dated as of May 6, 2019, by and among the Company and the stockholders named therein (the "Private Placement Investors"), entered into in connection with the previously announced private placement of shares of the Company's common stock and warrants to purchase common stock (the "Original Registration Rights Agreement"). Pursuant to the terms of the Original Registration Rights Agreement, the Company, among other things, granted certain registration rights to the Private Placement Investors. The Registration Rights Agreement Amendment extends the deadline by which the Company must file with the Securities and Exchange Commission ("SEC") a Registration Statement covering the resale of the shares of the Company's common stock purchased in the private placement, including the shares issuable upon exercise of the warrants to purchase common stock, by 42 days from July 5, 2019 to August 16, 2019, and extends the applicable deadline for seeking to have such Registration Statement declared effective by the SEC by the same amount.

On June 29, 2019, the Company appointed Andreas Schulmeyer as Chief Financial Officer to serve as the Company's principal financial officer and principal accounting officer, effective June 29, 2019, and to commence full-time employment on July 29, 2019.

On July 12, 2019, the Company filed a Form 8-K disclosing the following: that as a result of the issuance of shares of our common stock pursuant to the Bona Vida Merger Agreement and TruPet Merger Agreement, a change in control from the legacy stockholders of the Company occurred on May 6, 2019; that the Bona Vida Merger and TruPet Merger are being accounted for as a reverse acquisition and recapitalization of the Company for financial accounting purposes, whereby TruPet is deemed to be the acquirer for accounting purposes, and the Company's historical financial statements before the Acquisitions will be replaced with the historical financial statements of TruPet before the Acquisitions in future filings with the SEC; that the Company intends to appoint a new auditor for the combined entity; and that the Company also intends to file the historical financial statements of Bona Vida and TruPet, along with a pro forma presentation illustrating the effects of the Acquisitions, to comply with Rule 8-04 and Rule 8-05 of Regulation S-X and Item 9.01 of Form 8-K.

On July 23, 2019, the Company filed a Form 8-K/A which included the audited financial statements of TruPet LLC as of and for the years ended December 31, 2018 and December 31, 2017 and the notes related thereto and the related independent auditor's report of MNP LLC; the unaudited interim financial statements of TruPet LLC as of and for the three months ended March 31, 2019 and March 31, 2018 and the notes related thereto; the audited financial statements of Bona Vida, Inc. from the date of incorporation, March 29, 2018, to December 31, 2018 and the notes

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related thereto and the related independent auditor's report of MNP LLC; the unaudited interim financial statements of Bona Vida, Inc. as of and for the three months ended March 31, 2019 and the notes related thereto; the audited financial statements of TruPet LLC; and the unaudited pro forma combined financial statements of Better Choice Company Inc. as of and for the three months ended March 31, 2019 and for the twelve months ended December 31, 2018 and the related notes thereto.

We evaluated subsequent events after the balance sheet date through the date the financial statements were issued. We did not identify any additional material events or transactions occurring during this subsequent event reporting period that required further recognition or disclosure in these financial statements.

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**Better Choice Company Inc.**  
**Condensed Consolidated Balance Sheets**  
**As of June 30, 2019 and December 31, 2018**  
*(Dollars in thousands)*

	6/30/2019 (Unaudited)	12/31/2018
<b>Assets</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 5,019	\$ 3,946
Restricted cash	6,243	—
Accounts receivable, net	333	276
Inventories, net	1,707	1,557
Prepaid expenses and other current assets	1,134	269
Total Current Assets	14,436	6,048
Property and equipment, net	59	71
Right of use asset, operating lease, net of accumulated amortization	840	—
Intangible assets, net	961	—
Other assets	182	28
Total Assets	<u>\$ 16,478</u>	<u>\$ 6,147</u>
<b>Liabilities &amp; Stockholders' Deficit</b>		
<b>Current Liabilities</b>		
Line of credit	\$ —	\$ 4,600
Other liabilities	—	1,899
Long-term debt, current portion	6,200	1,600
Accounts payable	2,413	765
Due to related parties	134	—
Accrued liabilities	2,198	244
Deferred revenue	318	66
Operating lease liability, current portion	262	—
Warrant derivative liability	2,304	—
Total Current Liabilities	13,829	9,174
Operating lease liability	590	—
Deferred rent	15	15
Total Liabilities	14,434	9,189
Commitments and contingencies	—	—
Redeemable Series E Convertible Preferred Stock, \$0.001 par value, 2,900,000 & 0 shares authorized, 1,707,919 & 0 shares issued and outstanding at June 30, 2019 and December 31, 2018, respectively.	13,007	—
<b>Stockholders' Deficit</b>		
Common Stock, \$0.001 par value, 88,000,000 shares authorized, 43,168,161 & 11,661,485 shares issued and outstanding at June 30, 2019 and December 31, 2018, respectively.	43	12
Convertible Series A Preferred Units, \$0.001 par value, units equivalent to 0 & 2,391,403 Common Stock issued and outstanding at June 30, 2019 and December 31, 2018, respectively	—	2
Additional paid-in capital	170,017	13,642
Accumulated deficit	(181,023)	(16,698)
Total Stockholders' Deficit	(10,963)	(3,042)
Total Liabilities, Redeemable Preferred Stock and Stockholders' Deficit	<u>\$ 16,478</u>	<u>\$ 6,147</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Better Choice Company Inc.**  
**Condensed Consolidated Statements of Operations**  
**For the Three and Six Months Ended June 30, 2019 and 2018**  
*(Dollars in thousands, except per share amounts)*

	For the Six Months ended June 30,		For the Three Months ended June 30,	
	2019	2018	2019	2018
Net Sales	\$ 7,635	\$ 7,064	\$ 4,084	\$ 3,817
Cost of Goods Sold	4,082	3,329	2,421	1,384
Gross Profit	3,553	3,735	1,663	2,433
<b>Operating Expenses:</b>				
General & Administrative Expense	6,004	1,351	4,571	665
Share-Based Compensation Expense	4,212	—	4,006	—
Sales & Marketing	5,597	2,819	3,412	1,512
Other Operating Expenses	1,721	1,899	937	958
Total Operating Expenses	17,534	6,069	12,926	3,135
Loss from Operations	(13,981)	(2,334)	(11,263)	(702)
<b>Other Income (Expense)</b>				
Interest Expense	(124)	(66)	(62)	(43)
Loss on Acquisition	(149,988)	—	(149,988)	—
Change in Fair Value of Derivative Liability	(193)	—	(193)	—
Total Other Expenses	(150,305)	(66)	(150,243)	(43)
Net Loss	(164,286)	(2,400)	(161,506)	(745)
Preferred dividends	27	—	27	—
Net Loss Available to Common Stockholders	\$ (164,313)	\$ (2,400)	\$ (161,533)	\$ (745)
Weighted Average Number of Shares Outstanding	21,202,188	11,497,128	30,638,048	11,497,128
Loss per share, basic and diluted	\$ (7.75)	\$ (0.21)	\$ (5.27)	\$ (0.06)

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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**Better Choice Company Inc.**  
**Condensed Consolidated Statements of Changes in Stockholders' Deficit**

	Common Stock		Series A Preferred Units		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
Balance at December 31, 2017	11,497,128	\$ 11,497			\$ 8,545,446	\$ (10,672,090)	\$ (2,115,147)
Net loss for the period						(1,655,302)	(1,655,302)
Subtotal - March 31, 2018	11,497,128	11,497			8,545,446	(12,327,392)	(3,770,449)
Net loss for the period						(744,558)	(744,558)
Subtotal - June 30, 2018	11,497,128	11,497			8,545,446	(13,071,950)	(4,515,007)
Shares issued pursuant to private placement			2,391,403	2,391	4,665,609		4,668,000
Stock compensation pursuant to services provided	164,357	164			430,647		430,811
Net loss for the period						(3,626,157)	(3,626,157)
Balance at December 31, 2018	11,661,485	11,661	2,391,403	2,391	13,641,701	(16,698,107)	(3,042,353)
Impact on Prior Year of Adoption of ASC 842						(11,824)	(11,824)
Shares issued pursuant to private placement			69,115	69	149,931		150,000
Stock compensation pursuant to services provided	18,964	19			206,147		206,166
Net loss for the period						(2,780,082)	(2,780,082)
Subtotal - March 31, 2019	11,680,449	11,680	2,460,517	2,461	13,997,779	(19,490,013)	(5,478,093)
Stock compensation pursuant to services provided	1,099,822	1,100			2,225,907		2,227,006
Stock based commissions to third parties	798,492	798			4,790,156		4,790,955
Conversion of Series A Preferred Units to Common Stock	2,460,517	2,461	(2,460,517)	(2,461)			—
Retired TruPet Units	(1,011,748)	(1,012)			(2,198,988)		(2,200,000)
Subtotal - May 6, 2019 (Pre-Transaction)	15,027,533	15,028	—	—	18,814,854	(19,490,013)	(660,132)
Acquisition of Better Choice Company	3,117,364	3,117			18,701,067		18,704,184
Acquisition of Bona Vida	18,003,273	18,003			108,001,637		108,019,640
PIPE (net of issuance costs)	5,744,991	5,745			15,670,045		15,675,790
Subtotal - May 6, 2019 (Post-Transaction)	41,893,161	41,893			161,187,602	(19,490,013)	141,739,482
Stock compensation pursuant to services provided	100,000	100			599,900		600,000
Conversion of Series E Preferred Stock	1,175,000	1,175			7,050,678		7,051,853
Vesting of stock options for services provided					1,178,997		1,178,997
Net loss for the period						(161,533,182)	(161,533,182)
Balance at June 30, 2019	43,168,161	\$ 43,168			\$ 170,017,177	\$ (181,023,195)	\$ (10,962,849)

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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**Better Choice Company Inc.**  
**Unaudited Condensed Consolidated Statements of Cash Flows**  
**For the Six Months Ended June 30, 2019 and 2018**  
*(Dollars in thousands)*

	June 30, 2019	June 30, 2018
<b>Cash Flow from Operating Activities</b>		
Net loss	\$ (164,286)	\$ (2,400)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	45	7
Stock-based compensation expense	4,212	—
Non-cash lease expense	2	—
Change in fair value of derivative liability	193	—
Loss on acquisition	149,988	—
Other	(4)	—
(Increase) decrease in operating assets		
Accounts receivable	(27)	(50)
Inventories	42	(296)
Prepaid expenses and other assets	(466)	48
Change in operating lease right of use asset	(457)	—
(Decrease) increase in current liabilities		
Accounts payable	(32)	530
Accrued liabilities	1,600	76
Deferred revenue	252	68
Deferred rent	—	(9)
Change in Lease liability	457	—
<b>Cash Used in Operating Activities</b>	<u>\$ (8,481)</u>	<u>\$ (2,026)</u>
<b>Cash Flow from Investing Activities</b>		
Cash spent for acquisition of fixed assets (Office Furniture)	(4)	(31)
Cash acquired in merger	1,955	—
Security deposits paid	(81)	—
<b>Cash Provided by (Used in) Investing Activities</b>	<u>\$ 1,870</u>	<u>\$ (31)</u>
<b>Cash Flow from Financing Activities</b>		
Repayment of advance	(1,899)	—
Proceeds from private placement of Series A Preferred Units	150	—
Proceeds from private issuance of public equity	15,676	—
Payment of old debt	(6,200)	—
Proceeds from the issuance of debt	6,200	2,013
<b>Cash Provided by Financing Activities</b>	<u>\$ 13,927</u>	<u>\$ 2,013</u>
Net Changes in Cash, Cash Equivalents and Restricted Cash	\$ 7,316	\$ (44)
Total Cash, Cash Equivalents and Restricted Cash, Beginning of Period	3,946	157
Total Cash, Cash Equivalents and Restricted Cash, End of Period	<u>\$ 11,262</u>	<u>\$ 113</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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Supplemental Cash Flow Information

The following represent noncash financing and investing activities and other supplemental disclosures related to the statement of cash flows:

On May 6, 2019, the Company acquired the net assets of Bona Vida and Better Choice in exchange for shares:

**Dollars in thousands**

<b>Assets</b>	
<b>Current Assets</b>	
Accounts receivable, net	\$ 30
Inventories, net	193
Prepaid expenses and other current assets	399
Total Current Assets	622
Intangible Assets	986
Other assets	74
Total Assets	<u>\$ 1,682</u>
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts payable	\$ (1,814)
Accrued liabilities	(325)
Total Current Liabilities	(2,139)
Warrant derivative liability	(2,111)
Total Liabilities	<u>\$ (4,250)</u>
Redeemable Series E Preferred Stock	<u>\$ 20,059</u>

On January 1, 2019, the Company adopted ASC 842 which resulted in the acquisition of right of use assets and lease liabilities as follow:

<b>Right of use asset and lease liability acquired under operating leases</b>	
Right of Use asset recorded upon adoption of ASC 842	\$ 477
Lease liability recorded upon adoption of ASC 842	(489)

The Company paid no income taxes during the six months ended June 30, 2019 or 2018.

Cash interest paid amounted to \$123 and \$66 during the six months ended June 30, 2019 and 2018, respectively.

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Notes to the Unaudited Condensed Consolidated Financial Statements****Note 1 – Nature of Business and Summary of Significant Accounting Policies**Nature of the Business

Better Choice Company, Inc. (the “Company”) is a holistic pet wellness company providing high quality, hemp-based, raw cannabidiol (“CBD”) infused and non-CBD infused food, treats and supplements, dental care products, and accessories for pets and their human parents. Our products are formulated and manufactured using only high-quality ingredients manufactured, tested and packaged to our specifications. On May 6, 2019, the Company acquired TruPet LLC and Bona Vida Inc. in a pair of all-stock transactions (the “acquisitions”). The acquisition of TruPet LLC is a reverse acquisition for accounting purposes, with TruPet as the accounting acquirer.

The majority of our products are sold online directly to consumers with additional sales through online retailers and pet specialty stores. We have a limited selection of CBD infused canine products available on our Bona Vida website. The information contained in, or accessible through, these websites does not constitute a part of this Quarterly Report.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by accounting principles generally accepted in the United States of America. However, in the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation of the financial position and operating results have been included. Operating results for the three and six months ended June 30, 2019 are not necessarily indicative of the results that may be expected for any subsequent quarters or for the year ending December 31, 2019. The significant accounting policies applied by the Company are described below. We present our tables, except for the Statements of Stockholders’ Deficit, in dollars (thousands), numbers in the text in dollars (millions) and % as rounded up or down.

Basis of Measurement

The unaudited condensed consolidated financial statements of the Company are presented on a going concern basis, under the historical cost convention except for certain financial instruments that are measured at fair value, as explained in the accounting policies below. Historical cost is measured as the fair value of the consideration provided in exchange for goods and services. The Company’s functional and presentation currency is United States dollars (“USD”).

Consolidation

The consolidated financial statements and related notes include the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Cash and Cash Equivalents

Cash and cash equivalents include demand deposits held with banks and highly liquid investments with remaining maturities of ninety days or less at acquisition date. For purposes of reporting cash flows, the Company considers all cash accounts that are not subject to withdrawal restrictions or penalties to be cash and cash equivalents.

Restricted Cash

As part of the revolving credit agreement with Franklin Synergy Bank, the Company is required to maintain a cash balance of \$6.2 million in its account. Any withdrawals from the account require an equal reduction to the funds available under the revolving credit agreement.

<i>Dollars in thousands</i>	<b>June 30, 2019</b>	<b>December 31, 2018</b>
Cash and cash equivalents	\$ 5,019	\$ 3,946
Restricted cash	6,243	0
Total cash, cash equivalents and restricted cash	<u>\$ 11,262</u>	<u>\$ 3,946</u>

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### Accounts Receivable

Accounts receivable represents amounts due from customers less an allowance for doubtful accounts. A provision is recorded for impairment when there is objective evidence (such as significant financial difficulties of the debtor) that the Company will not be able to collect all amounts due according to the original terms of the receivable. A provision is recorded as the difference between the carrying value of the receivable and the present value of future cash flows expected from the debtor, with an offsetting amount recorded as an allowance, reducing the carrying value of the receivable. The provision is included in general and administrative expense in the statements of operations. As of the period ended June 30, 2019 and December 31, 2018, the Company considers accounts receivable to be fully collectible and, accordingly, no allowance for doubtful accounts has been recorded.

### Inventories

Inventories are recorded at the lower of cost and net realizable value. The net realizable value represents the estimated selling price for inventories in the ordinary course of business, less all estimated costs of completion and costs necessary to make the sale.

Cost is determined on a standard cost basis and includes the purchase price and other costs, such as transportation costs. Inventory average cost is determined on a first-in, first-out (“FIFO”) basis and trade discounts are deducted from the purchase price.

### Property and Equipment

Property and equipment are carried at cost and includes expenditures for new additions and other additions, which substantially increase the useful lives of existing assets. Depreciation is computed at various rates by use of the straight-line method. Depreciable lives are generally as follows:

Furniture and Fixtures	5 to 7 years
Equipment	7 years

Expenditures for normal repairs and maintenance are charged to operations as incurred. The cost of property or equipment retired or otherwise disposed of and the related accumulated depreciation are removed from the accounts in the year of disposal with the resulting gain or loss reflected in earnings.

The Company assesses potential impairments of its property and equipment whenever events or changes in circumstances indicate that the asset’s carrying value may not be recoverable. An impairment charge would be recognized when the carrying amount of property and equipment is not recoverable and exceeds its fair value. The carrying amount of property and equipment is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the property and equipment.

### Income Taxes

No provision has been made for federal and state income taxes prior to the date of the acquisitions since the proportionate share of TruPet’s income or loss was included in the personal tax returns of its members because TruPet was a limited liability company. Subsequent to the acquisitions, the Company, as a corporation, is required to provide for income taxes.

The Company utilizes Accounting Standards Codification (“ASC 740”), “Accounting for Income Taxes”, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

The effective tax rate for each of the three months and the six months ended June 30, 2019 is 0%. The effective tax rate differs from the U.S. Federal statutory rate of 21% primarily because our previously reported losses have been offset by a valuation allowance due to uncertainty as to the realization of those losses.

The Company accounts for uncertain tax positions in accordance with the provisions of ASC 740. Accounting guidance addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should

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be recorded in the financial statements, under which a company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position.

The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. Accordingly, the Company would report a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. The Company elects to recognize any interest and penalties, if any, related to unrecognized tax benefits in tax expense.

The Tax Cuts and Jobs Act (the "Tax Act") was enacted on December 22, 2017. The Tax Act reduces the U.S. federal corporate tax rate from 35% to 21%. As of the completion of these unaudited condensed financial statements, we have made a reasonable estimate of the effects of the Tax Act. This estimate incorporates assumptions made based upon the Company's current interpretation of the Tax Act and may change as the Company may receive additional clarification and implementation guidance and as the interpretation of the Tax Act evolves. In accordance with SEC Staff Accounting Bulletin No. 118, the Company will finalize the accounting for the effects of the Tax Act no later than the end of the fourth quarter of fiscal year 2019. Future adjustments made to the provisional effects will be reported as a component of income tax expense in the reporting period in which any such adjustments are determined. Based on the new tax law that lowers corporate tax rates, the Company revalued its deferred tax assets. Future tax benefits are expected to be lower, with the corresponding one-time charge being recorded as a component of income tax expense.

### Revenue

The Company recognizes revenue to depict the transfer of promised goods to the customer in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods.

In order to recognize revenue, the Company applies the following five (5) steps:

- Identify a customer along with a corresponding contract;
- Identify the performance obligation(s) in the contract to transfer goods to a customer;
- Determine the transaction price the Company expects to be entitled to in exchange for transferring promised goods to a customer;
- Allocate the transaction price to the performance obligation(s) in the contract; and
- Recognize revenue when or as the Company satisfies the performance obligation(s).

A description of the Company's revenue generating activities is listed below:

Direct-to-consumer ("DTC") – Our products are offered through our online stores where customers place orders online or through our customer service number. Revenue is recorded, net of discounts, at the time the order is received by the customer. Revenue is deferred for orders that have been placed, and paid for, but have not yet been received by the customer during the reporting period. As our customers have a 60-day guarantee on the product purchased, the Company records a liability for two months of estimated returns based on historical experience.

Loyalty Program - The Company offers a loyalty program to all of its direct-to-consumer customers. There are two tiers to the program.

Tier 1: the customer will earn 6 points for every \$1 spent.

Tier 2: the customer can earn points at a much faster rate and will also have opportunities to earn bonus points for different events, such as a birthday. This tier is known as the TruDog Love Club, and the customer accumulates twelve points for every \$1 spent.

The redemption requirements are the same under both levels and, for every five hundred points earned, customers receive a \$5 gift code which can be redeemed for goods purchased in the future. The Company records a reduction to sales revenue and deferred revenue when the customer accumulates loyalty points.

Wholesale Sales – This channel includes the sale of our products to wholesale customers for resale. The Company's policy is to recognize revenue at the time the product is shipped to the wholesale customer, net of estimated returns and allowances.

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Consignment – The Company partners with an Amazon channel partner to market and sell TruDog products. Revenue is recognized, net of returns, when our partner ships the product to the end customer. The commission, selling, marketing and storage fees are recognized at the time the services are rendered by the channel partner and are recorded by the Company, as follows:

- Commission, selling and marketing fees as sales and marketing expenses; and
- Storage fees as cost of goods sold.

### Cost of Goods Sold

Cost of goods sold consists primarily of the cost of product obtained from the contract manufacturing plants, packaging materials and CBD oils directly sourced by the Company, and freight for shipping product from our contract manufacturing plants to our warehouse. We review inventory on hand periodically to identify damages, slow moving inventory, and/or aged inventory. Based on the analysis, we record inventories on the lower of cost and net realizable value, with any reduction in value expensed as cost of goods sold.

### Advertising

The Company charges advertising costs to expense as incurred and such charges are included in sales and marketing expenses.

Advertising costs, consisting primarily of Facebook advertising, search costs and email advertising, were \$2.3 million and \$1.2 million for the three-month periods ended June 30, 2019 and 2018, respectively. For the six-month periods ended June 30, 2019 and 2018, advertising costs were \$3.5 million and \$2.2 million, respectively.

### Research and Development

Research is a planned search or a critical investigation aimed at discovering new knowledge and information with the hope that such knowledge will be useful in developing a new product or service (referred to as a “product”) or a new process or technique (referred to as a “process”) or bringing about a significant improvement to an existing product or process. Development is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. It includes the conceptual formulation, design and testing of product alternatives, construction of prototypes and operation of pilot plants. No research and development costs were incurred during the three or six month period ended June 30, 2019 and June 30, 2018.

### Shipping and Handling / Freight Out

The Company recognizes shipping and handling costs as a fulfillment cost, included in other operating expenses as they are incurred prior to the customer obtaining control of the products. Shipping and handling costs primarily consist of costs associated with moving finished products to customers through third-party carriers.

Shipping and handling costs were \$0.6 million and \$0.7 million for the three-month periods ended June 30, 2019 and 2018, respectively. For the six-month periods ended June 30, 2019 and 2018, shipping and handling costs were \$1.2 million and \$1.3 million, respectively.

Additionally, for direct to consumer customers, the Company may recover such costs by passing them onto the customer. In these instances, the Company includes the freight charges billed to customers in total revenue.

The amount included in revenue related to such recoveries was \$0.2 million and \$0.3 million for the three-month periods ended June 30, 2019 and 2018, respectively. For the six-month periods ended June 30, 2019 and 2018, the amounts included in revenue related to such recoveries was \$0.4 million and \$0.6 million, respectively.

### Fair Value of Financial Instruments

A financial instrument is defined as cash, evidence of an ownership interest in an entity, or a contract that both:

- Imposes on one entity a contractual obligation either:
  - To deliver cash or another financial instrument to a second entity; or
  - To exchange other financial instruments on potentially unfavorable terms with the second entity.

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- Conveys to that second entity a contractual right either:
  - To receive cash or another financial instrument from the first entity; or
  - To exchange other financial instruments on potentially favorable terms with the first entity.

The Company's financial instruments recognized in the balance sheet consist of cash and cash equivalents, restricted cash accounts, accounts receivable, deposits, accounts payable, line of credit, due to related party, accrued and other liabilities, warrant derivative liability and long-term debt. Warrant derivative liability is measured at fair value each reporting period. The fair values of the remaining financial instruments approximate their carrying values.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company has applied the framework for measuring fair value which requires a fair value hierarchy to be applied to all fair value measurements. The fair value of the warrant derivative liability is considered a Level 3 financial instrument.

All financial instruments recognized at fair value in the balance sheet are classified into one of three levels in the fair value hierarchy as follows:

- Level 1 – valuation based on quoted prices (unadjusted) observed in active markets for identical assets or liabilities. Cash is measured based on Level 1 inputs.
- Level 2 – valuation techniques based on inputs that are quoted prices of similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; inputs other than quoted prices used in a valuation model that are observable for that instrument; and inputs that are derived from or corroborated by observable market data by correlation or other means.
- Level 3 – valuation techniques with significant unobservable market inputs.

### Derivative Financial Instruments

Financial Accounting Standards Board ("FASB") ASC Topic 815, "Derivatives and Hedging", generally provides three criteria that, if met, require companies to bifurcate conversion options from its host instruments and account for them as free standing derivative financial instruments. These three criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument subject to the requirements of ASC 815. ASC 815 also provides an exception to this rule when the host instrument is deemed to be conventional, as described.

The accounting treatment of derivative financial instruments requires that the Company record the embedded conversion option and warrants at their fair values as of the inception date of the agreement and at fair value as of each subsequent balance sheet date. Any change in fair value is recorded as non-operating, non-cash income or expense for each reporting period at each balance sheet date. The Company reassesses the classification of its derivative instruments at each balance sheet date. If the classification changes as a result of events during the period, the contract is reclassified as of the date of the event that caused the reclassification.

The pricing model we use for determining fair value of our derivatives is the Lattice Model. Valuations derived from this model are subject to ongoing internal and external verification and review. The model uses market-sourced inputs such as interest rates and stock price volatilities. Selection of these inputs involves management's judgment and may impact net income (see Note 8).

### Basic and Diluted Loss Per Share

Basic and diluted loss per share has been determined by dividing the net loss available to stockholders for the applicable period by the basic and diluted weighted average number of shares outstanding, respectively. Common Stock equivalents and incentive shares are excluded from the computation of diluted loss per share when their effect is anti-dilutive.

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### Stock-Based Compensation

The Company recognizes a compensation expense for all equity-based payments in accordance with FASB ASC Topic 718, "Compensation – Stock Compensation". The Company accounts for share-based payments granted to non-employees in accordance with FASB ASC Topic 505-50, "Equity Based Payments to Non-Employees." The Company follows the fair value method of accounting for stock awards granted to employees, directors, officers and consultants. Stock-based awards to employees are measured at the fair value of the related stock-based awards. Stock-based payments to others are valued based on the related services rendered or goods received or if this cannot be reliably measured, on the fair value of the instruments issued. Issuances of such awards are valued using the fair value of the awards at the time of grant. The Company recognizes stock-based payment expenses over the vesting period based on the number of awards expected to vest over that period on a straight-line basis. Forfeitures are accounted for as they occur.

The fair value of an option award is estimated on the date of grant using the Black-Scholes option valuation model. The Black-Scholes option valuation model requires the development of assumptions that are inputs into the model. These assumptions are the expected stock volatility, the risk-free interest rate, the expected life of the option, the dividend yield on the underlying stock and the expected forfeiture rate. Expected volatility is calculated based on the analysis of other public companies within the pet wellness sector. Risk-free interest rates are calculated based on continuously compounded risk-free rates for the appropriate term.

Determining the appropriate fair value model and calculating the fair value of equity-based payment awards requires the input of the subjective assumptions described above. The assumptions used in calculating the fair value of equity-based payment awards represent management's best estimates, which involve inherent uncertainties and the application of management's judgment. The Company is required to estimate the expected forfeiture rate and recognize expense only for those shares expected to vest.

### Use of Estimates

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of expenses during the reporting periods.

The Company evaluates its estimates on an ongoing basis. The Company bases its estimates on various assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

### Segment Information

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision-maker in making decisions regarding resource allocation and assessing performance. To date, the Company has viewed its operations and manages its business as one segment operating in the United States of America. The Company's chief operating decision-maker does not review operating results on a disaggregated basis; rather, the chief operating decision-maker reviews operating results on an aggregate basis.

### License Intangibles

License intangibles are recorded at fair value at the date of acquisition and are amortized ratably over the life of the license agreement.

### Commitments and Contingencies

We may be involved in legal proceedings, claims, and regulatory, tax, or government inquiries and investigations that arise in the ordinary course of business resulting in loss contingencies. We accrue for loss contingencies when losses become probable and are reasonably estimable. If the reasonable estimate of the loss is a range and no amount within the range is a better estimate, the minimum amount of the range is recorded as a liability.

We do not accrue for contingent losses that are considered to be reasonably possible, but not probable; however, we disclose the range of such reasonably possible losses. Loss contingencies considered remote are generally not disclosed.

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We have entered into debt, royalty and lease agreements for which we are committed to pay certain amounts over a period of time. See Notes 5, 6 and 7.

### Reclassification of Prior Period Presentation

Certain reclassifications have been made to conform the prior period data to the current presentations. These reclassifications had no effect on the reported results.

### Recently Issued Accounting Pronouncements

The Company has reviewed the Accounting Standards Update (“ASU”) accounting pronouncements and interpretations thereof issued by the FASB that have effective dates during the reporting period and in future periods.

#### *New Standards and Interpretations:*

### Adoption of FASB ASC Topic 842 “Leases”

The amendments in this update establish a comprehensive new lease accounting model. The new standard: (a) clarifies the definition of a lease; (b) requires a dual approach to lease classification similar to current lease classifications; and (c) causes lessees to recognize leases on the balance sheet as a lease liability with a corresponding right-of-use asset for leases with a lease term of more than twelve months. The new standard is effective for fiscal years and interim periods beginning after December 15, 2018, with early adoption permitted. A modified retrospective transition approach is required for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, including a number of optional practical expedients that entities may elect to apply. In July 2018, the FASB issued ASU No. 2018-11, “Leases (Topic 842): Targeted Improvements”, an update which provides another transition method, the prospective transition method, which allows entities to initially apply the new lease standard at the adoption date and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. The Company adopted the new standard on January 1, 2019 using the prospective transition method.

The Company has identified all leases to determine the impact of ASC 842 on its consolidated financial statements. The Company has elected to apply the practical expedient to certain classes of leases, whereby the separation of components of leases into lease and non-lease components is not required, and all of the practical expedients to all leases, (1) whether any expired or existing contracts are or contain leases, (2) lease classification for any expired or existing leases and (3) initial direct costs for any existing leases. The adoption of the new standard resulted in the recording on the consolidated balance sheet as of January 1, 2019 a right-of-use asset of \$0.5 million, a lease liability of \$0.5 million and a corresponding cumulative adjustment to accumulated deficit of an immaterial amount in accordance with ASC 842.

### Adoption of FASB ASU No. 2018-07 “Improvements to Nonemployee Share-Based Payment Accounting”

On January 1, 2019, the Company adopted ASU No. 2018-07 “Improvements to Nonemployee Share-Based Payment Accounting”. The amendments in this update expanded the scope of ASC 718 to include share-based payment transactions for acquiring goods and services from non-employees. The requirements of ASC 718 are applied to nonemployee awards except for specific guidance on inputs to an option pricing model and the attribution of cost. The amendments specify that ASC 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor’s own operations by issuing share-based payment awards. The amendments also clarify that ASC 718 does not apply to share-based payments used to effectively provide (1) financing to the issuer or (2) awards granted in conjunction with selling goods or services to customers as part of a contract accounted for under ASC 606, “Revenue from Contracts with Customers.”

The Company is treating the inclusion of share-based payments to non-employees as a change in accounting principle prospectively beginning in the period ending June 30, 2019. As the Company did not make any share-based payments to non-employees in prior periods, there was no impact on the results of operations in prior periods.

### Adoption of ASU 2018-13 “Fair Value Measurement”

In August 2018, the FASB issued ASU 2018-13, “Fair Value Measurement (Topic 820) Changes to the Disclosure Requirement for Fair Value Measurement” which amends ASC 820 to expand the disclosures required for items subject to Level 3, fair value remeasurement, including the underlying assumptions. ASU 2018-13 is effective for public companies for fiscal years beginning after December 15, 2019. The Company has early adopted the disclosures as permitted under the ASU.

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### *New and Revised Standards not Yet Adopted:*

In June 2016, the FASB issued ASU No. 2016-13 “Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments (Topic 326)”. ASU 2016-13 changes the impairment model for most financial assets. The new model uses a forward-looking expected loss method, which will generally result in earlier recognition of allowances for losses. ASU 2016-13 is effective for annual and interim periods beginning after December 15, 2019. The Company does not anticipate any material impact from the implementation of this ASU.

The Company has carefully considered other new pronouncements that alter previous generally accepted accounting principles and does not believe that any new or modified principles will have a material impact on the Company’s reported balance sheet or operations in 2019.

### **Note 2 - Acquisition of TruPet LLC and Bona Vida, Inc.**

On May 6, 2019, the Company completed the acquisitions through the issuance of shares of Common Stock, par value \$0.001 of the Company (the “Common Stock”). Following the completion of the acquisitions, the business conducted by the Company became primarily the businesses conducted by TruPet and Bona Vida. TruPet is a North American online seller of pet foods, pet nutritional products and related pet supplies. Bona Vida is an emerging hemp based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space. The completion of the acquisitions has created a vertically integrated pet wellness company providing high-quality raw CBD infused and non-CBD infused food, treats and supplements in addition to dental care products and accessories for pets and their human parents.

Based upon the guidance described in ASC 805-10-25-4 and 5, TruPet LLC has been determined to be the accounting acquirer. As such, the historical financial statements are those of TruPet, and TruPet’s equity has been re-cast to reflect shares of Common Stock received in the acquisitions.

At the closing of the TruPet transaction, the Company issued 15,027,533 shares of Common Stock in exchange for the remaining 93% of the outstanding interests in TruPet. BCC had acquired the initial 7% of TruPet in December 2018. Immediately after the consummation of the acquisitions, the TruPet members, in the aggregate, owned 38% of the combined company. The Company retired 914,919 TruPet Member Units (equivalent to 1,011,748 Common Shares) owned by Better Choice Company as part of the acquisition.

Bona Vida did not meet the definition of a business and therefore asset acquisition accounting was applied. At the closing of the Bona Vida transaction, the Company issued 18,003,273 shares of Common Stock in exchange for 100% of the outstanding shares of Bona Vida. Immediately after the consummation of the acquisitions, the Bona Vida stockholders, in the aggregate, owned 46% of the combined company.

Better Choice Company did not meet the definition of a business and therefore asset acquisition accounting was applied. The fair value of Better Choice Company’s net liabilities and redeemable preferred stock acquired by TruPet is estimated to be \$19.5 million. The estimated purchase price has been allocated based on a preliminary estimate of the fair value of Better Choice Company assets acquired and liabilities assumed and redeemable preferred stock assumed with the remainder recorded as an expense. The loss on acquisition of Better Choice Company assets was \$38.2 million.

The fair value of Bona Vida’s net assets acquired is estimated to be \$1.0 million. The estimated purchase price has been allocated based on a preliminary estimate of the fair value of assets acquired and liabilities. The excess of the consideration paid over the net assets acquired has been recorded as an expense. The loss on acquisition of Bona Vida’s assets was \$107.0 million.

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On May 6, 2019, the fair value of the following assets and liabilities were acquired:

<i>Dollars in thousands</i>	<b>Better Choice Company</b>	<b>Bona Vida</b>	<b>Total</b>
<b>Assets</b>			
Current Assets			
Cash and cash equivalents	\$ 1,546	\$ 384	\$ 1,930
Restricted cash		25	25
Accounts receivable		30	30
Intercompany receivables	6,161	38	6,199
Inventories		193	193
Prepaid expenses and other current assets	52	347	399
<b>Total Current Assets</b>	<b>7,759</b>	<b>1,017</b>	<b>8,776</b>
Intangible assets, net of amortization	986		986
Other assets		74	74
<b>Total Assets</b>	<b>\$ 8,745</b>	<b>\$ 1,091</b>	<b>\$ 9,836</b>
<b>Liabilities and Redeemable Preferred Stock</b>			
<b>Current Liabilities</b>			
Warrant derivative liability	\$ 2,111	\$ —	\$ 2,111
Accounts payable & accrued liabilities	2,071	69	2,140
Long term debt, current portion	6,200		6,200
<b>Total Current Liabilities</b>	<b>\$ 10,382</b>	<b>\$ 69</b>	<b>\$ 10,451</b>
<b>Total Liabilities</b>	<b>\$ 10,382</b>	<b>\$ 69</b>	<b>\$ 10,451</b>
Redeemable Series E Preferred Stock	\$ 20,059	\$ —	\$ 20,059

**Note 3 - Inventories**

Inventories reflected on the accompanying balance sheets are summarized as follows:

<i>Dollars in thousands</i>	<b>June 30, 2019</b>	<b>December 31, 2018</b>
Food, treats and supplements	\$ 1,682	\$ 1,301
Other products and accessories	87	191
Inventory packaging and supplies	168	133
	1,937	1,625
Inventory reserve	(230)	(68)
	<b>\$ 1,707</b>	<b>\$ 1,557</b>

**Note 4 - Property and Equipment**

Property and equipment consist of the following:

<i>Dollars in thousands</i>	<b>June 30, 2019</b>	<b>December 31, 2018</b>
Warehouse equipment	\$ 49	\$ 49
Computer equipment	14	14
Furniture and fixtures	76	46
<b>Total property and equipment</b>	<b>139</b>	<b>109</b>
Accumulated depreciation	(80)	(38)
	<b>\$ 59</b>	<b>\$ 71</b>

Depreciation expense was immaterial for the three and six-month periods ended June 30, 2019 and 2018, respectively. Depreciation expense is included as a component of general and administrative expenses.

**Note 5 – Operating Leases**

The Company adopted Topic 842 “Leases” effective January 1, 2019. A modified retrospective transition approach was followed by applying the new standard to all leases existing at the date of initial application. We chose to use January 1, 2019 as our date of initial application of the standard. Since we adopted the new standard on January 1, 2019 and use the effective date as our date of initial application, financial information will not be updated, and the disclosures required under the new standard will not be provided for dates and periods before January 1, 2019.

The new standard provides a number of optional practical expedients in transition. We elected the ‘package of practical expedients’, which permits us not to reassess under the new standard our prior conclusions about lease identification, lease classification and initial direct costs. We did not elect the use-of-hindsight or the practical expedient pertaining to land easements; the latter not being applicable to us. We elected all of the new standard’s available transition practical expedients.

The new standard establishes a right-of-use model (“ROU”) that requires a lessee to recognize a ROU asset and lease liability on the balance sheet for all leases with a term longer than 12 months. Operating lease right-of-use assets and liabilities were recognized at the commencement date based on the present value of lease payments over the lease term. As the Company’s leases do not provide an implicit rate, an incremental borrowing rate based on the information available at the commencement date was used in determining the present value. The Company will use the implicit rate when readily determinable.

This standard did not have a material effect on our financial statements. The adoption of Topic 842 resulted in an immaterial cumulative effect adjustment to accumulated deficit and the Company recognized operating lease right-of-use assets of \$0.5 million and operating lease liabilities of \$0.5 million on January 1, 2019. The most significant future effects relate to (1) the recognition of new ROU assets and lease liabilities on our balance sheet for our real estate operating leases and (2) providing significant new disclosures about our leasing activities.

The Company leases its office and warehouse facilities under operating leases which originally expired in November 2018. These agreements were modified in October 2017 for additional space leased. With this modification, the rent term was also revised and extended until October 2022, at a base prices of \$13.02 per square foot for the existing lease and \$15.50 per square foot for the additional space leased, with a 3.5% annual escalation clause and a one-time option to renew the leases for an additional 5-year term. In addition to base monthly rent, the agreement requires the Company to pay its proportionate share of real estate taxes, insurance, and common area maintenance expenses.

In February and May 2019, the Company entered into two additional operating leases for office and warehouse facilities under three-year lease agreements at base monthly rental rates of \$8,856 and \$4,492, respectively. The monthly rent shall increase each year which will be based on the Consumer Price Index promulgated by the United States Bureau of Labor Statistics. The rent adjustment will not be less than two percent or exceed five percent per year.

The Company determines if an arrangement contains a lease at inception based on the ability to control a physically distinct asset. Operating and finance lease right-of-use assets are recorded in the consolidated balance sheets based on the initial measurement of the lease liability as adjusted to include prepaid rent and initial direct costs less any lease incentives received. Lease liabilities are measured at the commencement date based on the present value of the lease payments over the lease term. Lease payments are generally fixed but may include provisions for future rent increases. The Company separately accounts for variable components within lease agreements including common area maintenance, insurance and real estate taxes. The Company uses its incremental borrowing rate to present value the lease liability as key inputs to determine the interest rate implicit in the lease are not shared by lessors.

Operating lease expense is recorded on a straight-line basis over the lease term. Right-of-use assets and lease liabilities for short-term leases are not recognized in the consolidated balance sheets. Payments for leases with a term of one month or less are recognized in the consolidated statements of operations as incurred. We have no leases that are considered short term (one year or less).

Rent expenses related to our real estate leases for which a right of use asset has been recognized totaled \$0.1 million and \$0.1 million for the three and six months ended June 30, 2019, respectively. Estimated expenses for variable lease costs are immaterial for the three and six months period ended June 30, 2019.

Rent expense for operating leases in effect and recorded prior to the adoption of ASC 842. Leases amount to an immaterial amount and \$0.1 million for the three and six-month periods ended June 30, 2018, respectively.

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The table below presents the operating lease-related assets and liabilities recorded on the consolidated balance sheets:

*Dollars in thousands*

<b>Leases</b>	<b>Balance Sheet Classification</b>	<b>June 30, 2019</b>
<b>Assets</b>		
Non-current assets	Operating lease right-of-use assets, net of accumulated amortization	\$ 840
Total operating lease assets		<u>\$ 840</u>
<b>Liabilities</b>		
Current		
Operating	Operating lease liabilities	(262)
Non-current		
Operating	Operating lease liabilities	(590)
Total operating lease liabilities		<u>\$ (852)</u>

The table below presents the maturity of lease liabilities as of June 30, 2019:

*Dollars in thousands*

<b>Lease payments</b>	<b>Operating Leases</b>
Remainder of 2019	\$ 147
2020	299
2021	303
2022	169
Total undiscounted minimum future lease payments	918
Less: imputed interest	66
Present value of lease liabilities	<u>\$ 852</u>

**Note 6 – License Intangibles and Royalties**

On May 6, 2019, the Company entered into a licensing agreement with Elvis Presley Enterprises, LLC which is fairly valued at \$1 million and related to an April 2019 agreement between Better Choice Company, Authentic Brands and Elvis Presley Enterprises focused on the development of hemp-derived CBD products under the Elvis Presley Hound Dog name. Product development is expected to be complete in late 2019.

The initial term of the licensing agreement ends on December 31, 2025. The license agreement is amortized on a straight-line basis over the life of the agreement. During the period from May 6, 2019 through June 30, 2019, an immaterial amount in amortization was expensed related to the Hound Dog license.

Royalties are required to be paid quarterly at a rate of 5% of net retail sales and 10% of net wholesale sales. The contract includes Guaranteed Minimum Royalty Payments for each of the contract years as per the table below:

*Dollars in thousands*

<b>Contract Year</b>	<b>Guaranteed Minimum Royalty</b>
2019-2020	\$ 1,500
2021	\$ 1,000
2022	\$ 1,125
2023	\$ 1,250
2024	\$ 1,500
2025	\$ 1,750

As of June 30, 2019, the Company had paid \$0.6 million of the 2019-2020 Guaranteed Minimum Royalty Payments which were recorded as prepaid expenses. There were no sales related to Hound Dog products during the three and six-month periods ended June 30, 2019.

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The Company entered into an agreement for the payment of royalties related to sales of the Orapup brand dental system in November 2015. The agreement called for a 10% royalty to be paid on the first \$2.5 million of related sales for a term of three years. Thereafter, commencing on the earlier of the end of the three-year term or having reached \$2.5 million in sales, a 2% royalty was to be paid thereafter. Royalty expense was minimal during 2017 and 2018. In November 2018, the parties reached a settlement whereby the Company paid \$0.1 million to fulfill all of its present and future obligations related to this agreement. Due to the settlement by the parties, the Company no longer has any royalty obligation related to the Orapup brand dental system.

### **Note 7 - Line of Credit and Debt**

In May 2017, the Company along with the majority owners serving as co-borrowers entered into a credit facility providing for up to \$2 million of borrowings. Through various amendments, the maximum borrowings under the line increased to \$4.6 million with a maturity of May 2019. Borrowings bear interest at LIBOR plus 3%. At June 30, 2019 and December 31, 2018, outstanding borrowings amounted to \$0 and \$4.6 million, respectively.

The line of credit was secured by personal assets of the co-borrowers. Covenants under the line of credit required the Company to be within a certain quarterly and annual loss limitation threshold, and certain other restrictions. As of December 31, 2018, the Company was in compliance with its covenants and/or obtained waivers from the lien holders. At June 30, 2019 and December 31, 2018, outstanding borrowings amounted to \$0 and \$1.6 million, respectively.

At December 31, 2018, our long-term debt consisted of an unsecured note payable to a director of the Company bearing 26.6% interest with principal and interest due within 30 days after change of control. No interest was paid during 2019.

On May 6, 2019, Better Choice Company refinanced the \$4.6 million line of credit and the \$1.6 million note payable to the director with a \$6.2 million revolving credit agreement with Franklin Synergy Bank. All advances relating to this revolving credit agreement bear a fixed rate of interest equal to 3.7% per annum, which may be adjusted from time to time subject to certain conditions. In addition, the Company paid a fee of \$10,000 upon closing. The Company is also required to pay a late charge equal to 5% of the aggregate amount of any payments of principal and/or interest that are paid more than 10 days after the due date. This note matures on May 6, 2020. The Franklin Synergy Bank note requires that the Company maintain deposits on account at the bank in the total amount of \$6.2 million. If withdrawals are made from the account, the amount available under the revolving credit agreement decreases by the amount of the withdrawal.

TruPet and Bona Vida became guarantors of the Company's obligations under the Loan Agreement after the closing of the acquisitions. In addition, pursuant to a Security Agreement by and between the Company and Lender dated the date of the Loan Agreement (the "Security Agreement"), the Company has granted the Lender a security interest in all assets of the Company owned or later acquired. The Loan Agreement also contains certain events of default, representations, warranties and covenants of the Company and its subsidiaries. For example, the Loan Agreement contains representations and covenants that, subject to exceptions, restrict the Company's ability to do the following, among things: incur additional indebtedness, engage in certain asset sales, or undergo a change in ownership.

Interest expense of approximately \$0.1 million and \$0.1 million was recorded in the statements of operations related to the lines of credit and director note for the three and six months ended June 30, 2019, respectively.

Interest expense of approximately an immaterial amount and approximately \$0.1 million was recorded in the statements of operations related to the line of credit and the director note for the three and six months ended June 30, 2018, respectively.

### **Note 8 – Warrant Derivative Liability**

On December 12, 2018, the Company closed a private placement offering (the "December Offering") of 1,425,641 units (the "Units"), each unit consisting of (i) one share of the Company's Common Stock and (ii) a warrant to purchase one half of a share of Common Stock. The Units were offered at a fixed price of \$1.95 per Unit for gross proceeds of \$2.8 million. Costs associated with the December Offering were \$0.1 million, and net proceeds were \$2.7 million. \$2.6 million of the net proceeds were received by the Company during the period ended December 31, 2018 for the sale of 1,400,000 common shares, and \$0.1 million of the net proceeds were received on January 8, 2019 for the sale of 25,641 common shares. The warrants are exercisable over a two-year period at the initial exercise price of \$3.90 per share. The warrant holders have an option to settle in cash in the event of a change

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of control of the Company. The Company considers these warrants a derivative liability and calculated the fair value of this liability utilizing a Lattice Model that values the warrant based upon a probability weighted discounted cash flow model.

At May 6, 2019, the derivative liability was recorded at fair value as part of the purchase price of Better Choice Company by TruPet.

The following schedule shows the change in fair value of the derivative liabilities for the period from May 6, 2019 through June 30, 2019.

<i>Dollars in thousands</i>	<b>Warrant Liability</b>	
Assumption of warrants pursuant to May 6, 2019 acquisition of Better Choice Company	\$	2,110
Change in fair value of derivative liability		193
<b>Balance as of June 30, 2019</b>	<b>\$</b>	<b>2,304</b>

  

	<b>May 6, 2019</b>	<b>June 30, 2019</b>
<b>Warrant Liability</b>		
Stock Price	\$6.00	\$6.35
Exercise Price	\$3.90	\$3.90
Remaining term (in years)	1.60 – 1.68	1.45 – 1.53
Volatility	64%	65%
Risk-free interest rate	2.39%	1.98%

The warrants feature provisions to reset the exercise price in the event of certain fundamental transactions. Such a transaction is considered a likelihood of 50% for December 31, 2019.

Additionally, the warrants feature provisions to force an early exercise in the event of the Company's stock trading above a certain threshold for a specified period. The Company considers the likelihood of meeting these conditions to be zero.

If all shares were redeemed at June 30, 2019, the Company would be required to pay \$2.3 million if all warrants were settled in cash as a result of a fundamental transaction or issue 712,823 shares if all warrants were settled in shares.

### Note 9 - Loyalty Program Provision

The Company offers a loyalty program to all of its direct-to-consumer customers. The loyalty program is designed to increase customer visits and spending. There are two tiers to the program as outlined below:

Tier 1: the customer earns six points for every \$1 spent

Tier 2: the customer earns points at a much faster rate and will also have opportunities to earn bonus points for different events, such as a birthday. This tier is known as the TruDog Love Club (TLC), and the customer accumulates twelve points for every \$1 spent.

The redemption requirements are the same under both levels, for every five hundred points earned, customers receive a \$5 gift code which can be redeemed for goods purchased in the future. The Company records a liability provision of 45% of all accrued and unredeemed points based on historical redemption rates. The redemption rate is consistent with the redemption rate used for the period ending December 31, 2018. We have included the redemption amounts as deferred revenue on the Condensed Consolidated Balance Sheets. As of June 30, 2019 and December 31, 2018, earned, but not redeemed, loyalty program awards are estimated to be \$0.2 million and \$0.1 million, respectively, and are recorded as a deferred revenues.

### Note 10 – Other Liabilities

Other liabilities include outstanding amounts on bank issued revolving credit cards. Interest rates on the issued credit cards was 22% for purchases and 24.24% for cash advances for the three and six months ended June 30, 2019 and 2018.

Under the terms of a Business Cash Advance Agreement, during 2018, the Company sold \$2.0 million of future receivables for proceeds of \$1.9 million. Future receivables are defined as all future payments made by cash, check,

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ACH, direct or pre-authorized debit, wire transfer, credit card, debit card, charge card or other form of payment related to the business of the Company. The creditor had the right to decline to purchase any future receivables and/or adjust the amount of the advance. In the event of a sale, disposition, assignment, transfer or otherwise of all or substantially all of the business assets, the creditor's consent was required or repayment in full of the amount of future receivables remaining. The future receivables were remitted to the creditor based on a percentage of daily cash receipts. All remaining advances were repaid as of June 30, 2019.

<i>Dollars in thousands</i>	<u>Advance #1</u>	<u>Advance #2</u>	<u>Advance #3</u>	<u>Total</u>
Opening balance – January 1, 2018	\$ —	\$ —	\$ —	\$ —
Advance of outstanding amounts	399	965	1,050	2,414
2018 Payments	(429)	(256)	(102)	(787)
Rollover to Advance #3		(824)	824	
Advance fixed fee	30	115	126	271
Closing Balance – December 31, 2018	—	—	1,899	1,899
Payments			(1,899)	(1,899)
Balance June 30, 2019	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

**Note 11 – Redeemable Preferred Stock**

On October 22, 2018, the Board of Directors of Better Choice Company approved a resolution to designate a series of 2,900,000 shares of its Series E Convertible Preferred Stock pursuant to its articles of incorporation. The Series E Convertible Preferred Stock has a stated value of \$0.99 per share; is convertible to Common Stock at a price of \$0.78 per share and accrues dividends at the rate of 10% per annum on the stated value. The Series E Convertible Preferred Stock has voting rights equal to those of the underlying Common Stock. Under certain default conditions, the Series E Convertible Preferred Stock is subject to mandatory redemption in cash equal to 125% of the greater of \$0.99 per share (\$1.23 per share) or 75% of the market price of the Common Stock. As the redemption is outside the control of the Company, the Series E Convertible Preferred Stock has been recorded as mezzanine equity between liabilities and equity in the balance sheet.

On May 6, 2019, the Series E Convertible Preferred Stock was recorded at its fair value based on the \$6.00 per share closing price of Better Choice Company's common shares as they remained outstanding after the reverse acquisitions discussed in Note 2 above.

On May 10, 2019 and May 13, 2019, holders of the Company's Series E Convertible Preferred Stock converted 689,394 and 236,364 preferred shares into 875,000 and 300,000 shares of the Company's Common Stock, respectively.

Pursuant to waiver letters executed by each investor, the holders of the Company's Series E Convertible Preferred Stock agreed to waive their right to the distribution of dividends until October 22, 2019.

The below table summarizes changes in the balance of Series E Convertible Preferred Stock for the periods ended June 30, 2019 and December 31, 2018 including its value prior to acquisition by the Company.

<i>Dollars in thousands</i>	<u>Number</u>	<u>Amount</u>
Issued on October 18, 2018	2,846,356	\$ 2,023
Converted to Common Stock	(212,678)	(152)
Balance on May 6, 2019	2,633,678	1,871
Purchase price adjustment		18,188
Outstanding at May 6, 2019	2,633,678	20,059
Converted to Common Stock	(925,758)	(7,052)
Balance at June 30, 2019	<u>1,707,920</u>	<u>\$ 13,007</u>

**Note 12 - Stockholders' Deficit**

On May 6, 2019, Better Choice Company completed the acquisition of TruPet pursuant to a Stock Exchange Agreement dated February 2, 2019 and amended May 6, 2019. At the closing of the transaction, Better Choice Company issued 15,027,533 shares of its Common Stock in exchange for 93% of the outstanding ownership units

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of TruPet. Additionally, on May 6, 2019, Better Choice Company also completed the acquisition of Bona Vida pursuant to an Agreement and Plan of Merger dated February 28, 2019 and amended May 3, 2019. At the closing of the transaction, Better Choice Company issued 18,003,273 shares of its Common Stock in exchange for all outstanding shares of Bona Vida. The operations of Better Choice Company subsequent to the acquisitions are those of TruPet and Bona Vida. For accounting purposes, the transaction is considered a reverse merger whereby TruPet is considered the accounting acquirer of Better Choice Company.

As a result of the transaction the historical TruPet members' equity (units and incentive units) has been recast to reflect the equivalent Better Choice Common Stock for all periods presented after the transaction. Prior to the transaction, TruPet was a Limited Liability Company and as such, the concept of authorized shares was not relevant.

### Series A Preferred Units

In December 2018, the Company completed a private placement and issued 2,162,536 Series A Preferred Units (no par value) to unrelated parties for \$2.40 per unit. The proceeds were approximately \$4.7 million, net of \$0.5 million of share issuance costs. Additionally, on February 12, 2019, an additional private placement of 62,500 Series A Preferred Units at \$2.40 per unit was completed. The proceeds were approximately \$0.2 million, net of share issuance costs.

On May 6, 2019, all Series A Preferred Units were converted to 2,460,517 shares of Common Stock.

### Series E Preferred Stock

On May 6, 2019, the Company acquired 2,633,678 shares of Series E Preferred Stock issued by Better Choice Company in the transaction. Series E Preferred Stock is treated as mezzanine equity as it has redemption features that can be exercised by the holder under certain instances outside the control of the Company. 925,758 shares of Series E Preferred Stock were converted to Common Stock in the three- and six-month period ended June 30, 2019. As of June 30, 2019, 1,707,920 shares of Series E Preferred Stock remain outstanding. Full conversion of the remaining Series E Preferred Stock would result in the issuance of 2,167,745 shares of Common Stock.

### Common Stock

The Company was authorized to issue 580,000,000 shares of Common Stock as of December 31, 2018. On April 22, 2019, the Company filed a certificate of amendment of certificate of incorporation with the State of Delaware which reduced the number of authorized shares of Common Stock to 88,000,000. The Company has 43,168,161 and 11,661,485 shares of Common Stock issued and outstanding as of June 30, 2019 and December 31, 2018, respectively.

On March 14, 2019, the Company filed a certificate of amendment of Certificate of Incorporation with the Delaware Secretary of State to effect a one-for-26 reverse split of Common Stock effective March 15, 2019. All of the Common Stock amounts and per share amounts in these financial statements and footnotes have been retroactively adjusted to reflect the effect of this reverse split.

On December 12, 2018, Better Choice Company closed a private placement offering (the "December Offering") of 1,425,641 units (the "Units"), each unit consisting of (i) one share of the Company's Common Stock and (ii) a warrant to purchase one half of a share of Common Stock. The Units were offered at a fixed price of \$1.95 per Unit for gross proceeds of \$2.8 million. Costs associated with the December Offering were \$0.1 million, and net proceeds were \$2.7 million. Net proceeds of \$2.6 million were received by the Company during the period ended December 31, 2018 for the sale of 1,400,000 common shares, and \$0.1 million of the net proceeds were received on January 8, 2019 for the sale of 25,641 common shares. The Warrants are exercisable over a two-year period at the initial exercise price of \$3.90 per share. (See Note 8 – Warrant Derivative Liability). A portion of the proceeds from this private placement was used to acquire the initial 7% of TruPet.

In connection with the December Offering, Better Choice Company also entered into a registration rights agreement (the "Registration Rights Agreement") with each investor in the Offering. Pursuant to the Registration Rights Agreement, the Company agreed to use commercially reasonable efforts to file with the Securities and Exchange Commission a registration statement on Form S-1 (or other applicable form) within 60 days following the closing date to register the resale of the shares of Common Stock sold in the Offering and shares of Common Stock issuable upon exercise of the Warrants.

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On November 18, 2018 the Company entered into a consulting agreement for management services. The consultant was awarded the equivalent of 303,427 shares of Common Stock, half which vested on November 18, 2018 and the remainder on a monthly schedule over 2 years.

During the period from January 1, 2019 through May 5, 2019, equity awards for the equivalent of 979,716 shares were issued to employees and consultants and were valued at a weighted average value per share of \$2.26, the fair value at the date of award. The awards vested over three years.

However, on May 6, 2019, all equity incentive awards issued prior to May 6, 2019 immediately vested. As a result of the immediate vesting of these awards, share-based compensation expense equal to \$2.2 million and \$2.4 million has been recorded during the three and six-months ended June 30, 2019. There were no equity awards issued or outstanding during the three and six months ended June 30, 2018.

The Company retired 914,919 member units (equivalent to 1,011,748 Common Shares) in TruPet representing the 7% Better Choice Company ownership of TruPet valued at \$2.2 million which was recorded as part of loss on acquisition.

The Company also issued 5,744,991 million units for gross proceeds of \$3.00 per unit, also closing on May 6, 2019 (the "PIPE Transaction"). Each unit included one common share of Better Choice Company stock, and a warrant to purchase an additional share. The funds raised from the PIPE Transaction will be used to fund the operations of the combined company. Net proceeds of \$15.7 million were received in the private placement, allocable between shares of Common Stock and warrants.

Pursuant to Damian Dalla-Longa's ("Mr. Dalla-Longa") employment agreement with Bona Vida dated October 29, 2018, he was entitled to a \$500,000 Change of Control payment. It was later agreed to and included in Mr. Dalla-Longa's Better Choice Company employment agreement dated May 6, 2019, that he would receive 100,000 common shares in the Company in consideration for the \$500,000 Change of Control payment. The 100,000 common shares were valued at \$6.00 per share, which was the market value as of the date of Mr. Dalla-Longa's employment agreement.

### Stock Options

On May 6, 2019, the Company acquired the Better Choice Company, Inc. 2019 Incentive Award Plan ("2019 Incentive Award Plan") which became effective as of April 29, 2019. The 2019 Plan provides for the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, other stock or cash-based awards or a dividend equivalent award (each an "Award"). Non-employee directors of the Company and employees and consultants of the Company or any of its subsidiaries are eligible to receive awards under the 2019 Plan. The 2019 Plan authorizes the issuance of (i) 6,000,000 shares of common stock plus (ii) an annual increase on the first day of each calendar year beginning on January 1, 2020 and ending on and including January 1, 2029, equal to the lesser of (A) 10% of the shares of common stock outstanding (on an as-converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of shares of common stock as determined by the Board. At the time of acquisition, the following grants had been issued under the 2019 Incentive Award Plan:

On May 6, 2019, as part of the merger, the Company acquired options to purchase an aggregate of 3,750,000 shares of the Company's Common Stock at an exercise price of \$5.00 per share. These options had been granted to management of Better Choice Company on May 2, 2019. Subject to the holder's continued service to the Company, each such option vests with respect to 1/24<sup>th</sup> of the underlying shares on each monthly anniversary of the grant date such that the option is fully vested on the second anniversary of the grant date.

On May 6, 2019, as part of the merger, the Company acquired options to purchase an aggregate of 1,500,000 shares of the Company's Common Stock at an exercise price of \$5.00 per share. These options had been granted to non-employee directors of Better Choice Company on May 2, 2019. Subject to the holder's continued service to the Company, each such option vests with respect to 1/24<sup>th</sup> of the underlying shares on each monthly anniversary of the grant date such that the option is fully vested on the second anniversary of the grant date.

After the acquisition, the following stock option awards were granted under the 2019 Incentive Award Plan, subject to stockholder approval of the 2019 Incentive Award Plan:

On May 21, 2019, the Company granted to third-party consultants options to purchase an aggregate of 60,000 shares of the Company's Common Stock at an exercise price of \$7.50 per share. Subject to the holder's continued service to the Company, each such option vests with respect to 1/36<sup>th</sup> of the underlying shares on each monthly anniversary of the grant date, such that the option is fully vested on the third anniversary of the grant date.

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On May 21, 2019, the Company granted to employees options to purchase an aggregate of 30,000 shares of the Company's Common Stock at an exercise price of \$7.50 per share. Subject to the holder's continued service to the Company, each such option vests with respect to 25% of the underlying shares on the first anniversary of the grant date and the remainder vests in 24 equal installments on each monthly anniversary of the grant date following the first anniversary of the grant date, such that the option is fully vested on the third anniversary of the grant date.

On June 29, 2019, the Company granted to employees options to purchase an aggregate of 3,000 shares of the Company's Common Stock options at an exercise price of \$7.50 per share. Subject to the holder's continued service to the Company, each such option vests with respect to 25% of the underlying shares on the first anniversary of the grant date and the remainder vests in 24 equal installments on each monthly anniversary of the grant date following the first anniversary of the grant date, such that the option is fully vested on the third anniversary of the grant date.

Following the stockholder approval of the 2019 Incentive Award Plan, all vested options described herein will become exercisable and may be exercised through the ten-year anniversary of the grant date (or such earlier date described in the applicable award agreement following a holder's termination of service).

*Dollars in thousands except per share amounts*

	Date of grant(s)	Vesting period (years)	Number	Exercise price (\$)	Share-based payment expense (\$)	Risk-free rate	Volatility	Dividend yield	Expiry (yrs)	Remaining Life (yrs)
Option grant	5/21/2019	2	60,000	\$7.50	9	2.28%	55.00%	Nil	10	9.9
Option grant	5/21/2019	3	30,000	\$7.50	5	2.28%	55.00%	Nil	10	9.9
Option grant	6/29/2019	3	3,000	\$7.50	0	1.84%	56.00%	Nil	10	10.0
			<u>93,000</u>		<u>\$ 14</u>					

Pursuant to ASC 718-10-35-8, the Company recognizes compensation cost for stock and option awards with only service conditions that have a graded vesting schedule on a straight-line basis over the service period for each separately vesting portion of the award as if the award was, in-substance, multiple awards.

The following table summarizes the significant terms of options outstanding at June 30, 2019:

Range of exercise prices	Number of options outstanding	Weighted average remaining contractual life (years)	Weighted average exercise price of outstanding options	number of options exercisable	Weighted average exercise price of exercisable options
\$5.00 – 7.50	5,381,462	9.8	\$ 5.06	260,545	5.04

Transactions involving options are summarized below:

	Number of Options	Weighted Average Exercise Price
Acquired on May 6, 2019	5,288,462	\$ 5.00
Granted	93,000	\$ 7.50
Options outstanding at June 30, 2019	<u>5,381,462</u>	<u>\$ 5.04</u>

The intrinsic value of outstanding options is \$34.2 million as of June 30, 2019.

### Warrants

On May 6, 2019, the Company acquired 913,310 warrants with a weighted average exercise price of \$3.70 with the acquisition of Better Choice Company. The Company also issued 5,744,991 warrants with an exercise price of \$4.25 on May 6, 2019 as part of the PIPE. No warrants were exercised in the six months ending June 30, 2019.

	Number of Warrants	Weighted Average Exercise Price
Warrants Acquired on May 6, 2019	913,310	\$ 3.70
Issued	5,744,991	\$ 4.25
Exercised	—	—
Canceled / expired	—	—
Warrants outstanding at June 30, 2019	<u>6,658,301</u>	<u>\$ 4.39</u>

The intrinsic value of outstanding warrants is \$13.0 million as of June 30, 2019.

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**Note 13 - Related Party Transactions and Material Service Agreements**

*Related Party Transactions*

Management Services

A related party provided management services during 2018. Payments related to this arrangement were immaterial for the three and six-month period ended June 30, 2018. No payments were made to the related party during 2019. Outstanding balances were immaterial amounts for the periods ending June 30, 2019 and December 31, 2018, respectively.

Marketing Services

A related party provides online traffic acquisition marketing services for the Company. The Company paid immaterial amounts for their services during the three and six months ended June 30, 2019, respectively. The Company did not use this related party's services in 2018. The service contract has a 30-day termination clause. Outstanding balances were \$0.1 million and an immaterial amount for the periods ending June 30, 2019 and December 31, 2018, respectively.

Financial and Accounting Personnel

The Company entered into an agreement in December 2018 for assistance and support regarding its financial operation and capital raise efforts and can be terminated at any time by either party with a 60-day notice with an affiliate of the managing member. The agreement requires payments amounting to \$21,160 every four weeks through December 2020. Payments related to this agreement amounted to \$0.1 million and \$0.2 million for the three and six-month period ended June 30, 2019, respectively.

The Company entered into an employment agreement in February 2019 with a previous executive for a term of six months. Payments related to this agreement amounted to \$0.1 million and \$0.2 million for the three and six-month period ended June 30, 2019.

Finder's Fee and Other Services

The Company paid a finders' fee of \$0.3 million during the year ended December 31, 2018 to an entity owned by one of its members. Additionally, the Company paid approximately \$0.4 million to this entity for other professional services rendered. No amounts have been paid in 2019.

*Material Service Agreements Consummated with Third Parties:*

Financial and Accounting Personnel

The Company entered into a new agreement in December 2018 for accounting management services for a fee of \$8,370 to be paid every two weeks. Prior to this entering into this agreement, the same company was performing similar services in 2018 for \$2,600 every two weeks.

Payments related to this agreement amounted to \$0.1 million and an immaterial amount for the three-month period ended June 30, 2019 and 2018, respectively.

Payments related to this agreement amounted to \$0.2 million and an immaterial amount for the six-month period ended June 30, 2019 and 2018, respectively.

Marketing Services

The Company entered into multiple agreements with marketing services with independent contractors during 2018 and 2019. Payments related to the marketing agreements amounted to \$0.2 million and an immaterial amount for the three-month period ended June 30, 2019 and 2018, respectively.

Payments related to the marketing agreements amounted to \$0.4 million and \$0.2 million for the six-month period ended June 30, 2019 and 2018, respectively.

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### Placement and Selling Agent

In December 2018, the Company executed an agreement with a third party to assist the Company in identifying and negotiating with potential investors, assisting in due diligence, and other capital market functions for a term of six months. The agreement calls for a \$0 base fee and a 5% commission on cash proceeds obtained in exchange for shares or equity interest in the Company. The commissions can be paid in cash or equity in the Company. This agreement has an initial six-month term and, thereafter, the Company at its option may elect to extend this agreement for one successive twelve-month term upon a sixty-day notice prior to the end of the initial term.

Payments related to this agreement amounted to \$0.1 million for the year ended December 31, 2018 and was capitalized to related private placement as costs of issuance. On May 6, 2019, the Company expensed the issuance costs of \$0.1 million. No other amounts were paid under this agreement in 2019.

On May 6, 2019, the Company issued the equivalent of 798,492 shares of its Common Stock to the Placement and Selling Agent. As a cost associated with the merger, this amount is presented as a loss on acquisition of \$4.8 million.

### **Note 14 - Major Suppliers**

The Company purchased approximately 83% and 72% of its inventories from one vendor for the six months ended June 30, 2019 and 2018, respectively. Additionally, the Company primarily utilized one vendor for outsourced manufacturing of meals for the six-month periods ended June 30, 2019 and the year ended June 30, 2018.

### **Note 15 - Concentration of Credit Risk**

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivables. The Company places its cash and cash equivalents with primarily one financial institution. At times, such amounts may be in excess of the FDIC insured limit. The Company has never experienced any losses related to these balances. As of June 30, 2019 and December 31, 2018 the Company had deposits in excess of the FDIC insured limits of \$10.3 million and \$3.4 million, respectively.

The Company routinely assesses the financial strength of its customers and, consequently, believes that its accounts receivable credit risk exposure is limited.

### **Note 16 - Net Loss per Share**

Basic and diluted net loss per share attributable to Common Stockholders is presented using the treasury stock method. Under the treasury stock method, the amount the employee must pay for exercising stock options and the amount of compensation cost for future service that has not yet recognized are collectively assumed to be used to repurchase shares.

Basic and diluted net loss per share is calculated by dividing net loss attributable to Common Stockholders by the weighted-average shares outstanding during the period. For the six months ended June 30, 2019 and 2018, the Company's basic and diluted net loss per share attributable to Common Stockholders are the same, because the Company has generated a net loss to Common Stockholders and Common Stock equivalents are excluded from diluted net loss per share as they have an antidilutive impact.

The following table sets forth basic and diluted net loss per share attributable to Common Stockholders for the three and six months ended June 30, 2019 and 2018:

*Dollars in thousands except per share amounts*

	<b>Six Months Ended</b>		<b>Three Months Ended</b>	
	<b>June 30</b>		<b>June 30</b>	
	<b>2019</b>	<b>2018</b>	<b>2019</b>	<b>2018</b>
<b>Common Stockholders</b>				
Numerator:				
Net loss	\$ (164,286)	\$ (2,400)	\$ (161,506)	\$ (745)
Less: Preferred Stock Dividends	(27)	—	(27)	—
Net loss attributable to Common Stockholders	<u>\$ (164,313)</u>	<u>\$ (2,400)</u>	<u>\$ (161,533)</u>	<u>\$ (745)</u>

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*Dollars in thousands except per share amounts*

	Six Months Ended		Three Months Ended	
	June 30		June 30	
	2019	2018	2019	2018
Denominator:				
Weighted average shares used in computing net loss per share attributable to Common Stockholders, basic and diluted	21,202,188	11,497,128	30,638,048	11,497,128
Net loss per share attributable to Common Stockholders, basic and diluted	\$ (7.75)	\$ (0.21)	\$ (5.27)	\$ (0.06)

**Note 17 - Going Concern**

The Company has incurred significant losses over the last three years and has a significant accumulated deficit. These operating losses create an uncertainty about the Company's ability to continue as a going concern for a period of twelve months from the date these unaudited condensed consolidated financial statements are issued. Management has evaluated whether the unaudited condensed consolidated financial statements should be presented as a going concern which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.

The unaudited condensed consolidated financial statements have been prepared on a going concern basis. In making this assessment, management conducted a comprehensive review of the Company's affairs including, but not limited to:

- The Company's financial position at June 30, 2019 which includes \$0.6 million of working capital;
- Significant events and transactions the Company has entered into, including and through the date the unaudited condensed consolidated financial statements were available to be issued;
- The loss from operations includes \$4.2 million related to non-cash stock compensation;
- Sales and profitability forecasts for the Company for the next financial year;
- The continued support of the Company's members and lenders; and
- The repayment of the line of credit with proceeds from a new \$6.2 million loan. To address the future additional funding requirements members have undertaken the following initiatives:
  - To continue to monitor the Company's ongoing working capital requirements and minimum expenditure commitments; and
  - Continue their focus on maintaining an appropriate level of corporate overhead in line with the Company's available cash resources.

Management is confident that it will be able to meet its minimum expenditure commitments and support its planned level of overhead expenditures. There can be no assurance however that the Company will be able to raise additional capital when needed, or at terms deemed acceptable, if at all. The accompanying unaudited condensed consolidated financial statements do not include any adjustments related to the recoverability and classification of asset amounts or the classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

**Note 18 - Subsequent Events**

Management has evaluated subsequent events through the date on which the unaudited condensed consolidated financial statements were issued.

On June 28, 2019, the Company granted 500,000 options to Andreas Schulmeyer, the Company's Chief Financial Officer, subject to commencement of employment on July 29, 2019. The options have an exercise price of \$6.35 and vest over a two-year period beginning with commencement of employment.

On July 23, 2019, the Audit Committee of the Board of Directors of the Company appointed Ernst & Young LLP as the Company's independent registered public accounting firm for fiscal periods on or after January 1, 2019.

On July 29, 2019, Mr. Schulmeyer received a grant of 6,042 common shares as a consulting fee pursuant to his employment agreement dated June 28, 2019.

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On August 14, 2019, the Company granted 30,000 options to an employee of the Company. The options have an exercise price of \$4.00 and vest over a three-year period.

On August 28, 2019, the Company entered into a radio advertising agreement with iHeartMedia + Entertainment, Inc. The Company issued 1,000,000 common shares which shall be entirely paid for by iHeartMedia in the form of a commitment from iHeartMedia to provide to Company advertising media inventory having an aggregate value of \$5,000,000. Company has committed to using \$2,500,000 of the media inventory by August 28, 2020 with the remainder of the inventory available through August 28, 2021.

On August 30, 2019, the Company granted 100,000 stock options to Mr. Schulmeyer. These options have an exercise price of \$3.90 and vest over a two-year period.

On September 6, 2019, the Audit Committee notified RBSM LLP of the Audit Committee's approval to dismiss RBSM as the Company's independent registered public accounting firm upon filing of this Quarterly Report.

On September 9, 2019, the Company granted 30,000 options to an employee of the Company. The options have an exercise price of \$3.70 and vest over a three-year period.

On September 13, 2019, Lori R. Taylor notified the Company of her decision to resign as Co-Chief Executive Officer of the Company effective as of September 13, 2019. The Company also entered into a separation agreement with Ms. Taylor, in connection with her resignation as an officer of the Company, effective as of the date thereof. Pursuant to the separation agreement all outstanding stock option awards will become fully vested on November 12, 2019, subject to Ms. Taylor's continued cooperation with the Company through such date and subject to the effectiveness and irrevocability of the release of claims. Ms. Taylor will continue to serve as a member of the board of directors of the Company.

On September 17, 2019, the Company entered into a 5-year consulting agreement with Bruce Linton. As compensation for the services rendered, the Company has issued 2,500,000 share purchase warrants to acquire one share each of Company Common Stock with an exercise price of \$0.10. An additional 1,500,000 share purchase warrants to acquire one share each of Company Common Stock with an exercise price of \$10.00.

The Warrants will vest as follows: (i) 50% (or 1,250,000) of the Warrants (the "Tranche 1 Warrants"), will vest and be exercisable upon the earlier of (Y) September 17, 2020 or (Z) immediately prior to a Change in Control (as such term is defined under the Company's 2019 Incentive Award Plan) (a "Change in Control") and (ii) the remaining 50% (or 1,250,000) of the Warrants (the "Tranche 2 Warrants") will vest and be exercisable upon the earlier of (Y) March 17, 2021 or (Z) immediately prior to a Change in Control, in each case, subject to Mr. Linton's continued service to the Company through the applicable vesting date or Change in Control. The Warrants have a term expiring on September 17, 2029 (the "Expiry Date") and will be subject to such other terms and conditions as may be determined by the Board.

The Additional Warrants will be exercisable on the earlier of (Y) March 17, 2021 or (Z) immediately prior to a Change in Control, in each case, subject to Mr. Linton's continued service to the Company through the applicable date. The Additional Warrants have a term expiring on the Expiry Date and will be subject to such other terms and conditions as may be determined by the Board.

If Mr. Linton should cease to be engaged by the Company for any reason, other than as a result of a termination by reason of Just Cause (as such term is defined in the Independent Contractor Agreement) or as a result of Mr. Linton's resignation as an independent contractor of the Company, the Incentive Warrants which have not then vested will immediately prior to the date Mr. Linton ceases to be engaged with the Company be deemed to become vested and such Incentive Warrants will remain exercisable until the Expiry Date.

During the month of September 2019 several warrant holders converted 1,144,999 warrants to 1,259,498 Common Stock shares. The Company received \$4.0 million in return for the common shares issued.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Unitholders of Trupet LLC.

**Opinion on the Financial Statements**

We have audited the accompanying balance sheet of Trupet LLC. (the "Company") as of December 31, 2018 and 2017, and the related statements of loss and comprehensive loss, unitholders' equity, and cash flows for the years then ended, and the related notes (collectively referred to as the financial statements).

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018 and 2017, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

**Material Uncertainty Related to Going Concern**

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has experienced ongoing losses, negative cash flows from operations, accumulated a significant deficit, has a working capital deficit and the line of credit is approaching maturity. The Company is dependent upon future sources of debt or equity financing in order to fund its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

*MNP LLP*

Chartered Professional Accountants

We have served as the Company's auditor since 2019.  
Toronto, Ontario  
April 26, 2019

**TRUPET LLC**  
**Balance Sheets**  
**As of December 31, 2018 and 2017**

	2018	2017
<b>Assets</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 3,946,261	\$ 157,138
Accounts receivable, net (Note 2)	275,560	79,270
Inventories, net (Note 3)	1,556,946	1,156,830
Prepaid expenses and other current assets	269,073	60,898
<b>Total Current Assets</b>	<b>6,047,840</b>	<b>1,454,136</b>
Property and equipment, net (Note 4)	71,295	54,481
Other assets	27,559	27,559
<b>Total Assets</b>	<b>\$ 6,146,694</b>	<b>\$ 1,536,176</b>
<b>Liabilities and Members' Deficit</b>		
<b>Current Liabilities</b>		
Line of credit (Note 5)	\$ 4,600,000	\$ 1,985,000
Other liabilities (Note 7)	1,898,759	58,407
Long-term debt, current portion (Note 8)	1,600,000	—
Accounts payable	764,715	676,884
Due from related parties	—	32,706
Accrued liabilities	244,593	889,069
Deferred revenue (Note 6)	65,965	—
<b>Total Current Liabilities</b>	<b>9,174,032</b>	<b>3,642,066</b>
Deferred rent	15,016	9,258
<b>Total Liabilities</b>	<b>9,189,048</b>	<b>3,651,324</b>
<b>Members' Deficit (Note 9)</b>		
Common units, no par value, 13,651,461 and 10,396,808 units authorized 10,545,435 and 10,396,808 units issued and outstanding at December 31, 2018 and 2017, respectively	8,913,647	8,556,943
Series A Preferred Units, no par value, 5,000,000 units authorized, 2,162,536 units issued and outstanding December 31, 2018.	4,668,000	—
Units to be issued	74,107	—
Accumulated deficit	(16,698,108)	(10,672,091)
<b>Total Members' Deficit</b>	<b>(3,042,354)</b>	<b>(2,115,148)</b>
<b>Total Liabilities and Members' Deficit</b>	<b>\$ 6,146,694</b>	<b>\$ 1,536,176</b>

See accompanying notes.

**TRUPET LLC**  
**Statements of Loss and Comprehensive Loss**  
**For the Years Ended December 31, 2018 and 2017**

	<u>2018</u>	<u>2017</u>
Net Sales	\$ 14,784,831	\$ 7,931,780
Cost of Goods Sold	<u>7,488,641</u>	<u>4,309,602</u>
Gross Profit	7,296,190	3,622,178
Selling, General, and Administrative Expenses	<u>12,454,023</u>	<u>8,964,329</u>
Loss from Operations	(5,157,833)	(5,342,151)
Other Income (Expense)		
Interest expense	(868,184)	(42,109)
Other income	<u>—</u>	<u>12,421</u>
<b>Net Loss and Comprehensive Loss</b>	<b><u>\$ (6,026,017)</u></b>	<b><u>\$ (5,371,839)</u></b>
Weighted average number of units outstanding	10,474,541	10,205,688
Loss per unit, basic and diluted	(0.58)	(0.53)

See accompanying notes.

**TRUPET LLC**  
**Statements of Changes in Members' Deficit**  
**For the Years Ended December 31, 2018 and 2017**

	Common Units		Series A Preferred Units		Units to be Issued	Deficit	Total
	Number	Amount	Number	Amount			
<b>Balance at January 1, 2017</b>	5,208,354	\$ 1,471,000	—	\$ —	\$ —	\$ (5,300,252)	\$ (3,829,252)
Units issued pursuant to private placement	4,796,457	6,169,650	—	—	—	—	6,169,650
Units issued pursuant to services provided	391,997	916,293	—	—	—	—	916,293
Net loss for the period	—	—	—	—	—	(5,371,839)	(5,371,839)
<b>Balance at December 31, 2017</b>	10,396,808	8,556,943	—	—	—	(10,672,091)	(2,115,148)
Units issued pursuant to private placement	—	—	2,162,536	4,668,000	—	—	4,668,000
Units issued pursuant to services provided	148,627	356,704	—	—	74,107	—	430,811
Net loss	—	—	—	—	—	(6,026,017)	(6,026,017)
<b>Balance at December 31, 2018</b>	<u>10,545,435</u>	<u>\$ 8,913,647</u>	<u>2,162,536</u>	<u>\$ 4,668,000</u>	<u>\$ 74,107</u>	<u>\$ (16,698,108)</u>	<u>\$ (3,042,354)</u>

See accompanying notes.

**TRUPET LLC**  
**Statements of Cash Flows**  
**For the Years Ended December 31, 2018 and 2017**

	2018	2017
<b>Cash Flows from Operating Activities:</b>		
Net loss	\$ (6,026,017)	\$ (5,371,839)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	14,123	11,883
Unit-based compensation expense	430,811	916,293
Change in operating assets and liabilities:		
Accounts receivable	(196,290)	(50,447)
Inventories	(400,116)	(373,323)
Prepaid expenses and other assets	(208,175)	(31,418)
Accounts payable	55,125	479,946
Accrued liabilities	(644,476)	442,389
Deferred revenue	65,965	—
Deferred rent	5,758	9,258
Net cash used in operating activities	<u>(6,903,292)</u>	<u>(3,967,258)</u>
<b>Cash Flows from Investing Activities:</b>		
Purchases of property and equipment	<u>(30,937)</u>	<u>(8,686)</u>
<b>Cash Flows from Financing Activities:</b>		
Other liabilities	1,840,352	19,720
Net borrowings on line of credit	2,615,000	1,985,000
Borrowings on long-term debt	1,600,000	—
Proceeds from shares issued pursuant to private placement, net	4,668,000	1,836,450
Net cash provided by financing activities	<u>10,723,352</u>	<u>3,841,170</u>
<b>Net Increase (Decrease) in Cash</b>	<b>3,789,123</b>	<b>(134,774)</b>
Cash, Beginning of Year	<u>157,138</u>	<u>291,912</u>
<b>Cash, End of Year</b>	<b><u>\$ 3,946,261</u></b>	<b><u>\$ 157,138</u></b>
<b>Supplemental Cash Flow Disclosures:</b>		
Interest paid	<u>\$ 868,184</u>	<u>\$ 42,109</u>
<b>Non-Cash Financing Activities:</b>		
Conversion of debt for equity	<u>\$ 0</u>	<u>\$ 4,333,200</u>

See accompanying notes.

**TRUPET LLC**  
**Notes to the Financial Statements**  
**For the Years Ended December 31, 2018 and 2017**

**Note 1 – Nature of Operations and Going Concern:**

TruPet LLC (the Company), is a Delaware company, originally formed as an Ohio limited liability company on August 2, 2013. On December 20, 2018, the Company was converted to a Delaware limited liability company. The Company manufactures and markets freeze dry raw diet meals, treats, and supplements for dogs and cats in fulfillment of and to help pet owners understand the benefits of feeding a species an appropriate diet. The Company's products are distributed throughout the United States online as well as pet specialty retail stores.

As of December 31, 2018, the Company incurred a loss from continuing operations of \$6,026,017 and its balance sheet reflected an excess of current liabilities over current assets of approximately \$3,126,000, while its cash flows showed a deficit in cash flows from operating activities of approximately \$6,903,000. Additionally, the Company's outstanding balance on the line of credit amounted to approximately \$4,600,000 as of December, 31, 2018, and is due in May 2019.

The financial statements have been prepared on a going concern basis. In making this assessment, management conducted a comprehensive review of the Company's affairs including, but not limited to:

- The Company's financial position for the year ended December 31, 2018;
- Significant events and transactions the Company has entered into, including and through the date the financial statements were available to be issued;
- Sales and profitability forecasts for the Company for the next financial year; and
- The continued support of the Company's members and lenders.
- The refinancing of the line of credit with the same bank under similar terms.

To address the future additional funding requirements members have undertaken the following initiatives:

- To continue to monitor the Company's ongoing working capital requirements and minimum expenditure commitments;
- Continue their focus on maintaining an appropriate level of corporate overhead in line with the Company's available cash resources; and
- The Company currently has an offer to sell its interest to Sport Endurance, Inc. ("SENZ") in return for stock in the combined entity.

The members are confident that they will be able to complete additional rounds of a capital raising that will provide the Company with sufficient funding to meet its minimum expenditure commitments and support its planned level of overhead expenditures. Therefore, it is appropriate to prepare the financial statements on the going concern basis. In the event that the Company is not able to successfully complete any additional rounds of fundraising referred to above, complete the SENZ transaction, or control their overhead, there is substantial doubt as to whether the Company will continue as going concern, and therefore, whether they will realize their assets and extinguish their liabilities in the normal course of business, and at the amounts stated in the financial statements. As such, the financial statements do not include adjustments relating to the recoverability and classification of recorded asset amounts, nor to the amounts and classification of liabilities that might be necessary should the Company not continue as a going concern.

**Note 2 – Summary of Significant Accounting Policies:**

**Basis of Presentation**

The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP") as issued by the Financial Accounting Standards Board ("FASB") in effect on December 31, 2018. The significant accounting policies applied by the Company are described below.

**Basis of Measurement**

The financial statements of the Company are presented using and have been prepared on a going concern basis, under the historical cost convention except for certain financial instruments that are measured at fair value, as explained in

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the accounting policies below. Historical cost is measured as the fair value of the consideration provided in exchange for goods and services. The Company's functional and presentation currency is United States dollars ("USD").

### **Cash and Cash Equivalents**

Cash and cash equivalents include demand deposits held with banks and highly liquid investments with remaining maturities of ninety days or less at acquisition date. For purposes of reporting cash flows, the Company considers all cash accounts that are not subject to withdrawal restrictions or penalties to be cash and cash equivalents.

### **Accounts Receivable**

Accounts receivable represents amounts due from customers less the allowance for doubtful accounts. A provision is recorded for impairment when there is objective evidence (such as significant financial difficulties of the debtor) that the Company will not be able to collect all amounts due according to the original terms of the receivable. A provision is recorded as the difference between the carrying value of the receivable and the present value of future cash flows expected from the debtor, with an offsetting amount recorded as an allowance, reducing the carrying value of the receivable. The provision is included in selling, general and administrative expense in the statements of loss and comprehensive loss. As at December 31, 2018 and 2017, the Company considers accounts receivable to be fully collectible, accordingly, no allowance for doubtful accounts have been recorded.

### **Inventories**

Inventories are recorded at the lower of cost and net realizable value. The net realizable value represents the estimated selling price for inventories in the ordinary course of business, less all estimated costs of completion and costs necessary to make the sale.

Cost is determined on a standard cost basis and includes the purchase price and other costs, such as transportation costs. Inventory's average cost is determined on a first-in, first-out ("FIFO") basis and trade discounts are deducted from the purchase price.

### **Property and Equipment**

Property and equipment are carried at cost and includes expenditures for new additions and those, which substantially increase the useful lives of existing assets. Depreciation is computed at various rates by use of the straight-line method. Depreciable lives are generally as follows:

Furniture and Fixtures	5 to 7 years
Equipment	7 years

Expenditures for normal repairs and maintenance are charged to operations as incurred. The cost of property or equipment retired or otherwise disposed of and the related accumulated depreciation are removed from the accounts in the year of disposal with the resulting gain or loss reflected in earnings.

The Company assesses potential impairments of its property and equipment whenever events or changes in circumstances indicate that the asset's carrying value may not be recoverable. An impairment charge would be recognized when the carrying amount of property and equipment is not recoverable and exceeds its fair value. The carrying amount of property and equipment is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the property and equipment.

### **Income Taxes**

No provision has been made for federal and state income taxes since the proportionate share of the Company's income or loss is included in the personal tax returns of the members.

Accounting principles generally accepted in the United States of America require the Company to examine its tax positions for uncertain positions. Management is not aware of any tax positions that are more likely than not to change in the next twelve months or that would not sustain an examination by applicable taxing authorities.

The Company's policy is to recognize penalties and interest as incurred in its statements of operations.

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### **Revenue**

The Company recognizes revenue to depict the transfer of promised goods to the customer in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods.

In order to recognize revenue, the Company applies the following five (5) steps:

- Identify a customer along with a corresponding contract;
- Identify the performance obligation(s) in the contract to transfer goods to a customer;
- Determine the transaction price the Company expects to be entitled to in exchange for transferring promised goods to a customer;
- Allocate the transaction price to the performance obligation(s) in the contract;
- Recognize revenue when or as the Company satisfies the performance obligation(s).

Revenue is recognized upon the satisfaction of the performance obligation. The Company satisfies its performance obligation and transfers control upon shipment to the customer.

### **Advertising**

The Company charges advertising costs to expense as incurred and such charges are included in selling, general and administrative expenses. Advertising costs, consisting primarily of media ads, amounted to approximately \$3,900,000 and \$3,700,000 for the years ended December 31, 2018 and 2017, respectively.

### **Shipping and Handling / Freight Out**

The Company recognizes shipping and handling costs as a fulfillment cost, included in selling, general and administrative expenses as they are incurred prior to the customer obtaining control of the products. Shipping and handling costs primarily consist of costs associated with moving finished products to customers through third-party carriers. Shipping and handling costs amounted to \$2,464,873 and \$561,682 for the years ended December 30, 2018 and 2017, respectively. Additionally, the Company may recover such costs by passing them onto the customer. In these instances, the Company includes the freight charges billed to customers in total revenue. The amount included in revenue related to such recoveries was \$883,398 and \$430,457 for the years ended December 31, 2018 and 2017, respectively.

### **Fair Value of Financial Instruments**

The Company's financial instruments recognized in the balance sheet and included in working capital consist of cash and cash equivalents, accounts receivable, accounts payable, line of credit, due to related party, accrued and other liabilities and long-term debt. Cash and cash equivalents are measured at fair value each reporting period. The fair values of the remaining financial instruments approximate their carrying values.

The Company's financial instruments exposed to credit risk include cash and cash equivalents and accounts receivable (Note 13).

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company has applied the framework for measuring fair value which requires a fair value hierarchy to be applied to all fair value measurements.

All financial instruments recognized at fair value in the balance sheet are classified into one of three levels in the fair value hierarchy as follows:

- Level 1 – valuation based on quoted prices (unadjusted) observed in active markets for identical assets or liabilities. Cash is measured based on Level 1 inputs.
- Level 2 – valuation techniques based on inputs that are quoted prices of similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; inputs other than quoted prices used in a valuation model that are observable for that instrument; and inputs that are derived from or corroborated by observable market data by correlation or other means.
- Level 3 – valuation techniques with significant unobservable market inputs.

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### **Basic and Diluted Loss Per Unit**

Basic and diluted loss per unit has been determined by dividing the net loss available to members for the applicable period by the basic and diluted weighted average number of units outstanding, respectively. Common unit equivalents and incentive units are excluded from the computation of diluted loss per unit when their effect is anti-dilutive.

### **Stock-Based Compensation**

The Company follows the fair value method of accounting for stock awards granted to employees, directors, officers and consultants. Stock-based awards to employees are measured at the fair value of the related stock-based awards. Stock-based payments to others are valued based on the related services rendered or goods received or if this cannot be reliably measured, on the fair value of the instruments issued. Issuances of such awards are valued using the fair value of the awards at the time of grant. The Company recognizes stock-based payment expenses over the vesting period based on expectations of the number of awards expected to vest over that period on a straight-line basis.

### **Use of Estimates**

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of expenses during the reporting periods.

The Company evaluates its estimates on an ongoing basis. The Company bases its estimates on various assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting estimates are reviewed and discussed with the Board of Directors. The Company considers an accounting estimate to be critical if it requires assumptions to be made that were uncertain at the time the estimate was made, if changes in the estimate or if different estimates that could have been selected would have a material impact on the Company's results of operations or financial condition.

Significant estimates and assumptions that have the most significant effect on the amounts recognized in the financial statements relate to, but are not limited to going concern and liquidity assumptions, allowance for doubtful accounts, inventory reserves, valuation of stock-based compensation, loyalty points rewards and return and refund provisions.

### **Recently Issued Accounting Pronouncements**

The Company has reviewed the FASB issued Accounting Standards Update ("ASU") accounting pronouncement and interpretations thereof that have effective dates during the reporting period and in future periods.

#### *New standards and interpretations:*

#### Early adoption of ASC606 "Revenue from Contracts with Customers"

As permitted, the Company elected to early-adopt ASC606 for the periods reported. In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2014-09, "Revenue from Contracts with Customers" (Topic 606) ("ASU 2014-09"), which supersedes the revenue recognition requirements in ASC Topic 605, "Revenue Recognition," and most industry-specific guidance. ASU No. 2014-09 is based on the principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The ASU also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments, and assets recognized from costs incurred to obtain or fulfill a contract.

The amendments in the ASU must be applied using one of two retrospective methods and are effective for annual and interim periods beginning after December 15, 2016. On July 9, 2015, the FASB modified ASU 2014-09 to be effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. As modified, the FASB permits the adoption of the new revenue standard early, but not before the

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annual periods beginning after December 15, 2016. There have also been various additional accounting standards updates issues by the FASB in 2016 that further amend this new revenue standard. The Company adopted ASC 606 on January 1, 2017 and there has been no impact on the financial statements as a result of the adoption of ASC 606.

### Early adoption of ASU 2017-11 “Earnings Per Share”

As permitted, the Company elected to early-adopt ASU 2017-11. The FASB issued ASU No. 2017-11, Earnings Per Share (Topic 260) Distinguishing Liabilities From Equity (Topic 480) Derivatives and Hedging (Topic 815); I. Accounting for Certain Financial Instruments With Down Round Features; II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Non-public Entities and Certain Mandatorily Redeemable Noncontrolling Interests With a Scope Exception, allows a financial instrument with a down-round feature to no longer automatically be classified as a liability solely based on the existence of the down-round provision. The update also means the instrument would not have to be accounted for as a derivative and be subject to an updated fair value measurement each reporting period.

On consideration of the above factors, the Company elected to early adopt ASU 2017-11 on January 1, 2018, the ASU is effective for public business entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. For all other organizations, the amendments are effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020.

The early adoption allows the Company to reduce the cost and complexity of accounting for financial instruments that, due to down round provisions, would otherwise require fair value measurement each reporting period and eliminate the corresponding impact and unnecessary volatility in reported earnings created by the revaluation when the Company’s share value changes.

The Company has applied the change in accounting policy retrospectively to all prior periods, as described in ASU No. 250-10-45-5, Accounting Changes and Error Corrections; however, there was no impact on the comparative period.

### *New standards and interpretations:*

#### Early adoption of ASU 2017-01 “Business Combinations”

The FASB issued ASU No. 2017-01 which clarifies the definition of business. If substantially all of the fair value of the gross assets acquired is a single identifiable asset or group of similar identifiable assets, the set is not considered a business. The Company elected to early adopt ASU 2017-01 on January 1, 2018, the ASU is effective for public business entities for fiscal years beginning after December 15, 2017. For all other organizations, the amendments are effective for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019.

The Company has applied the change in accounting policy retrospectively to all prior periods, as described in ASU No. 250-10-45-5, Accounting Changes and Error Corrections; however, there was no impact on the comparative period.

### *New and revised standards not yet adopted:*

On February 25, 2016, the FASB issued ASU 2016-02, Leases (Topic 842). This update will require organizations that lease assets to recognize on the balance sheets the assets and liabilities for the rights and obligations created by those leases. The new guidance will also require additional disclosures about the amount, timing and uncertainty of cash flows arising from leases. The provisions of this update are effective for annual and interim periods beginning after December 15, 2018. The Company is currently assessing the impact of the standard on its lease commitments disclosed in Note 10. Recognizing the present value of the remaining lease payments as a right of use asset and lease liability is expected to have a material impact, which is currently still under assessment.

In June 2018, the FASB issued ASU 2018-07- Stock Compensation (Topic 718). The amendments in this Update expand the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The requirements of Topic 718 should be applied to nonemployee awards except for specific guidance on inputs to an option pricing model and the attribution of cost. The amendments specify that Topic 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor’s own operations by issuing share-based payment awards. The amendments also clarify that Topic 718 does

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not apply to share-based payments used to effectively provide (1) financing to the issuer or (2) awards granted in conjunction with selling goods or services to customers as part of a contract accounted for under Topic 606, Revenue from Contracts with Customers. These amendments are effective for public companies for fiscal years beginning after December 15, 2018.

In June 2016 the FASB issued Topic ASU No. 2016-13 “Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments (Topic 326)” (“ASU 2016-13”). ASU 2016-13 changes the impairment model for most financial assets. The new model uses a forward-looking expected loss method, which will generally result in earlier recognition of allowances for losses. ASU 2016-13 is effective for annual and interim periods beginning after December 15, 2019 and early adoption is permitted for annual and interim periods beginning after December 15, 2018.

The Company has carefully considered other new pronouncements that alter previous generally accepted accounting principles and does not believe that any new or modified principles will have a material impact on the Company’s reported balance sheet or operations in 2019.

### Note 3 – Inventories:

Inventories reflected on the accompanying balance sheets are summarized as follows:

	2018	2017
Food, treats and supplements	\$ 1,301,274	\$ 709,561
Other products and accessories	191,292	283,132
Inventory packaging and supplies	<u>132,681</u>	<u>164,137</u>
	1,625,247	1,156,830
Inventory reserve	<u>(68,301)</u>	<u>—</u>
	<u>\$ 1,556,946</u>	<u>\$ 1,156,830</u>

### Note 4 – Property and Equipment:

Property and equipment consists of the following at December 31, 2018 and 2017:

	2018	2017
Warehouse equipment	49,431	49,431
Computer equipment	13,913	13,913
Furniture and fixtures	<u>45,944</u>	<u>14,556</u>
	109,288	77,900
Accumulated depreciation	<u>(37,993)</u>	<u>(23,419)</u>
	<u>\$ 71,295</u>	<u>\$ 54,481</u>

Depreciation amounted to \$14,123 and \$11,883 for the years ended December 31, 2018 and 2017, respectively, and is included as a component of selling, general, and administrative expenses.

### Note 5 – Line of Credit:

The Company, along with the majority owners serving as co-borrowers, had a \$2,000,000 line of credit executed in May 2017. Through various amendments, the maximum borrowings under the line increased to \$4,600,000 with a maturity of May 2019. Borrowings bear interest at the Libor rate plus 3% (5.3% and 4.3% at December 31, 2018 and 2017, respectively). At December 31, 2018 and 2017, outstanding borrowings amounted to \$4,600,000 and \$1,985,000, respectively.

The line of credit is secured by certain investment holdings of one of the co-borrowers. Covenants under the line of credit require the Company to be within a certain quarterly and annual loss limitation threshold, and certain other restrictions. As of December 31, 2018, the Company was in compliance with their covenants. As of December 31, 2017, the Company was not in compliance with certain covenants; however, the bank granted a waiver of default remedies with respect to noncompliance as of that date and the credit agreement was modified to remove the annual loss limitation threshold.

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For the years ended December 31, 2018 and 2017, the Company recorded approximately \$169,000 and \$38,000, respectively, of interest expense in its statements of loss and comprehensive loss related to the line of credit.

### **Note 6 – Loyalty Program Provision:**

The TruDog Love Club is a loyalty program designed to increase customer visits and spending. The Club allows members instant access to select perks not offered to the general public, like auto-shipments and free shipping over \$47. The program also enables customers to accumulate points based on their spending. For every \$1 spent, customers receive twelve points, and for every five hundred points earned, customers will receive a \$5 gift card which can be redeemed for goods purchased on-line. As of December 31, 2018 and 2017, earned, but not redeemed, loyalty program awards amounted to \$65,965 and \$0, respectively, as reflected in the balance sheets.

### **Note 7 – Other Liabilities:**

Other liabilities include outstanding amounts on bank issued revolving credit cards. Interest rates on the issued credit cards was 19.24% for purchases and 24.24% for cash advances for the year ended December 31, 2018.

Under the terms of a Business Cash Advance Agreement, the Company has sold \$2,005,794 of future receivables for proceeds of \$1,879,794. Future receivables are defined as all future payments made by cash, check, ACH, direct or pre-authorized debit, wire transfer, credit card, debit card, charge card or other form of payment related to the business of the Company. The creditor has the right to decline to purchase any future receivables and/or adjust the amount of the advance. In the event of a sale, disposition, assignment, transfer or otherwise of all or substantially all of the business assets, the creditor's consent is required or repayment in full of the amount of future receivables remaining. The transactions under the Business Cash Advance Agreement are as follows:

	<u>Advance #1</u>	<u>Advance #2</u>	<u>Advance #3</u>	<u>Total</u>
<b>Opening balance - January 1, 2018</b>				
Initial cash advance	\$ —	\$ —	\$ —	\$ —
Advance of outstanding amounts	398,909	965,308	1,050,000	2,414,217
Total initial advances	—	—	824,486	824,486
Payments	(429,432)	(1,080,180)	(101,727)	(1,611,339)
Advance fixed fee	30,523	114,872	126,000	271,395
<b>Closing balance - December 31, 2018</b>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 1,898,759</u>	<u>\$ 1,898,759</u>

For the years ended December 31, 2018 and 2017, the Company recorded approximately \$271,000 and \$0, respectively, of interest expense in its statements of loss and comprehensive loss related to the credit cards.

### **Note 8 – Long-term Debt:**

Long-term debt consists of a note payable to a director of the Company bearing 26.6% interest, unsecured, with principal and interest due within 30 days to the Company being sold. At December 31, 2018 and 2017, outstanding borrowings amounted to \$1,600,000 and \$0, respectively. As a result of the likelihood of a transaction resulting in a sale of the Company (Note 15), this has been classified as a current liability on the accompanying balance sheets.

For the years ended December 31, 2018 and 2017, the Company recorded approximately \$426,000 and \$0, respectively, of interest expense in its statements of loss and comprehensive loss related to its related party term debt.

### **Note 9 – Members' Equity:**

#### Common Units

The Company had the following transactions in its common units during the year ended December 31, 2018:

- The Company issued 148,627 shares of the Company's common units to employees and consultants of the Company as compensation under the Equity Incentive Plan. The value of the units amounted to \$430,811 and has been recorded as a component of selling, general and administrative expenses for the year ended December 31, 2017.

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The Company had the following transactions in its common units during the year ended December 31, 2017:

- The Company issued an aggregate of 4,796,457 shares of the Company's common units at a purchase price of \$1.29 per share. The proceeds were approximately \$6,170,000.
- The Company issued 391,997 shares of the Company's common units to an employee and a service provider of the Company as compensation. The value of the units amounted to \$916,293 and has been recorded as a component of selling, general and administrative expenses for the year ended December 31, 2017.

### Series A Preferred Units

In December 2018, the Company completed a private placement and issued Series A Preferred Units to unrelated parties for \$2.40 per unit.

Until a Qualified Public Offering (as defined in the Company Operating Agreement, "Agreement"), any holder of Series A Preferred Units may, at any time prior to or simultaneously with a Deemed Liquidation Event (as defined in the Agreement), without the payment of additional consideration by the Series A Preferred Member, convert all or any portion of the Series A Preferred Units (including any fraction of a Unit) held by such Member into a number of Common Units based on a Series A Preferred Unit conversion price as defined in the Agreement.

The initial "Conversion Price" shall be the Original Purchase Price per Series A Preferred Unit. In order to prevent dilution of the conversion rights granted under this Agreement, the Conversion Price shall be adjusted for any unit splits, unit combinations, unit "dividends", recapitalizations or similar transactions with respect to such Series A Preferred Units after the issuance of such Series A Preferred Units and also shall be subject to adjustment from time to time pursuant to the Agreement.

All of the outstanding Series A Preferred Units shall be automatically converted into a number of Common Units equal to (i) the total number of outstanding Series A Preferred Units multiplied by the Adjusted Original Purchase Price, divided by (ii) the Conversion Price then in effect without any further action on the part of the Company or any holder of Series A Preferred Units, upon (i) the closing of a Qualified Public Offering or (ii) the date and time, or the occurrence of an event, specified by the vote or written consent of the Unanimous Consent of the Series A Managers.

As detailed above, the Company early adopted ASU 2017-11 and accounted for Series A Preferred Units as an equity instrument.

The following summarizes the Company's shares of common units as of December 31, 2018:

- The Company issued an aggregate of 2,162,536 shares of the Company's Series A Preferred Units at a purchase price of \$2.29 per unit. The proceeds were approximately \$4,668,000, net of \$532,000 of share issuance costs.

No transactions were consummated during the year ended December 31, 2017 related to the Series A Preferred Units.

### Equity Incentive Plan

In December 2018, the Company executed a limited liability company agreement by and among its members. As part of the agreement, an equity incentive plan was created whereby common units are or may be granted to an employee, consultant, officer, director, manager or other service provider of the Company. The aggregate number of common units issued pursuant to the plan, together with the aggregate number of profits interest units issued pursuant to any profits interest plan shall not exceed eight percent 8% of the total units outstanding. Therefore, the Company has 1,097,552 available units to issue under the plan as of December 31, 2018. The value of these units are estimated at the common unit fair market value of \$2.40 per unit.

In November 2018, the Company awarded an affiliate of the managing member 274,388 available units under the Equity Incentive Plan in connection with its performance of services to the Company. Fifty percent of these incentive units shall vest immediately, and then subject to continuous service being rendered, the remaining incentive units shall vest in 24 equal monthly installments beginning on the effective date of the Plan which is December 2018.

### **Note 10 – Operating Lease Commitments:**

The Company leases its office and warehouse facilities under an agreement, which originally expired in November 2018. This agreement was modified in January 2016 for additional space leased. With this modification, the rent term

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was also revised and extended for an additional 72 months beginning June 2016, at a base price of \$12.15 per square foot, with a 3.5% annual escalation clause and a one-time option to renew the lease for an additional 5 year term. In addition to base monthly rent, the agreement requires the Company to pay its proportionate share of real estate taxes, insurance, and common area maintenance expenses.

Rent expense under this arrangement amounted to \$219,262 and \$128,457 for the years ended December 31, 2018 and 2017, respectively.

Future minimum commitments under this agreement is as follows at December 31, 2018:

<u>Year Ending December 31,</u>	
2019	\$ 257,296
2020	295,740
2021	295,740
2022	123,075
2023	—
	<u>\$ 971,850</u>

### **Note 11 – Material Service Agreements:**

*Material service agreements consummated with related parties:*

#### Financial and Accounting Personnel

The Company entered into an agreement in December 2018 for assistance and support regarding its financial operation and capital raise efforts, and can be terminated at any time by either party with a 60 day notice with an affiliate of the managing member. The agreement requires payments amounting to \$21,160 every 4 weeks through December 2020. Payments related to this agreement amounted to \$48,312 for the year ended December 31, 2018.

#### Management Services

The Company pays an entity owned by one of its members for management services that can be terminated at any time by either party. Payments related to this arrangement amounted to approximately \$477,000 and \$0 for the years ended December 31, 2018 and 2017, respectively.

#### Finder's Fee and Other Services

The Company paid a finders' fee of \$300,000 during the year ended December 31, 2018 to an entity owned by one of its members. Additionally, the Company paid approximately \$437,000 to this entity for other professional services rendered. No such fees were paid to this entity in 2017.

*Material service agreements consummated with third parties:*

#### Financial and Accounting Personnel

The Company entered into an agreement in December 2018 for accounting management services for a fee of \$5,770 to be paid every 2 weeks. Prior to this, the same company was performing similar services in 2018 for \$3,600 every 2 weeks. Payments related to this agreement amounted to \$37,710 for the year ended December 31, 2018.

#### Supply Chain and Inventory Control Management

The Company entered into an agreement with an independent contractor for supply chain and inventory control services in March 2017 for \$1,100 per month. Payments related to this agreement amounted to \$57,200 and \$29,950 for the years ended December 31, 2018 and 2017, respectively.

#### Marketing Services

The Company entered into an agreement with an independent contractor for dedicated marketing measurement management in March 2018 for \$2,995 per week. The contract can be terminated by either party with a 30 day written notice. Payments related to this agreement amounted to \$26,955 for the year ended December 31, 2018.

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The Company entered into an agreement with an independent contractor for e-mail marketing services and related maintenance in November 2017 for \$4,000 per month. The contract can be terminated by either party with a 30 day written notice. Payments related to this agreement amounted to \$48,000 and \$8,000 for the years ended December 31, 2018 and 2017, respectively.

The Company entered into an agreement with an independent contractor for marketing services in March 2018 for \$3,500 per month. The contract can be terminated by either party with a 30 day written notice. Payments related to this agreement amounted to \$35,000 for the year ended December 31, 2018.

### *Material service agreements consummated with third parties:*

#### Placement and Selling Agent

In December 2018, the Company executed an agreement with a third party to assist them in identifying and negotiating with potential investors, assisting in due diligence, and other capital market functions for a term of 6 months. The agreement calls for a \$0 base fee, but a 5% commission on cash proceeds obtained in exchange for shares or equity interest in the Company. The commissions can be paid in cash or equity in the Company. This agreement has an initial six month term, and subsequent to that, with a sixty day notice prior to the end of the initial term, the Company at its option may elect to extend this agreement for one successive twelve month term. Payments related to this agreement amounted to \$110,000 for the year ended December 31, 2018, and is capitalized to related private placement as costs of issuance.

#### Consulting and Business Advisory Services

In September 2018, the Company executed an agreement with two third parties to assist them in brand alignment, introductions to potential investors as well as introductions to others who could provide assistance to the Company. The agreement calls for a referral fee paid of the following:

- 6% of any deal completed with a person or entity that was referred by the third parties up to \$10,000,000.
- 3% of \$10,000,001 – \$20,000,000.
- 1.5% above \$20,000,001

This agreement has an initial term of one year with automatic renewal for successive one year terms. Either party can terminate the agreement with a thirty day written notice. Payments related to this agreement amounted to \$132,000 for the year ended December 31, 2018, and is capitalized to related private placement as costs of issuance.

#### **Note 12 – Royalties:**

The Company entered into an agreement for the payment of royalties related to sales of the Orapup brand dental system in November 2015. The agreement calls for a 10% royalty to be paid on the first \$2.5 million of related sales for a term of 3 years. Subsequent to this, commencing on the earlier of the 3 year term, or the sales ceiling of \$2.5 million has been reached, a 2% royalty will be paid thereafter on the sales of the Orapup brand. In November 2018, the parties reached a settlement whereby the Company paid \$100,000 to fulfill all of their present and future obligations related to this agreement. As such, in addition to this payment, royalty expense amounted to \$3,091 and \$15,011 for the years ended December 31, 2018 and 2017, respectively, all of which are included in selling, general and administrative expenses.

#### **Note 13 – Concentration of Credit Risk:**

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivables. The Company places its cash and cash equivalents with primarily one financial institution. At times, such amounts may be in excess of the FDIC insured limit. The Company has never experienced any losses related to these balances.

The Company routinely assesses the financial strength of its customers and, as a consequence, believes that its accounts receivable credit risk exposure is limited.

#### **Note 14 – Major Suppliers:**

The Company purchased approximately 70% and 54% of its inventories from one vendor for the years ended December 31, 2018 and 2017, respectively. Additionally, the Company primarily utilized one vendor for outsourced manufacturing of their meals for the years ended December 31, 2018 and 2017.

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**Note 15 – Subsequent Events:**

Management has evaluated subsequent events through the date on which the financial statements were issued.

Award of Incentive Units

In January 2019, the Company awarded the following individuals or entities available units of the Equity Incentive Plan:

- Anthony Santarsiero – 397,862 units
- Michelle Ruble, supply chain and inventory control management (see Note 10) – 137,194 units
- Will Mullis – 137,194 units

Provisions under these award agreements call for continuous service to the Company and will vest over a 3 year period unless a deemed liquidation or business combination event occurs, whereby the units will become 100% vested prior to consummation of such event.

Plan and Exchange Agreement

In February 2019, the Company entered into a securities and exchange agreement with Better Choice Company Inc. (“BCC”) (formerly Sports Endurance, Inc.), a Delaware corporation, TruPet LLC, a Delaware limited liability company (“TruPet”), and the holders of the Membership Interests of TruPet. The TruPet Members will sell, convey, transfer and assign to BCC, free and clear of all Encumbrances or known claims of any kind, nature or description, all of the issued and outstanding Membership Interests of TruPet on a fully diluted basis (the “TruPet Exchange Consideration”). The agreement is subject to certain conditions to close disclosed in article 6 of the agreement. Immediately after the consummation of the transaction the TruPet Members, in the aggregate, shall own 38.2% of the voting power and 38.2% of the economic interests in BCC.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Shareholders of Bona Vida, Inc.

**Opinion on the Financial Statements**

We have audited the accompanying balance sheet of Bona Vida Inc. (the "Company") as of December 31, 2018, and the related statements of loss and comprehensive loss, shareholders' equity, and cash flows for the period from the date of incorporation, March 29, 2018 to December 31, 2018, and the related notes (collectively referred to as the financial statements).

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018, and the results of its operations and its cash flows for the period then ended, in conformity with accounting principles generally accepted in the United States of America.

**Material Uncertainty Related to Going Concern**

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company is dependent upon future sources of equity financing in order to fund its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

*MNP LLP*

Chartered Professional Accountants  
Licensed Public Accountants

We have served as the Company's auditor since 2019.  
Toronto, Ontario  
April 9, 2019

**BONA VIDA, INC.**  
**Balance Sheet**  
**As at December 31, 2018**

	<u>Note</u>	
<b>Assets</b>		
Cash and cash equivalents		\$ 1,123,968
Prepaid expenses and deposits	3	<u>540,686</u>
<b>Total current assets</b>		<b><u>1,664,654</u></b>
Intangible assets		9,270
<b>Total assets</b>		<b><u>\$ 1,673,924</u></b>
<b>Liabilities</b>		
Accrued liabilities	6	\$ 115,946
Warrants	4	<u>1,125,861</u>
<b>Total liabilities</b>		<b><u>1,241,807</u></b>
<b>Shareholders' equity</b>		
Capital Stock	4	2,889
Preferred shares, 10,000,000 authorized, nil issued and outstanding;		
Common stock, 75,000,000 authorized, par value \$0.0001, 46,687,200 issued and outstanding		
Additional paid in capital	4	3,594,915
Shares to be issued	5	9,546
Contributed surplus	5	94,172
Deficit		<u>(3,269,405)</u>
<b>Total shareholders' equity</b>		<b><u>432,117</u></b>
<b>Total liabilities and shareholders' equity</b>		<b><u>\$ 1,673,924</u></b>

The accompanying notes are an integral part of these financial statements

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**BONA VIDA, INC.**  
**Statement of Loss and Comprehensive Loss**  
**From the date of incorporation, March 29, 2018 to December 31, 2018**

	<u>Note</u>	<u>2018</u>
<b>For the period ended December 31,</b>		
<b>Expenses</b>		
Finance placement fees	4	\$ 12,526
Salary and benefits		153,241
Selling, general and administrative		277,028
Loss on advanced royalties	7	500,000
Stock based compensation	5	1,390,718
Fair value adjustment on warrants	4	935,892
		<u>3,269,405</u>
<b>Net loss and comprehensive loss</b>		<b><u>\$ 3,269,405</u></b>
Weighted average number of shares outstanding		32,597,423
Loss per share basic and diluted		\$ 0.10

The accompanying notes are an integral part of these financial statements

**BONA VIDA, INC.**  
**Statement of Changes in Equity**  
**From the date of incorporation, March 29, 2018 to December 31, 2018**

	Note	Equity Interest			Shares to be issued	Contributed Surplus	Deficit	Total Equity
		Number	Amount	APIC				
<b>Balance as at March 29, 2018</b>		—	\$ —	\$ —	\$ —	—	—	
Shares issued to founders	4	17,800,000	—	—	—	—	—	
Shares issued pursuant to private placement	4	10,600,000	1,060	316,940	—	—	318,000	
Shares issued pursuant to units offering	4	12,287,200	1,229	1,991,575	—	—	1,992,804	
Shares issued pursuant to services provided	5	6,000,000	600	1,286,400	9,546	—	1,296,546	
Share-Based payments		—	—	—	—	94,172	94,172	
Net loss for the period		—	—	—	—	(3,269,405)	(3,269,405)	
<b>Balance as at December 31, 2018</b>		<u>46,687,200</u>	<u>2,889</u>	<u>3,594,915</u>	<u>9,546</u>	<u>94,172</u>	<u>(3,269,405)</u>	

The accompanying notes are an integral part of these financial statements

**BONA VIDA, INC.**  
**Statement of Cash Flows**  
**From the date of incorporation, March 29, 2018 to December 31, 2018**

	<u>Note</u>	
<b>Cash flows from (used in) operating activities</b>		
Net loss and comprehensive loss		\$ (3,269,405)
Adjustments for non-cash items and others		
Stock based compensation	5	1,390,718
Change in FV of Warrants	4	<u>935,892</u>
		(942,795)
<b>Adjustments for net changes in non-cash operating assets and liabilities</b>		
Prepaid expenses and deposits	3	(540,686)
Accrued liabilities		<u>115,946</u>
<b>Net cash used in operating activities</b>		<b><u>(1,367,535)</u></b>
<b>Cash flows from investing activities</b>		
Purchase of intangible assets		<u>(9,270)</u>
<b>Net cash used in investing activities</b>		<b><u>(9,270)</u></b>
<b>Cash flows from financing activities</b>		
Shares/warrants issued pursuant to units offering, net of transaction costs		2,182,773
Shares issued pursuant to private placement		<u>318,000</u>
<b>Net cash from financing activities</b>		<b><u>2,500,773</u></b>
<b>Net change in cash during the period</b>		<b>1,123,968</b>
Cash and cash equivalents at beginning of period		<u>—</u>
<b>Cash, end of period</b>		<b><u>\$ 1,123,968</u></b>

The accompanying notes are an integral part of these financial statements

**BONA VIDA, INC.**  
**Notes to the Financial Statements**  
**From the date of incorporation, March 29, 2018 to December 31, 2018**

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**Note 1 – Nature Of Operations And Going Concern**

Bona Vida, Inc. (“Bona Vida,” or the “Company”) was originally formed as a Limited Liability Company (LLC) under the laws of the State of California on March 29, 2018. On October 4, 2018, Bona Vida was converted to a Corporation under the laws of the State of Delaware. Bona Vida is developing a portfolio of brand and product verticals within the animal and adult CBD supplement space. The Company is currently working on launching several hemp-derived CBD products within the canine supplements space.

The Company entered into a Trademark License Agreement (the “Agreement”), dated December 21, 2018, with a Company’s shareholder (the “shareholder”) who is the owner of the trademark application for “Bonavida”. Under the Agreement, the shareholder agrees for the nominal consideration to establish the Company’s right to use the trademark for the Business Purpose. Furthermore, the shareholder shall assign the trademark application to the Company once a lawful statement of use or declaration of use is filed at the United States Patent and Trademark Office such that the Company becomes the Assignee and owner of the mark. The Company is the owner and assignee of a US trademark application for “Bona Vida” in international class 005 for animal feed additives for use as nutritional supplements and international class 031 for foodstuffs for animals and pet treats.

**Going Concern**

There is no certainty that the Company will be successful in generating sufficient cash flow from operations or achieving and maintaining profitable operations in the future to enable it to meet its obligations as they come due and consequently continue as a going concern. The Company will require additional financing to fund its operations and it is currently working on securing this funding through corporate collaborations, public or private equity offerings, as described in Note 8. Sales of additional equity securities by the Company would result in the dilution of the interests of existing shareholders. There can be no assurance that financing will be available when required.

The Company expects the forgoing, or a combination thereof, to meet the Company’s anticipated cash requirements for the next 12 months; however, these conditions raise substantial doubt about the Company’s ability to continue as a going concern.

These financial statements have been prepared on the basis that the Company will continue as a going concern, which presumes that it will be able to realize its assets and discharge its liabilities in the normal course of business as they come due. These financial statements do not reflect the adjustments to the carrying values of assets and liabilities and the reported expenses and statement of balance sheet classifications that would be necessary if the Company was unable to realize its assets and settle its liabilities as a going concern in the normal course of operations. Such adjustments could be material.

**Note 2 – Summary Of Significant Accounting Policies**

**Statement of compliance**

The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”) as issued by the Financial Accounting Standards Board (“FASB”) in effect on December 31, 2018. The significant accounting policies applied by the Company are described below.

**Basis of measurement**

The financial statements of the Company are presented using and have been prepared on a going concern basis, under the historical cost convention except for certain financial instruments that are measured at fair value, as explained in the accounting policies below. Historical cost is measured as the fair value of the consideration provided in exchange for goods and services. The Company’s functional and presentation currency is United States dollars (“USD”).

**Cash and Cash Equivalents**

Cash and cash equivalents include demand deposits held with banks and highly liquid investments with remaining maturities of ninety days or less at acquisition date. For purposes of reporting cash flows, the Company considers all cash accounts that are not subject to withdrawal restrictions or penalties to be cash and cash equivalents.

#### **Intangible Assets**

Definite-lived intangible assets are amortized using the straight-line method over their estimated useful lives and are tested for recoverability whenever events or changes in circumstances indicate that carrying amounts of the asset group may not be recoverable. The estimated useful lives and amortization methods are reviewed at the end of each reporting year, with the effect of any changes in the estimate being accounted for on a prospective basis. In the reporting period, the Company purchased a website domain which is still under development and not available for use as of December 31, 2018 and thus has not been amortized.

#### **Derivative Warrant Liability**

The Company's derivative warrant instruments are measured at fair value using the Black-Scholes Model which takes into account, as of the valuation date, factors including the current exercise price, the expected life of the warrant, the current price of the underlying stock and its expected volatility, expected dividends on the stock and the risk-free interest rate for the term of the warrant. The liability is revalued at each reporting period and changes in fair value are recognized in the statements of loss and comprehensive loss.

#### **Basic and diluted loss per share**

Basic and diluted loss per share has been determined by dividing the net loss available to shareholders for the applicable period by the basic and diluted weighted average number of shares outstanding, respectively. The diluted weighted average number of shares outstanding is calculated as if all dilutive options had been exercised or vested at the later of the beginning of the reporting period or date of grant, using the treasury stock method. Common share equivalents, options and warrants are excluded from the computation of diluted loss per share when their effect is anti-dilutive.

#### **Income Taxes**

Deferred taxation is recognized using the asset and liability method, on temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. However, the deferred taxation is not recognized if it arises from initial recognition of an asset or liability in a transaction other than a business combination that at the time of the transaction affects neither accounting nor taxable profit or loss. Deferred taxation is determined using tax rates (and laws) that have been enacted by the reporting date and are expected to apply when the related deferred taxation asset is realized, or the deferred taxation liability is settled.

Deferred tax assets and liabilities are offset if there is a legally enforceable right to offset current tax liabilities and assets, and they relate to income taxes levied by the same tax authority on the same taxable entity, or on different tax entities, but they intend to settle current tax liabilities and assets on a net basis or their tax assets and liabilities will be realized simultaneously.

A deferred tax asset is recognized to the extent that it is probable that future taxable profits will be available against which the temporary difference can be utilized. Deferred tax assets are reviewed at each reporting date and are reduced to the extent that it is no longer probable that the related tax benefit will be realized.

#### **Share-Based Payment Expense**

The Company follows the fair value method of accounting for stock awards granted to employees, directors, officers and consultants. Share-based awards to employees are measured at the fair value of the related share-based awards. Share-based payments to others are valued based on the related services rendered or goods received or if this cannot be reliably measured, on the fair value of the instruments issued. Issuances of shares are valued using the fair value of the shares at the time of grant; issuances of options are valued using the Black-Scholes model with assumptions based on historical experience and future expectations. The Company recognizes share-based payment expenses over the vesting period based on expectations of the number of awards expected to vest over that period on a straight-line basis.

### **Financial Instruments**

The Company's financial instruments recognized in the balance sheet and included in working capital consist of cash and cash equivalents, prepaid expenses and deposits, accrued liabilities and warrants. Cash and cash equivalents, and warrants are measured at fair value each reporting period. The fair values of the remaining financial instruments approximate their carrying values due to their short-term maturities.

The Company's financial instruments exposed to credit risk include cash and cash equivalents. The Company places its cash and cash equivalents with institutions of high creditworthiness.

### **Fair Value of Financial Instruments**

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company has applied the framework for measuring fair value which requires a fair value hierarchy to be applied to all fair value measurements.

All financial instruments recognized at fair value in the balance sheet are classified into one of three levels in the fair value hierarchy as follows:

- Level 1 – valuation based on quoted prices (unadjusted) observed in active markets for identical assets or liabilities.
- Level 2 – valuation techniques based on inputs that are quoted prices of similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; inputs other than quoted prices used in a valuation model that are observable for that instrument; and inputs that are derived from or corroborated by observable market data by correlation or other means.
- Level 3 – valuation techniques with significant unobservable market inputs.

All of the Company's financial instruments, except warrants, were determined to be Level 1 fair value measurement. The warrants were determined to be Level 3 fair value.

### **Use of Estimates**

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of expenses during the reporting periods.

The Company evaluates its estimates on an ongoing basis. The Company bases its estimates on various assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting estimates are reviewed and discussed with the Board of Directors. The Company considers an accounting estimate to be critical if it requires assumptions to be made that were uncertain at the time the estimate was made, if changes in the estimate or if different estimates that could have been selected would have a material impact on the Company's results of operations or financial condition.

Significant estimates and assumptions that have the most significant effect on the amounts recognized in the financial statements relate to, but are not limited to the following:

#### Share-based payments

Valuation of stock-based compensation requires management to make estimates regarding the inputs for option pricing models, such as the share price, expected life of the option, the volatility of the Company's stock price, the vesting period of the option and the risk-free interest rate are used. Actual results could differ from those estimates. The estimates are considered for each new grant of stock options.

Fair value of financial instruments

The individual fair values attributed to the different components of a financing transaction, and/or derivative financial instruments, are determined using valuation techniques. The Company uses judgment to select the methods used to make certain assumptions and in performing the fair value calculations. These valuation estimates could be significantly different because of the use of judgment and the inherent uncertainty in estimating the fair value of these instruments that are not quoted in an active market.

**Effects of Recent Accounting Pronouncements**

The Company has reviewed the FASB issued Accounting Standards Update (“ASU”) accounting pronouncement and interpretations thereof that have effective dates during the reporting period and in future periods. The Company has carefully considered the new pronouncements that alter previous generally accepted accounting principles and does not believe that any new or modified principles will have a material impact on the Company’s reported balance sheet or operations in 2019.

On February 25, 2016, the FASB issued ASU 2016-02, Leases (Topic 842). This update will require organizations that lease assets to recognize on the balance sheets the assets and liabilities for the rights and obligations created by those leases. The new guidance will also require additional disclosures about the amount, timing and uncertainty of cash flows arising from leases. The provisions of this update are effective for annual and interim periods beginning after December 15, 2018.

In June 2016 the FASB issued Topic ASU No. 2016-13 “Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments (Topic 326)” (“ASU 2016-13”). ASU 2016-13 changes the impairment model for most financial assets. The new model uses a forward-looking expected loss method, which will generally result in earlier recognition of allowances for losses. ASU 2016-13 is effective for annual and interim periods beginning after December 15, 2019 and early adoption is permitted for annual and interim periods beginning after December 15, 2018.

In January 2017, the FASB issued ASU 2017-04, Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment (“ASU 2017-04”). The standard provides for the elimination of Step 2 from the goodwill impairment test. If impairment charges are recognized, the amount recorded will be the amount by which the carrying amount exceeds the reporting unit’s fair value with certain limitations. The ASU is effective for public companies for annual periods, and interim periods within those annual periods, beginning after December 15, 2020, and early adoption is permitted.

In June 2018, the FASB issued ASU 2018-07- Stock Compensation (Topic 718). The amendments in this Update expand the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The requirements of Topic 718 should be applied to nonemployee awards except for specific guidance on inputs to an option pricing model and the attribution of cost. The amendments specific that Topic 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor’s own operations by issuing share-based payment awards. The amendments also clarify that Topic 718 does not apply to share-based payments used to effectively provide (1) financing to the issuer or (2) awards granted in conjunction with selling goods or services to customers as part of a contract accounted for under Topic 606, Revenue from Contracts with Customers. These amendments are effective for public companies for fiscal years beginning after December 15, 2018.

**Note 3 – Prepaid Expenses And Deposits**

Prepaid expenses and deposits comprised the following as at December 31:

	<u>2018</u>
Other deposits	\$ 34,436
Inventory deposit	<u>506,250</u>
	\$ 540,686

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**BONA VIDA, INC.**  
**Notes to the Financial Statements**  
**From the date of incorporation, March 29, 2018 to December 31, 2018**

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The inventory deposit constitutes deposit with one supplier for pet related food products.

**Note 4 – Common Stock And Common Share Purchase Warrants**

**Common Stock**

In October 2018, upon Company's conversion from LLC to Corporation as detailed in Note 1, 73,500 LLC units were converted to 29,400,000 common shares. 2,500 LLC units (1,000,000 common shares) were issued in April 2018 to a third-party consultant for services provided, as detailed in Note 5.

The Company is authorized to issue 75,000,000 common stock and 10,000,000 preferred stock, each with a par value of \$0.0001.

There were no issued and outstanding preferred shares as of December 31, 2018.

Common shares as at December 31, 2018 are detailed in the table below:

	<u>Number of Common Shares</u>	<u>Amount, \$</u>	<u>APIC, \$</u>
Opening balance - March 29, 2018	—	—	—
Shares issued during the period	28,400,000	1,060	316,940
Shares issued pursuant to services	6,000,000	600	1,286,400
Units private placement on October 5, 2018	12,287,200	1,229	1,991,575
Balance- December 31, 2018	<u>46,687,200</u>	<u>2,889</u>	<u>3,594,915</u>

**Units private placement**

On October 5, 2018, the Company completed a private placement offering of units for aggregate gross proceeds of \$3,071,800 Canadian Dollars (CAD) (\$2,326,820). A total of 12,287,200 units were issued. Each unit was sold at a price of CAD \$0.25 (\$0.19) per unit. Each unit was comprised of one common share and one half of one common share purchase warrant, each whole warrant being exercisable to purchase one common share at an exercise price of CAD \$0.75 (\$0.57) for a period of 18 months following the date of issuance.

Since the warrants' exercise price is denominated in a currency other than the Company's functional currency, the warrants are not considered indexed to the Company's own stock and thus meet the definition of a financial liability.

The Company estimated a fair value of the warrants as \$189,969 on issuance date, October 5, 2018, and \$1,125,861 as remeasured at December 31, 2018. The fair value adjustment of \$935,892 was recorded in the statement of loss and comprehensive loss.

The fair value of the warrants was estimated using the Black-Scholes valuation model based on the following assumptions:

Share price	\$0.178 - \$0.45
Stock price volatility	107% - 108%
Expected life of the warrants	1.25 - 1.5 years
Risk free rate	1.86% - 2.32%

Inter-relationship between key unobservable inputs and fair value measurement at December 31, 2018:

If the share price was lower (higher) by 10%, the fair value would decrease (increase) by \$163,954 (\$205,025).

If the volatility was lower (higher) by 10%, the fair value would decrease (increase) by \$90,069 (\$135,103).

Total units' issuance cost was \$156,572, \$12,525 of which was assigned to warrants which are accounted for as a derivative liability and is recorded in the reporting period in the statement of loss and comprehensive loss.

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**BONA VIDA, INC.**  
**Notes to the Financial Statements**  
**From the date of incorporation, March 29, 2018 to December 31, 2018**

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The Company had the following warrants outstanding at December 31, 2018

<u>Grant date</u>	<u>Warrants</u>	<u>Exercise Price (\$)</u>	<u>Expiry</u>
October 5, 2018	6,143,600	0.57	April 4, 2020

**Note 5 – Share-Based Payments**

During the period ended December 31, 2018, the Company issued 3,300,000 stock purchase options and 6,000,000 common shares to directors, officers and service providers as share based compensation. The value of the shares given was based on recent financing transactions, the fair value of options was estimated using Black-Scholes valuation model based on the assumptions as detailed below.

Common shares:

In April 2018 the Company issued 1,000,000 common shares, which were estimated at \$0.125 per share, to a third-party consultant for legal services provided.

In October 2018 the Company issued 1,000,000 common shares, which were estimated at \$0.178 per share, to original founders for services provided.

On October 5, 2018, the Board of Directors for the Company authorized the employment agreement for a Chief Executive Officer and awarded 3,000,000 shares of common stock, which were estimated at \$0.178 per share, as compensation.

On December 21, 2018, the Board of Directors of the Company authorized and issued 1,000,000 common shares, which were estimated at \$0.45 per share, to the Bona Vida management team in consideration of the management team joining the Company.

On October 5, 2018, the Company allocated 300,000 shares of common stock to management which will be issued in equal portions over two years (50% end of year 1 and 50% end of year 2). The shares were estimated at \$0.178 per share and the Company recorded stock-based compensation expense \$9,546 in its statement of loss and comprehensive loss in the reporting period.

Stock purchase options:

On October 5, 2018, the Company issued 1,700,000 stock purchase options at an exercise price of \$1.00 to its management. 1,000,000 stock purchase options vests after a one-year period and 700,000 stock purchase options vests after a two-year period; all 1,700,000 stock purchase options are exercisable for ten years from the grant date.

On October 29, 2018, the Company issued 600,000 stock purchase option at an exercise price of \$0.45 to its directors. These options vest after a one-year period and are exercisable for ten years from the grant date.

On November 21, 2018, the Company issued 600,000 stock purchase option at an exercise price of \$1.00 to third party consultants. These options vest after a one-year period and are exercisable for ten years from the grant date.

On December 21, 2018, the Company issued 400,000 stock purchase option at an exercise price of \$0.45 to its directors. These options vest after a one-year period and are exercisable for ten years from the grant date.

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Notes to the Financial Statements  
From the date of incorporation, March 29, 2018 to December 31, 2018**

The components of stock purchase options are detailed in the table below.

	Date of grant	Vesting period (years)	Number	Exercise price (\$)	Share-based payment expense (\$)	Share price (\$)	Risk-free rate	Volatility	Dividend yield	Expiry (years)
Option grant	10/05/18	1	1,000,000	1.00	35,141	0.178	2.32	108%	Nil	10
Option grant	10/05/18	2	700,000	1.00	12,299	0.178	2.32	108%	Nil	10
Option grant	10/29/18	1	600,000	0.45	16,197	0.178	2.32	108%	Nil	10
Option grant	11/21/18	1	600,000	1.00	26,008	0.45	1.86	107%	Nil	10
Option grant	12/21/18	1	400,000	0.45	4,527	0.45	1.86	107%	Nil	10
Total options grant			3,300,000		94,172					

As at December 31, 2018, all stock options granted remained outstanding and not exercisable.

**Note 6 – Related Party Transactions And Balances**

As at December 31, 2018, the Company had an amount owing to the officers of the Company of \$57,177 for salary and bonus which is recorded in accrued liabilities.

A total of \$1,049,410 was recognized during the period ended December 31, 2018, for share-based payments expense to directors and officers of the Company.

**Note 7 – Loss On Advanced Royalties**

In May 2018, the Company advanced \$500,000 as well as the rights to purchase common stock to a celebrity endorser in order to obtain the rights to use the name, likeness and endorsement services of said celebrity. In December 2018 the deal was terminated, after the advances were already paid out. Bona Vida waived the right to claim the \$500,000 advance, and the celebrity waived the rights to Bona Vida's shares.

**Note 8 – Income Taxes**

The reconciliation of the combined U.S. federal and state statutory income tax rate of 27.98% the effective tax rate is as follows:

Net Loss before recovery of income taxes	\$ (3,269,405)
Expected income tax (recovery)	\$ (914,897)
Other non-deductible expenses	4,716
Fair value adjustment on warrants	261,896
Change in tax benefits not recognized	648,285
Income tax (recovery) expense	\$ —

The Company's income tax (recovery) is allocated as follows:

Current tax (recovery) expense	\$ —
Deferred tax (recovery) expense	—
	\$ —

**Unrecognized deferred tax assets**

Deferred taxes are provided as a result of temporary differences that arise due to the differences between the income tax values and the carrying amount of assets and liabilities. Deferred tax assets have not been recognized in respect of the following deductible temporary differences:

Stock Based Compensation	\$ 1,390,718
Capitalized start-up cost	925,943

**Note 9 – Subsequent Events**

The Company has evaluated subsequent events occurring after the balance sheet date through the date the consolidated financial statements were issued.

On January 9, 2019, the Company entered into a Share Purchase Agreement (the “Agreement”) to acquire GBX Labs Ltd. (“GBX”), a BVI business company incorporated under the laws of the British Virgin Islands. Pursuant to the Agreement, the Company issued a total of 10,000,000 common shares in consideration for a 100% ownership interest in GBX. On a pro-forma basis (unaudited), since GBX had no revenue and expenses in 2018, had this acquisition been completed on March 29, 2018 (date of incorporation), the net loss of the Company would not have changed.

On January 29, 2019, the Company finalized a share buy-back (“Buy-Back”) whereby it acquired 13,407,200 common shares and 303,600 warrants from existing shareholders for a total consideration of \$625,000. All common shares and warrants under the Buy-Back have been cancelled by the Company.

On February 6, 2019, the Company signed a non-binding letter of intent with Sports Endurance, Inc. (“SENZ”), to be renamed Better Choice Company, Inc., to acquire 100% of Bona Vida. SENZ is prepared to complete the acquisition by purchasing the 100% of Bona Vida issued and outstanding common stock for \$55,000,000 (the “Purchase Price”) equal to approximately USD \$0.97 per Share. The Purchase Price is based on the assumption that 56,942,222 Shares (on fully diluted basis) are issued and outstanding on the closing date of the Transaction. The Purchase Price would be satisfied in SENZ common stock (the “SENZ Shares”) issued at an exchange ratio of 26 SENZ Shares for each Share held. Immediately following the closing (the “Closing”) of the Transaction, Bona Vida shareholders will own 468,085,106 (or 46%) of the issued and outstanding SENZ Shares (on a fully diluted basis) based on the assumption that 1,018,668,131 SENZ Shares will be issued and outstanding at Closing.

Subsequent to December 31, 2018, the Company completed several subscription agreements for the issuance of common shares for gross proceeds of \$1,999,970 through the issuance of 4,444,440 common shares.

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**Bona Vida, Inc.**  
**Unaudited Interim Condensed Consolidated Balance Sheet**  
**As at March 31, 2019 and December 31, 2018**

	Note	Unaudited As of March 31, 2019	Audited As of December 31, 2018
<b>Assets</b>			
Cash and cash equivalents		\$ 1,488,794	\$ 1,123,968
Inventories	3	351,402	—
Prepaid expenses and deposits	4	471,709	540,686
Total current assets		<u>2,311,905</u>	<u>1,664,654</u>
Intangible assets		<u>8,575</u>	<u>9,270</u>
<b>Total assets</b>		<b><u>\$ 2,320,480</u></b>	<b><u>\$ 1,673,924</u></b>
<b>Liabilities</b>			
Accounts Payable		\$ 105,287	\$ —
Accrued liabilities		33,707	115,946
Other Liabilities		19,298	—
Warrants	5	927,926	1,125,861
<b>Total liabilities</b>		<b><u>1,086,218</u></b>	<b><u>1,241,807</u></b>
<b>Shareholders' equity</b>			
Capital Stock	5	4,172	2,889
Preferred shares, 10,000,000 authorized, nil issued and outstanding as at March 31, 2019 and December 31, 2018;			
Common stock, 75,000,000 authorized, par value \$0.0001, 47,724,440 and 46,687,200 issued and outstanding as at March 31, 2019 and December 31, 2018 accordingly			
Additional paid in capital	5	9,784,220	3,594,915
Shares to be issued	6	19,531	9,546
Contributed surplus		267,552	94,172
Accumulated Deficit		<u>(8,841,213)</u>	<u>(3,269,405)</u>
<b>Total shareholders' equity</b>		<b><u>1,234,262</u></b>	<b><u>432,117</u></b>
<b>Total liabilities and shareholders' equity</b>		<b><u>\$ 2,320,480</u></b>	<b><u>\$ 1,673,924</u></b>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

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**Bona Vida, Inc.**  
**Unaudited Interim Condensed Consolidated Statement of Loss and Comprehensive Loss**  
**For the Three Months Ended March 31, 2019**

	<u>Note</u>	
Net Sales		\$ 17,547
Cost of Goods Sold		<u>17,763</u>
Gross Loss		(216)
Selling, general and administrative		5,159,654
Other Income (Expense)		
Fair Value Adjustments	5	(144,782)
Share Based Compensation	6	<u>183,365</u>
<b>Net Loss and Comprehensive Loss</b>		<b>\$ (5,198,453)</b>
Weighted average number of shares outstanding		48,215,560
Loss per share basic and diluted		(0.11)

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

**Bona Vida, Inc.**  
**Unaudited Interim Condensed Consolidated Statement of Changes in Equity**  
**For the Three Months Ended March 31, 2019 and**  
**From the Date of Incorporation March 29, 2018 to December 31, 2018**

	Note	Equity Interest			Shares to be issued	Contributed Surplus	Deficit	Total Equity
		Number	Amount	APIC				
<b>Balance as at March 29, 2018</b>								
Shares issued to founders		17,800,000	\$ —	\$ —	—	\$ —	\$ —	\$ —
Shares issued pursuant to private placement		10,600,000	1,060	316,940				318,000
Shares issued pursuant to units offering		12,287,200	1,229	1,991,575				1,992,804
Shares issued pursuant to services provided		6,000,000	600	1,286,400	9,546			1,296,546
Share-Based payments		—	—	—	—	94,172	—	94,172
Net loss for the period		—	—	—	—	—	(3,269,405)	(3,269,405)
<b>Balance as at December 31, 2018 (Audited)</b>		<b>46,687,200</b>	<b>2,889</b>	<b>3,594,915</b>	<b>9,546</b>	<b>94,172</b>	<b>(3,269,405)</b>	<b>432,117</b>
Shares issued pursuant to investment	5	10,000,000	1,000	4,499,000	—	—	—	4,500,000
Share Buy-Back	5	(13,407,200)	(141)	(198,351)	—	—	(373,355)	(571,847)
Shares issued pursuant to private placement, net of transaction cost	5	4,444,440	424	1,888,656	—	—	—	1,889,080
Shares issued pursuant to services provided	6	—	—	—	9,985	—	—	9,985
Share-Based payments	6	—	—	—	—	173,380	—	173,380
Net loss for the period		—	—	—	—	—	(5,198,453)	(5,198,453)
<b>Balance as at March 31, 2019</b>		<b>47,724,440</b>	<b>\$ 4,172</b>	<b>\$ 9,784,220</b>	<b>19,531</b>	<b>\$ 267,552</b>	<b>\$ (8,841,213)</b>	<b>\$ 1,234,262</b>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

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**Bona Vida, Inc.**  
**Unaudited Interim Condensed Consolidated Statement of Cash Flow**  
**For the Three Months Ended March 31, 2019**

	<u>Note</u>	
<b>Cash flows from (used in) operating activities</b>		
Net loss and comprehensive loss		\$ (5,198,453)
Adjustments for non-cash items and others		
Depreciation and amortization		696
Stock based compensation	6	183,365
Change in FV of Warrants	5	<u>(144,782)</u>
<i>Adjustments for net changes in non-cash operating assets and liabilities</i>		
Inventory	3	(351,402)
Prepaid expenses and deposits	4	68,977
Other Liabilities		19,298
Accrued liabilities		(82,239)
Accounts Payable		<u>105,286</u>
<b>Net cash used in operating activities</b>		<b><u><u>(5,399,254)</u></u></b>
<b>Cash flows from financing activities</b>		
Shares issued pursuant to investments	5	4,500,000
Shares issued pursuant to private placement, net of transaction cost	5	1,889,080
Share buyback	5	<u>(625,000)</u>
<b>Net cash from financing activities</b>		<b><u><u>5,764,080</u></u></b>
<b>Net change in cash during the period</b>		<b>364,826</b>
Cash and cash equivalents at beginning of period		<u>1,123,968</u>
<b>Cash, end of period</b>		<b><u><u>\$ 1,488,794</u></u></b>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

**Notes to Unaudited Financial Statements**

**Note 1 – Nature of Operations and Going Concern**

Bona Vida, Inc. (“Bona Vida,” or the “Company”) was originally formed as a Limited Liability Company (LLC) under the laws of the State of California on March 29, 2018. There were no operations from the date of incorporation, March 29, 2018 to March 31, 2018. Therefore, the Statements of Loss and Comprehensive Loss, Changes in Equity and Cash Flows for the period from the date of incorporation, March 29, 2018 to March 31, 2018, are not presented in these unaudited interim condensed consolidated financial statements. On October 4, 2018, Bona Vida was converted to a Corporation under the laws of the State of Delaware. Bona Vida is developing a portfolio of brand and product verticals within the animal and adult CBD supplement space. The Company is currently working on launching several hemp-derived CBD products within the canine supplements space.

The Company entered into a Trademark License Agreement (the “Agreement”), dated December 21, 2018, with a Company’s shareholder (the “shareholder”) who is the owner of the trademark application for “Bonavida”. Under the Agreement, the shareholder agrees for the nominal consideration to establish the Company’s right to use the trademark for the Business Purpose. Furthermore, the shareholder shall assign the trademark application to the Company once a lawful statement of use or declaration of use is filed at the United States Patent and Trademark Office such that the Company becomes the Assignee and owner of the mark. The Company is the owner and assignee of a US trademark application for “Bona Vida” in international class 005 for animal feed additives for use as nutritional supplements and international class 031 for foodstuffs for animals and pet treats.

**Going Concern**

There is no certainty that the Company will be successful in generating sufficient cash flow from operations or achieving and maintaining profitable operations in the future to enable it to meet its obligations as they come due and consequently continue as a going concern. The Company will require additional financing to fund its operations. Sales of additional equity securities by the Company would result in the dilution of the interests of existing shareholders. There can be no assurance that financing will be available when required.

The Company expects the forgoing, or a combination thereof, to meet the Company’s anticipated cash requirements for the next 12 months; however, these conditions raise substantial doubt about the Company’s ability to continue as a going concern.

These unaudited interim condensed consolidated financial statements have been prepared on the basis that the Company will continue as a going concern, which presumes that it will be able to realize its assets and discharge its liabilities in the normal course of business as they come due. These unaudited interim condensed consolidated financial statements do not reflect the adjustments to the carrying values of assets and liabilities and the reported expenses and balance sheet classifications that would be necessary if the Company was unable to realize its assets and settle its liabilities as a going concern in the normal course of operations. Such adjustments could be material.

**Note 2 – Summary of Significant Accounting Policies**

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”) as issued by the Financial Accounting Standards Board (“FASB”) in effect on March 31, 2019. The significant accounting policies applied by the Company are described below.

The consolidated financial statements of the Company are presented using and have been prepared on a going concern basis, under the historical cost convention except for certain financial instruments that are measured at fair value, as explained in the accounting policies below. Historical cost is measured as the fair value of the consideration provided in exchange for goods and services. The Company’s functional and presentation currency is United States dollars (“USD”).

The consolidated financial statements and notes thereto are unaudited. These consolidated statements include all adjustments (consisting of normal recurring accruals) that the Company considered necessary to present a fair consolidated statement of the Company’s results of operations, balance sheet and cash flows. The results reported in these consolidated financial statements should not be regarded as necessarily indicative of results that may be expected for the entire year. It is suggested that these consolidated financial statements be read in conjunction with the audited financial statements and notes thereto for the period from the date of incorporation, March 29, 2018 to December 31, 2018.

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The Company's significant accounting policies are described in Note 2 to the aforementioned audited financial statements. The Company includes herein certain updates to those policies.

Inventories are recorded at the lower of cost and net realizable value. The net realizable value represents the estimated selling price for inventories in the ordinary course of business, less all estimated costs of completion and costs necessary to make the sale. Cost is determined on a standard cost basis and includes the purchase price and other costs, such as transportation costs. Inventory's average cost is determined on a first-in, first-out ("FIFO") basis and trade discounts are deducted from the purchase price.

In June 2018, the FASB issued ASU 2018-07- Stock Compensation (Topic 718). The amendments in this Update expand the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The requirements of Topic 718 should be applied to nonemployee awards except for specific guidance on inputs to an option pricing model and the attribution of cost. The amendments specific that Topic 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor's own operations by issuing share-based payment awards. The amendments also clarify that Topic 718 does not apply to share-based payments used to effectively provide (1) financing to the issuer or (2) awards granted in conjunction with selling goods or services to customers as part of a contract accounted for under Topic 606, Revenue from Contracts with Customers. These amendments are effective for public companies for fiscal years beginning after December 15, 2018. The Company adopted ASU 2018-07 on January 1, 2019 and there has been no impact on the Interim Condensed Consolidated Financial Statements as a result of adoption.

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2014-09, "Revenue from Contract with Customers" (Topic 606) ("ASU2014-09"), which supersedes the revenue recognition requirements in ASC Topic 605, "Revenue Recognition," and most industry-specific guidance. ASU No. 2014-09 is based on the principal that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The ASU also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgements and changes in judgements, and assets recognized from costs incurred to obtain or fulfill a contract. The Company adopted ASU 2014-09 on January 1, 2019. In the period ended December 31, 2018, no revenue was recognized in the Company's statement of loss and comprehensive loss.

The Company recognizes revenue to depict the transfer of promised goods to the customer in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods.

In order to recognize revenue, the Company applies the following five (5) steps:

- Identify a customer along with a corresponding contract;
- Identify the performance obligation(s) in the contract to transfer goods to a customer;
- Determine the transaction price the Company expects to be entitled to in exchange for transferring promised goods to a customer;
- Allocate the transaction price to the performance obligation(s) in the contract;
- Recognize revenue when or as the Company satisfies the performance obligation(s).

Revenue is recognized upon the satisfaction of the performance obligation. The Company satisfies its performance obligation and transfers control upon shipment to the customer.

### **Note 3 – Inventory**

Inventories, consisting entirely of finished goods, reflected on the accompanying balance sheets are summarized as follows:

	<u>March 31,</u> <u>2019</u>	<u>December 31,</u> <u>2018</u>
Treats & Supplements	\$ 351,402	\$ —

The Company estimated an inventory reserve to be nil as at March 31, 2019.

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**Note 4 – Prepaid Expenses and Deposits**

Prepaid expenses and deposits comprised the following as at March 31:

	<b>March 31, 2019</b>	<b>December 31, 2018</b>
Other deposits	\$ 101,755	\$ 34,436
Inventory deposit	369,954	506,250
	<u>\$ 471,709</u>	<u>\$ 540,686</u>

The inventory deposit constitutes a deposit with one supplier for pet related supplement products. Other deposits include credit card and merchant deposit and prepaid insurance.

**Note 5 – Common Stock and Common Share Purchase Warrants**

**Common Stock**

In October 2018, upon the Company’s conversion from an LLC to a Corporation as detailed in Note 1, 73,500 LLC units were converted to 29,400,000 common shares. 2,500 LLC units (1,000,000 common shares) were issued in April 2018 to a thirdparty consultant for services provided, as detailed in Note 6.

The Company is authorized to issue 75,000,000 common stock and 10,000,000 preferred stock, each with a par value of \$0.0001.

There were no issued and outstanding preferred shares as of March 31, 2019.

*GBX Acquisition*

On January 9, 2019, the Company entered into a Share Purchase Agreement (the “Agreement”) to acquire GBX Labs Ltd. (“GBX”), a BVI business company incorporated under the laws of the British Virgin Islands. Pursuant to the Agreement, the Company issued a total of 10,000,000 common shares at estimated value of \$0.45 per share in consideration for a 100% ownership interest in GBX. Refer to note 7.

*Share Buyback*

In January 2019, the Company finalized a share buy-back (“Buy-Back”) whereby it acquired 13,407,200 common shares and 303,600 common share purchase warrants which were part of the October 5, 2018 private placement, as detailed below, from existing shareholders for a total consideration of \$626,500. The acquired common shares and warrants have been cancelled by the Company. The Buy-Back constitutes the repurchase of common shares and warrants, the total consideration was allocated first on the fair value of warrants on the Buy-Back date and subsequently to the par value and APIC associated with the cancelled shares. The excess of the consideration was charged to a deficit.

As a result of the Buy-Back, the Company reduced the fair value of the warrants by \$53,153, equity interest by \$198,492, increased deficit by \$373,355 and incurred legal fees of \$1,500.

In January 2019, the Company completed a private placement offering of shares for aggregate gross proceeds of \$1,909,998. A total of 4,444,440 shares were issued, at a price of \$0.45 per share. The total shares included 200,000 shares issued to a third party consultant for the services associated with the private placement. In addition, the Company incurred \$20,918 legal fees associated with private placement.

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Common shares as at March 31, 2019 and December 31, 2018 are detailed in the table below:

	Number of Common Shares	Amount, \$	APIC, \$
Opening balance- March 29, 2018	—	—	—
Shares issued during the period	28,400,000	1,060	316,940
Shares issued pursuant to services	6,000,000	600	1,286,400
Units private placement on October 5, 2018	12,287,200	1,229	1,991,575
Balance- December 31, 2018	46,687,200	2,889	3,594,915
GBX Acquisition	10,000,000	1,000	4,499,000
Share Buy-Back	(13,407,200)	(141)	(198,351)
Shares issued during the period	4,444,440	424	1,888,656
Balance – March 31, 2019	47,724,440	4,172	9,784,220

### Units private placement

On October 5, 2018, the Company completed a private placement offering of units for aggregate gross proceeds of \$3,071,800 Canadian Dollars (CAD) (\$2,326,820). A total of 12,287,200 units were issued. Each unit was sold at a price of CAD \$0.25 (\$0.19) per unit. Each unit was comprised of one common share and one half of one common share purchase warrant, each whole warrant being exercisable to purchase one common share at an exercise price of CAD \$0.75 (\$0.57) for a period of 18 months following the date of issuance.

Since the warrants' exercise price is denominated in a currency other than the Company's functional currency, the warrants are not considered indexed to the Company's own stock and thus meet the definition of a financial liability.

The Company estimated a fair value of the warrants as \$1,125,861 on December 31, 2018, and \$927,926 as remeasured at March 31, 2019. The fair value of \$53,153 of repurchased warrants was deducted from the warrants on the Buy-Back date, as detailed above, and the fair value adjustment of \$144,782 related to the remaining warrants was recorded in the Consolidated Statement of Loss and Comprehensive Loss.

The fair value of the warrants as at March 31, 2019 and the warrants repurchased in a Buy-Back was estimated using the Black-Scholes valuation model based on the following assumptions:

Share price	\$0.45
Stock price volatility	107%
Remaining life of the warrants	1.01- 1.19 years
Risk free rate	2.41%

Inter-relationship between key unobservable inputs and fair value measurement at March 31, 2019:

If the share price was lower (higher) by 10%, the fair value would decrease (increase) by \$163,251 (\$172,384).

If the volatility was lower (higher) by 10%, the fair value would decrease (increase) by \$107,491 (\$104,760).

The Company had the following warrants outstanding at March 31, 2019.

Grant date	Warrants	Exercise Price (\$)	Expiry
October 5, 2018	5,840,000	0.60	April 4, 2020

### Note 6 – Share-Based Payments

During the period ended December 31, 2018, the Company issued 3,300,000 stock purchase options and 6,000,000 common shares to directors, officers and service providers as share based compensation. The value of the shares given was based on recent financing transactions, the fair value of options was estimated using Black-Scholes valuation model based on the assumptions as detailed below.

#### Common shares:

In April 2018 the Company issued 1,000,000 common shares, which were estimated at \$0.125 per share and vested immediately, to a third-party consultant for legal services provided.

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In October 2018 the Company issued 1,000,000 common shares, which were estimated at \$0.178 per share and vested immediately, to original founders for services provided.

On October 5, 2018, the Board of Directors for the Company authorized the employment agreement for a Chief Executive Officer and awarded 3,000,000 shares of common stock, which were estimated at \$0.178 per share and vested immediately, as compensation.

On December 21, 2018, the Board of Directors of the Company authorized and issued 1,000,000 common shares, which were estimated at \$0.45 per share and vested immediately, to the Bona Vida management team in consideration of the management team joining the Company.

On October 5, 2018, the Company allocated 300,000 shares of common stock to management which will be issued in equal portions over two years (50% end of year 1 and 50% end of year 2). The shares were estimated at \$0.178 per share and the Company recorded stock-based compensation fair value adjustment expense of \$9,985 in its consolidated statement of loss and comprehensive loss in the reporting period (Dec 31, 2018 - \$9,546) and as shares to be issued in the statement of changes in equity.

### Stock purchase options:

On October 5, 2018, the Company issued 1,700,000 stock purchase options at an exercise price of \$1.00 to its management. 1,000,000 stock purchase options vests after a one-year period and 700,000 stock purchase options vests after a two-year period; all 1,700,000 stock purchase options are exercisable for ten years from the grant date.

On October 29, 2018, the Company issued 600,000 stock purchase option at an exercise price of \$0.45 to its directors. These options vest after a one-year period and are exercisable for ten years from the grant date.

On November 21, 2018, the Company issued 600,000 stock purchase option at an exercise price of \$1.00 to third party consultants. These options vest after a one-year period and are exercisable for ten years from the grant date.

On December 21, 2018, the Company issued 400,000 stock purchase option at an exercise price of \$0.45 to its directors. These options vest after a one-year period and are exercisable for ten years from the grant date.

The components of stock purchase options are detailed in the table below.

	<u>Date of grant</u>	<u>Vesting period (years)</u>	<u>Number</u>	<u>Exercise price (\$)</u>	<u>Share-based payment expense (\$)</u>	<u>Share price (\$)</u>	<u>Risk-free rate</u>	<u>Volatility</u>	<u>Dividend yield</u>	<u>Expiry (years)</u>
Option grant	10/05/18	1	1,000,000	1.00	35,141	0.178	2.32	108%	Nil	10
Option grant	10/05/18	2	700,000	1.00	12,299	0.178	2.32	108%	Nil	10
Option grant	10/29/18	1	600,000	0.45	16,197	0.178	2.32	108%	Nil	10
Option grant	11/21/18	1	600,000	1.00	26,008	0.45	1.86	107%	Nil	10
Option grant	12/21/18	1	400,000	0.45	4,527	0.45	1.86	107%	Nil	10

The Company recorded stock-based compensation of stock purchase options expense of \$173,380 in its consolidated statement of loss and comprehensive loss in the reporting period (Dec 31, 2018 – 94,172). As at March 31, 2019, all stock options granted remained outstanding and not exercisable.

### **Note 7 – GBX Acquisition**

On January 9, 2019, the Company entered into a Share Purchase Agreement (the “Agreement”) to acquire GBX, a BVI business company incorporated under the laws of the British Virgin Islands. Pursuant to the Agreement, the Company issued a total of 10,000,000 common shares at estimated value of \$0.45 per share in consideration for a 100% ownership interest in GBX.

The Company concluded GBX did not constitute a business and did not fulfill the definition of an asset and recorded an expense of \$4,500,000 in its consolidated statement of loss and comprehensive loss in the reporting period.

### **Note 8 – Subsequent Events**

The Company has evaluated subsequent events occurring after the balance sheet date through the date the consolidated financial statements were issued.

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On May 6, 2019, BCC Merger Sub, Inc., a Delaware Corporation and a wholly owned subsidiary of BCC, merged with and into the Company, with the Company being the surviving corporation (the “Bona Vida Merger”). The merger between BCC Merger Sub, Inc. and the Company was constituted as a reorganization under Code Section 368(a)(2)(E). Pursuant to the Bona Vida Merger, the Company Common Stock held by each Bona Vida Shareholder that are issued and outstanding as of immediately prior to the effective date converted into 468,085,106 shares, or 18,003,273 shares after adjusting for BCC’s 26 for 1 reverse stock split, of BCC Common Stock equal to 46% of the issued and outstanding shares of BCC’s voting stock and any other class of stock, on a fully diluted basis, subject to adjustment to reflect the effect of any BCC stock split, reverse stock split or stock dividend.

On May 14, 2019, the Company purchased Wamor Corporation S.A. in the Republic of Uruguay which it will utilize in the expansion of its operations into Latin America. On a pro-forma basis, since Wamor Corporation S.A. had no revenue and expenses in 2019, had this acquisition been completed on January 1, 2019, the net loss of the Company would not have changed.

**Up to 46,765,215 Shares**

**Common Stock**

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**PROSPECTUS**

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**Better Choice Company Inc.**

, 2019

Through and including \_\_\_\_\_, 2019 (the 25<sup>th</sup> day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in the listing, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

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**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.**

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement all of which will be paid by us. All of the amounts are estimated except for the Securities and Exchange Commission (“SEC”) registration fee, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filing fee and the exchange listing fee.

<b>Item</b>	<b>Amount</b>
SEC registration fee	\$ (1)
Exchange listing fee	\$ (1)
Legal fees and expenses	\$ (1)
Accounting fees and expenses	\$ (1)
Printing expenses	\$ (1)
Transfer agent and registrar fees	\$ (1)
Blue sky fees and expenses	\$ (1)
FINRA filing fees	\$ (1)
Miscellaneous	\$ (1)
<b>Total</b>	<u>\$ (1)</u>

(1) To be filed by amendment.

**ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Article 10 of the registrant’s certificate of incorporation (the “Certificate of Incorporation”) limits the liability of the registrant’s directors for monetary damages for breach of their fiduciary duty as directors, except to the extent such exemption or limitation thereof is not permitted under the Delaware General Corporation Law (the “DGCL”) and applicable law. Delaware law provides that such a provision may not limit the liability of directors:

- for any breach of their duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- for unlawful payment of dividend or unlawful stock repurchase or redemption, as provided under Section 174 of the DGCL; or
- for any transaction from which the director derived an improper personal benefit.

The limitation of liability does not apply to liabilities arising under the federal or state securities laws and does not affect the availability of equitable remedies, such as injunctive relief or rescission.

Article 11 of the Certificate of Incorporation states that the registrant shall indemnify, to the fullest extent permitted by applicable law, any person who is a party or is threatened to be made a party to any action, suit or proceeding authorized by the registrant’s board of directors by reason of the fact that such person is or was a director or executive officer of the registrant or is or was serving at the request of the registrant. Article 11 of the Certificate of Incorporation also requires the registrant to pay any expenses incurred by any director or executive officer in defending against any such action, suit or proceeding in advance of the final disposition of such matter to the fullest extent permitted by law, subject to the receipt of an undertaking by or on behalf of such person to repay all amounts so advanced if it shall ultimately be determined that such person is not entitled to be indemnified as authorized by the Certificate of Incorporation or otherwise.

Article 11 of the Certificate of Incorporation permits the registrant to purchase and maintain director or officer liability insurance.

The registrant has entered into indemnification agreements with its directors and officers. Subject to certain limited exceptions, under these agreements, the registrant will be obligated, to the fullest extent not prohibited by the DGCL,

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to indemnify such directors and officers against all expenses, judgments, fines and penalties incurred in connection with the defense or settlement of any actions brought against them by reason of the fact that they were directors or officers of the registrant. The registrant also maintains liability insurance for its directors and officers in order to limit its exposure to liability for indemnification of such persons.

### **ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES**

Since January 1, 2016, the registrant made the following issuances of its unregistered securities as described below. All share amounts have been retroactively adjusted to give effect to the reverse stock split of 26-for-1 of the registrant's common stock effected on March 15, 2019.

- (1) On May 11, 2016, the registrant issued 200,000 shares of common stock, valued at \$360,000 as commitment shares to convertible note holders of the registrant. These shares were issued at fair value based on the market price at issuance of \$1.80 per share.
- (2) On May 11, 2016, the registrant issued senior secured convertible promissory notes to an investor in the principal amount of \$440,000 with an original issue discount of 3.5% (the "3.5% OID Convertible Notes").
- (3) On December 28, 2016, the registrant issued an investor of the registrant 35,000 shares of common stock as partial consideration for entering into a forbearance agreement with respect to debt held by such investor.
- (4) In January 2017 and February 2017, the registrant entered into restructuring agreements with holders of its 3.5% OID Convertible Notes. Pursuant to these agreements, the registrant agreed to issue new notes (the "January and February 2017 Convertible Notes") for the amounts due under the 3.5% OID Convertible Notes; penalties, fees, and accrued interest in the aggregate amount of \$212,702 would be added to the principal amount due under the January and February 2017 Convertible Notes; 35,000 shares of common stock were issued as a commitment fee.
- (5) On May 2, 2017, the registrant issued 208,333 shares of common stock, for the conversion of \$15,000 of principal and \$10,000 of accrued interest of convertible notes payable.
- (6) On June 2, 2017, the registrant issued 208,333 shares of common stock as consideration for the conversion of \$25,000 of principal of convertible notes.
- (7) On November 17, 2017, the registrant issued a senior secured convertible note to an investor in the principal amount of \$250,000 with an original issue discount of 3.5% and received gross proceeds of \$241,250.
- (8) On January 29, 2018, the registrant issued 998,540 shares of common stock in exchange for the conversion of \$28,148 of principal and \$1,808 of accrued interest of convertible notes payable.
- (9) On February 15, 2018, the registrant issued (i) senior secured convertible promissory notes to an investor in the amount of \$250,000 with an original issue discount of 3.5% and (ii) 500,000 five-year warrants to purchase the registrant's common stock, exercisable at \$0.01 per share, and received gross proceeds of \$241,250.
- (10) On March 14, 2018, a subsidiary of the registrant issued (i) a 10% original issue discount senior secured convertible note in the principal amount of \$5,500,000 and (ii) 25,000,000 five-year warrants to purchase the registrant's common stock, exercisable at \$0.01 per share, and received \$5,000,000 of bitcoin valued as of such date.
- (11) On March 19, 2018, the registrant issued (i) a senior secured convertible note to an investor in the principal amount of \$777,202 with an original issue discount of 3.5% and (ii) 1,554,405 five-year warrants to purchase the registrant's common stock, exercisable at \$0.01 per share, and received gross proceeds of \$750,000.
- (12) On October 22, 2018, the registrant issued 2,846,356 shares of Series E Convertible Preferred Stock to existing holders of the registrant's securities in exchange for the cancellation of all outstanding secured promissory notes, 803,969.73 shares of Series B Convertible Preferred Stock and 12,054,405 of the registrant's outstanding warrants. The shares of Series E Convertible Preferred Stock were issued and sold in reliance upon the exemption from registration contained in Section 3(a)(9) of the Securities Act.

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- (13) On December 12, 2018, the registrant issued 1,425,641 units to new investors, with each unit consisting of (i) one share of our common stock and (ii) a warrant to purchase one half of a share of common stock. The units were offered at a fixed price of \$1.95 per unit for gross proceeds of approximately \$2.7 million.
- (14) On December 21, 2018, the registrant issued certain directors and employees stock options to purchase 38,462 shares of the registrant's common stock. The stock options have an exercise price of \$6.76 per share.
- (15) In connection with the acquisition of Bona Vida, Inc., on May 6, 2019, the registrant issued an aggregate of 18,003,273 shares of common stock to new investors and certain of our directors and executive officers in exchange for all outstanding shares of common stock of Bona Vida, Inc.
- (16) In connection with the acquisition of TruPet LLC, on May 6, 2019, the registrant issued an aggregate of 15,027,533 shares of common stock to new investors and certain of our directors and executive officers in exchange for all remaining outstanding membership interests of TruPet LLC.
- (17) On May 6, 2019, the registrant issued an aggregate of 5,744,991 shares of common stock and 5,744,991 warrants at an offering price of \$3.00 per share to new investors and certain of our directors. The warrants have an exercise price of \$4.25 per share.
- (18) On May 6, 2019, the registrant issued certain directors and employees stock options to purchase 5,520,000 shares of the registrant's common stock. The stock options have an exercise price of \$5.00 per share.
- (19) On August 28, 2019, the registrant issued an aggregate of 1,000,000 shares of common stock at a price per share of \$5.00 to an affiliate of iHeartMedia + Entertainment, Inc. ("iHeart") as consideration for iHeart's provision of advertising inventory with an aggregate value of \$5.0 million.
- (20) On September 17, 2019, the registrant issued Bruce Linton (i) 2,500,000 share purchase warrants, with each warrant entitling Mr. Linton to acquire one share of common stock at a price of \$0.10 per share and (ii) an additional 1,500,000 share purchase warrants entitling Mr. Linton to acquire one share of common stock at a price of \$10.00 per share as consideration for Mr. Linton's services as a special advisor to our Chief Executive Officer, other senior executives and our board of directors.

Unless otherwise stated above, the issuances of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act, or Regulation D promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were placed upon the stock certificates issued in these transactions.

## **ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

- (a) Exhibits

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
<a href="#">2.1</a>	Agreement and Plan of Merger, dated February 28, 2019, by and among Better Choice Company Inc. (the “Company”), BBC Merger Sub, Inc. and Bona Vida, Inc.
<a href="#">2.2</a>	First Amendment to Agreement and Plan of Merger, dated February 28, 2019, by and among the Company, BBC Merger Sub, Inc. and Bona Vida, Inc., dated May 3, 2019
<a href="#">2.3</a>	Securities Exchange Agreement, dated February 2, 2019, by and among the Company, Trupet LLC and the members of TruPet LLC
<a href="#">2.4</a>	First Amendment to Securities Exchange Agreement, dated February 2, 2019, by and among the Company, Trupet LLC and the members of TruPet LLC, dated May 6, 2019
<a href="#">3.1</a>	Certificate of Incorporation of the Company
<a href="#">3.2</a>	Certificate of Amendment of Certificate of Incorporation, dated February 1, 2019
<a href="#">3.3</a>	Certificate of Amendment of Certificate of Incorporation, dated March 13, 2019
<a href="#">3.4</a>	Amended and Restated Certificate of Designations, Preferences and Rights of the Series E Convertible Preferred Stock of the Company
<a href="#">3.5</a>	Bylaws of the Company
5.1*	Opinion of Latham & Watkins LLP
<a href="#">10.1</a>	Registration Rights Agreement, dated December 12, 2019, by and among the Company and the persons listed on the signature pages thereto in connection with the December 2018 private placement
<a href="#">10.2</a>	Registration Rights Agreement, dated May 6, 2019, by and among the Company and the persons listed on the signature pages thereto in connection with the May 2019 private placement
<a href="#">10.3</a>	First Amendment to Registration Rights Agreement, dated June 10, 2019, by and among the Company and the stockholders party thereto
<a href="#">10.4</a>	Registration Rights Agreement, dated May 6, 2019, by and among the Company and the persons listed on the signature pages thereto in connection with the acquisition of Bona Vida, Inc.
<a href="#">10.5</a>	Registration Rights Agreement, dated May 6, 2019, by and among the Company and the persons listed on the signature pages thereto in connection with the acquisition of TruPet LLC
<a href="#">10.6+</a>	Better Choice Company Inc. 2019 Incentive Award Plan
<a href="#">10.7+</a>	Form of Option Agreement
<a href="#">10.8+</a>	Form of Indemnification Agreement by and among the Company and its officers and directors
<a href="#">10.9+</a>	Employment Agreement, dated May 6, 2019, by and among the Company and Damian Dalla-Longa

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<u>Exhibit No.</u>	<u>Description of Exhibit</u>
<a href="#"><u>10.10+</u></a>	Employment Agreement, dated May 6, 2019, by and among the Company and Lori Taylor
<a href="#"><u>10.11+</u></a>	Employment Agreement, dated May 6, 2019, by and among the Company and Anthony Santarsiero
<a href="#"><u>10.12+</u></a>	Employment Agreement, dated June 29, 2019, by and among the Company and Andreas Schulmeyer
<a href="#"><u>10.13</u></a>	Loan Agreement, dated May 6, 2019, by and between the Company and Franklin Synergy Bank
<a href="#"><u>10.14</u></a>	Security Agreement, dated May 6, 2019, by and between the Company and Franklin Synergy Bank
<a href="#"><u>10.15</u></a>	Form of Revolving Line of Credit Promissory Note
<a href="#"><u>10.16</u></a>	Guaranty Agreement, dated May 8, 2019, by Bona Vida, Inc. in favor of and Franklin Synergy Bank
<a href="#"><u>10.17</u></a>	Guaranty Agreement, dated May 8, 2019, by TruPet LLC in favor of and Franklin Synergy Bank
<a href="#"><u>21.1</u></a>	Subsidiaries of the Company
<a href="#"><u>23.1</u></a>	Consent of RBSM LLP, Independent Registered Public Accounting Firm, relating to the Financial Statements of the Company
<a href="#"><u>23.2</u></a>	Consent of MNP LLP, Independent Registered Public Accounting Firm, relating to the Financial Statements of Bona Vida, Inc. and TruPet LLC
<a href="#"><u>23.3</u></a>	Consent of M&K CPAS, PLLC, Independent Registered Public Accounting Firm, relating to the Financial Statements of the Company
<a href="#"><u>23.4*</u></a>	Consent of Latham & Watkins (included in Exhibit 5.1)
<a href="#"><u>24.1</u></a>	Power of Attorney (included on signature page)

\* To be filed by amendment

+ Management Compensation Plan

(b) Financial Statement Schedules

All schedules for which provision is made in the applicable accounting regulations of the SEC are omitted because they are not required, are not applicable or the information is included in the financial statements or notes thereto.

### ITEM 17. UNDERTAKINGS

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or issuances are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement.

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Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
  - (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
  - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering; and
  - (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
- (b) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of Better Choice Company Inc. pursuant to the foregoing provisions, or otherwise, Better Choice Company Inc. has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by Better Choice Company Inc. of expenses incurred or paid by a director, officer or controlling person of Better Choice Company Inc. in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, Better Choice Company Inc. will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
- (c) The undersigned hereby further undertakes that:
- (1) For purposes of determining any liability under the Securities Act the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by Better Choice Company Inc. pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
  - (2) For the purpose of determining any liability under the Securities Act each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in Brooklyn, State of New York, on October 25, 2019.

**BETTER CHOICE COMPANY INC.**

By: /s/ Damian Dalla-Longa  
Damian Dalla-Longa  
Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Damian Dalla-Longa and Andreas Schulmeyer, and each of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Damian Dalla-Longa</u> Damian Dalla-Longa	Chief Executive Officer	October 25, 2019
<u>/s/ Andreas Schulmeyer</u> Andreas Schulmeyer	Chief Financial Officer	October 25, 2019
<u>/s/ Lori Taylor</u> Lori Taylor	Director	October 25, 2019
<u>/s/ Michael Galego</u> Michael Galego	Director	October 25, 2019
<u>/s/ Michael Young</u> Michael Young	Director	October 25, 2019
<u>/s/ Jeff Davis</u> Jeff Davis	Director	October 25, 2019

**AGREEMENT AND PLAN OF MERGER**

BY AND AMONG  
SPORT ENDURANCE, INC.,  
BCC MERGER SUB, INC.  
AND  
BONA VIDA, INC.

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## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is made and entered into as of February 28, 2019 (the “**Execution Date**”), by and among Sport Endurance, Inc., a Nevada corporation which is in the process of reincorporating as Better Choice Company Inc., a Delaware corporation (“**BCC**”), BCC Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of BCC (“**Merger Sub**”), and Bona Vida, Inc., a Delaware corporation (“**Bona Vida**”). Each of BCC, Merger Sub and Bona Vida shall be known individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, BCC and Bona Vida have entered into a non-binding letter of intent with respect to a proposed transaction pursuant to which BCC shall acquire one hundred percent (100%) of the issued and outstanding Bona Vida capital stock and assume one hundred percent (100%) of the other outstanding securities which are convertible into, exercisable for or exchangeable for Bona Vida capital stock in exchange for shares of BCC Common Stock (as defined below) (the “**Transaction**”);

WHEREAS, in connection with the Transaction, each of the Parties desire to consummate a business combination transaction pursuant to which, upon the terms and subject to the conditions set forth in this Agreement, (i) Merger Sub shall be merged with and into Bona Vida, whereby the separate corporate existence of Merger Sub shall cease and Bona Vida shall be the surviving entity in such merger (the “**Merger**”), and (ii) at the time of completion of such Merger, all of the outstanding Bona Vida Common Stock (as defined below) will be converted into the applicable portion of the Merger Consideration as more particularly described in Section 2.5 hereof;

WHEREAS, on February 2, 2019, BCC and Trupet LLC (“**Trupet**”), a Delaware limited liability company, entered into that certain Securities Exchange Agreement (the “**Trupet SEA**”), whereby BCC shall acquire all of the outstanding equity interests of Trupet (the “**Trupet Transaction**”), and the Trupet Transaction shall be consummated simultaneously with the Merger on the Closing Date;

WHEREAS, for U.S. federal income tax purposes (and, where applicable, state and local tax purposes), the Parties intend that (i) the Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and this Agreement shall constitute a “plan of reorganization” within the meaning of the Code and the Treasury regulations promulgated thereunder, and (ii) the exchange of Bona Vida capital stock for Merger Consideration under this Agreement, and the exchange of all of the outstanding equity interests of Trupet for BCC capital stock pursuant to the Trupet SEA, together with the issuance of BCC Common Stock in the Financing (as defined below), qualify as an exchange under Section 351 of the Code, and this Agreement, as well as the Trupet Transaction and the Trupet SEA, will together be taken as a plan of exchange under Section 351 of the Code;

WHEREAS, the BCC Board has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of BCC and its stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (iii) directed that this Agreement be submitted to the stockholders of BCC for adoption, and (iv) resolved to recommend the approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, by the stockholders of BCC.

WHEREAS, the Board of Directors of Merger Sub has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of Merger Sub and its stockholder, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (iii) directed that this Agreement be submitted to the stockholder of Merger Sub for adoption, and (iv) resolved to recommend the approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, by the stockholder of Merger Sub.

WHEREAS, the Bona Vida Board has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of Bona Vida and its stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (iii) directed that this Agreement be submitted to the stockholders of Bona Vida for adoption, and (iv) resolved to recommend the approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, by the stockholders of Bona Vida.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.1 *Definitions.* For the purposes of this Agreement, capitalized words and terms have the following meanings:

“**Action**” means any action, suit, litigation, arbitration, mediation, proceeding, claim, complaint, allegation, demand, charge, grievance, prosecution, assessment, investigation, inquiry, hearing, audit, examination or subpoena (whether (i) civil, criminal, administrative, judicial, investigative or appellate, (ii) formal or informal, (iii) public or private, or (iv) at law or in equity) commenced, brought, conducted or heard by or before, or otherwise involving, any court, arbitrator, mediator or other Governmental Authority or tribunal.

“**Affiliate**” means any 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.

“**Agreement**” shall have the meaning contained in the Preamble.

“**Balance Sheet**” shall have the meaning contained in Section 3.1(s).

“**Balance Sheet Date**” shall have the meaning contained in Section 3.1(s).

“**BCC**” shall have the meaning contained in the Preamble.

“**BCC Board**” shall mean the board of directors of BCC.

“**BCC Common Stock**” means the common stock, \$0.001 par value per share, of BCC.

“**BCC Financial Statements**” shall have the meaning contained in [Section 4.1\(r\)\(v\)](#).

“**BCC Fundamental Representations**” shall have the meaning contained in [Section 6.5\(a\)](#).

“**BCC Indemnified Party**” shall have the meaning contained in [Section 4.1\(r\)\(v\)](#).

“**BCC IP Agreements**” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts related to any Intellectual Property (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, to which BCC or any of its Subsidiaries is a party, beneficiary or otherwise bound.

“**BCC IP Registrations**” means all Intellectual Property held by BCC or any of its Subsidiaries that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“**BCC Material Customers**” shall have the meaning contained in [Section 4.1\(u\)\(i\)](#).

“**BCC Material Suppliers**” shall have the meaning contained in [Section 4.1\(u\)\(ii\)](#).

“**BCC Representative**” shall have the meaning contained in [Section 5.6\(a\)\(iii\)](#).

“**Bloomberg**” shall mean Bloomberg, L.P., or any successor.

“**Bona Vida**” shall have the meaning contained in the Preamble.

“**Bona Vida Board**” shall mean the board of directors of Bona Vida.

“**Bona Vida Common Stock**” means the common stock, \$0.0001 par value per share, of Bona Vida.

“**Bona Vida Employees**” shall have the meaning contained in [Section 3.1\(w\)\(i\)\(A\)](#).

“**Bona Vida Executives**” shall mean Damian Dalla-Longa and Kyle McCollum.

“**Bona Vida Financial Statements**” shall have the meaning contained in [Section 3.1\(s\)](#).

“**Bona Vida Fundamental Representations**” shall have the meaning contained in [Section 6.4\(a\)](#).

“**Bona Vida Indemnified Party**” shall have the meaning contained in [Section 6.5\(a\)\(ii\)](#).

“**Bona Vida IP Agreements**” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases permissions and other Contracts related to any Intellectual Property (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, to which Bona Vida or any of its Subsidiaries is a party, beneficiary or otherwise bound.

“**Bona Vida IP Registrations**” means all Intellectual Property held by Bona Vida or any of its Subsidiaries that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“**Bona Vida Material Customers**” shall have the meaning contained in Section 3.1(v)(i).

“**Bona Vida Material Suppliers**” shall have the meaning contained in Section 3.1(v)(ii).

“**Bona Vida Shareholder**” or “**Bona Vida Shareholders**” shall mean each Person listed on Exhibit A hereto.

“**Bona Vida Representative**” shall have the meaning contained in Section 5.6(a)(iv).

“**Business Day**” means any day, other than a Saturday, Sunday or other day on which the principal commercial banks in New York, New York are not open for business during normal business hours.

“**Change of Control Transaction**” means the occurrence of (a) an acquisition by any Person or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock, membership interests or other equity securities of Bona Vida, by contract or otherwise) of greater than 50% of Bona Vida’s voting power, (b) a consolidation or merger of Bona Vida with or into any other Person (whether or not Bona Vida is the surviving Person), any other business combination, including without limitation a reorganization, recapitalization, share exchange, spin-off or scheme of arrangement, or any other transaction or series of related transactions in which greater than 50% of Bona Vida’s voting power is transferred through a merger, consolidation, tender offer or similar transaction, (c) the sale, lease, transfer, exclusive license or other disposition or encumbrance of all or substantially all of Bona Vida’s assets; (d) any event in which a majority of the Bona Vida Board, in one or a series of related transactions, are replaced; or (e) the execution by Bona Vida or the Bona Vida Shareholders constituting greater than 50% of Bona Vida’s voting power of an agreement providing for any of the events set forth above in (a), (b), (c) or (d).

“**Closing**” shall have the meaning contained in Section 2.2.

“**Closing Date**” shall have the meaning contained in Section 2.2.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Code**” has the meaning contained in the Recitals.

“**Contract**” means any agreement, contract, license, lease, deed, commitment, arrangement, covenant, easement, mortgage, indenture, note, instrument, undertaking or understanding, including any invoice, sales order or purchase order, and all other legally binding arrangements, whether written or oral, including any annex, exhibit or schedule thereto.

“**Customizations**” shall have the meaning contained in Section 4.1(j)(vii)(B).

“**Damages**” means any loss, Liability, damage, penalty, fine, assessment, order, amount paid in settlement, Tax, fee, cost or expense (whether or not involving a third party Action) including reasonable legal and expert expenses.

“**DEA**” shall have the meaning contained in Section 3.1(i)(i).

“**Deferred Compensation Plan**” shall have the meaning contained in Section 3.1(l)(x).

“**DGCL**” shall have the meaning contained in Section 2.1.

“**Disclosure Schedules**” means the Disclosure Schedules delivered with this Agreement.

“**Disqualification Event**” shall have the meaning contained in Section 3.1(aa).

“**Dissenting Shareholder**” shall have the meaning contained in Section 2.7(a).

“**Dissenting Shares**” shall have the meaning contained in Section 2.7(a).

“**Effective Time**” shall have the meaning contained in Section 2.3.

“**EHSR**” shall mean all applicable Laws concerning pollution or protection of the environment and/or protection of the health and safety of natural persons from exposures to toxic or hazardous substances, wastes or materials (including asbestos, polychlorinated biphenyls, crude petroleum and its fractions or derivatives thereof).

“**Employee Benefit Plan**” shall mean any employee benefit plan (as defined in Section 3(3) of ERISA, as amended, whether or not subject to ERISA), and any bonus, profit sharing, compensation, pension, retirement, “401(k),” severance, savings, deferred compensation, fringe benefit, insurance, post-retirement health or welfare benefit, life insurance, Section 125 cafeteria, stock option, stock purchase, restricted stock, equity compensation, stock appreciation right, restricted stock unit, phantom equity, tuition refund, service award, company car or car allowance, scholarship, housing or living allowances, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, paid time off, holiday, termination, unemployment, individual employment, consulting, executive compensation, incentive, commission, payroll practices, retention, or change in control, plan, agreement, policy, trust fund or arrangement (whether written or unwritten, insured or self-insured) which a Party hereto or any of their Subsidiaries sponsors, maintains, contributes to, is required to contribute to, or has a liability to or for the benefit of any current or former employee(s), director(s), officer(s), retiree(s), independent contractor(s), or consultant(s) (or any spouse, domestic partner, or dependent of any of the foregoing).

“**Employees**” shall have the meaning contained in Section 4.1(v)(i)(A).

“**Encumbrance**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Equity Plan**” shall have the meaning contained in Section 5.14.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” means any company, entity, trade, or business that is required to be aggregated with BCC or Bona Vida, as applicable, as a “single employer” under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Execution Date**” shall have the meaning contained in the Preamble.

“**Extra Shares**” shall have the meaning contained in Section 5.11.

“**FCPA**” means the Foreign Corrupt Practices Act, as amended.

“**FDA**” shall have the meaning contained in Section 3.1(i)(i).

“**Financing**” shall have the meaning contained in Section 5.15.

“**GAAP**” means generally accepted accounting principles.

“**General Expiration Date**” shall have the meaning contained in Section 5.6(c)(ii).

“**Governmental Authority**” or “**Governmental Authorities**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Indebtedness**” means, without duplication, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by or on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

“**Indemnified Party**” shall have the meaning contained in Section 5.6(a)(i).

“**Intellectual Property**” means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (i) all trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered or unregistered, and all registrations and applications for registration of such trademarks, including intent-to-use applications, all issuances, extensions and renewals of such registrations and applications and the goodwill connected with the use of and symbolized by any of the foregoing; (ii) Internet domain names and social media accounts, user names and handles, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, and all associated websites and web pages, social media sites and pages, and all content and data thereon, whether or not copyrights; (iii) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered or unregistered), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (iv) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and trade secrets, whether or not patentable; and (v) designs and inventions, design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

“**Interim Period**” shall have the meaning contained in Section 5.1(a).

“**IRS**” means the United States Internal Revenue Service.

“**Knowledge**” means, with respect to any fact, circumstance, event or other matter in question, (i) with respect to BCC, the actual knowledge of David Lelong or Mike Young, or (ii) with respect to Bona Vida, the actual knowledge of Damian Dalla-Longa and Kyle McCollum, and for each of clause (i) and (ii), such knowledge that such person could obtain through reasonable inquiry.

“**Labor Actions**” shall have the meaning contained in Section 3.1(w)(i)(C).

“**Law**” or “**Laws**” means any constitutional provision, statute, principles of common law, act, code (including the Code), law, regulation, rule, standard, interpretation, ordinance, Order, Permit, treaty, charter, injunction, decision, directive, policy, decree, ruling, resolution or judgment and other pronouncements having the effect of law or other binding requirement that has been enacted, issued, applied, or promulgated by any Governmental Authority.

“**Liability**” or “**Liabilities**” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

“**Lock-Up Agreement**” shall have the meaning contained in Section 5.8.

“**Lock-Up Securities**” shall mean any shares of BCC Common Stock received by a Bona Vida Shareholder on the Closing Date, and including any shares of BCC Common Stock issued to a Bona Vida Shareholder pursuant to the Equity Plan.

“**Material Adverse Effect**” means, with respect to any Party, a material adverse effect on: (i) the financial condition, results of operations, prospects, assets or Liabilities of such Party and its Subsidiaries taken as a whole; or (ii) the ability of such Party to timely consummate the Agreement on or prior to the Outside Date.

“**Merger**” shall have the meaning contained in the Recitals.

“**Merger Consideration**” shall have the meaning contained in Section 2.5(a).

“**Merger Filings**” shall have the meaning contained in Section 2.3.

“**Merger Sub**” shall have the meaning contained in the Preamble.

“**Multiemployer Plan**” shall have the meaning contained in Section 3.1(l)(vi).

“**New Matter**” shall have the meaning contained in Section 5.7(b).

“**November Investors**” shall have the meaning contained in Section 5.11.

“**OFAC**” shall have the meaning contained in Section 3.1(cc).

“**OFAC Lists**” shall have the meaning contained in Section 3.1(cc).

“**Order**” means any legally binding award, injunction, judgment, decree, order, ruling, subpoena, verdict or other decision (in each case, other than a Permit) issued, promulgated or entered by or with any Governmental Authority.

“**Organizational Documents**” means, with respect to any entity, the certificate of incorporation or formation, the articles of incorporation, by-laws, articles of organization, partnership agreement, limited liability company agreement, formation agreement, joint venture agreement or other similar organizational documents of such entity.

“**Outside Date**” shall mean May 1, 2019.

“**Party**” or “**Parties**” shall have the meaning contained in the Preamble.

“**PCAOB**” means the Public Company Accounting Oversight Board, or any successor entity.

“**Permit**” means any permit, approval, authorization, certification, license, determinations, certificate of authority, registration, order, franchise, variances or similar rights required by any Governmental Authority pursuant to any applicable Law.

“**Permitted Disposition**” shall include the following: (i) transfers of Lock-Up Securities to a trust for the benefit of the undersigned or as a bona fide gift, by will or intestacy or to a family member or trust for the benefit of a family member of the undersigned (for purposes of this lock-up agreement, “family member” means any relationship by blood, marriage or adoption, not more remote than first cousin); or (ii) transfers of Lock-Up Securities to a charity or educational institution; *provided* that in the case of any transfer pursuant to the foregoing clauses (i) or (ii), (A) any such transfer shall not involve a disposition for value; and (B) no filing under Section 16(a) of the Exchange Act shall be required or shall be voluntarily made.

“**Permitted Encumbrances**” means: (i) Encumbrances securing Taxes, the payment of which (A) is not delinquent or (B) is actively being contested in good faith by appropriate proceedings diligently pursued and is appropriately reserved for; (ii) Encumbrances imposed by Laws, such as carriers’, warehousemen’s and mechanics’ liens, and other similar liens arising in the ordinary course of business which secure payment of obligations arising in the ordinary course of business (and constituting current liabilities) not more than sixty (60) days past due or which are being contested in good faith by appropriate proceedings diligently pursued and is appropriately reserved for; and (iii) purchase money security interests in the ordinary course of business.

“**Person**” means any individual, group, organization, corporation, partnership, joint venture, limited liability company, trust or entity of any kind.

“**Policies**” shall have the meaning contained in [Section 3.1\(r\)](#).

“**Pre-Closing Tax Period**” shall have the meaning contained in [Section 5.12\(d\)](#).

“**Principal Market**” means any of The New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Select Market, the Nasdaq Global Market, the OTCQB, the OTCQX, the OTC Pink, the Canadian Securities Exchange, the Toronto Stock Exchange Venture, the London AIM or any other market operated by the OTC Markets Group Inc. or any successors of any of these exchanges or markets.

“**Products**” means all proprietary products and services of a Person that are currently being, or at any time in the past two (2) years have been, created, manufactured, offered for sale, licensed, sold, supplied, distributed or otherwise made available in any manner by or on behalf of a Party.

“**Purchase Price**” means an amount equal to fifty-five million dollars (\$55,000,000).

“**Registration Rights Agreement**” shall have the meaning contained in [Section 5.11](#).

“**Representatives**” shall have the meaning contained in [Section 5.16](#).

“**Reverse Stock Split**” means that a reverse stock split of BCC Common Stock at a ratio of 26:1.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**SEC**” shall mean the Securities and Exchange Commission.

“**SEC Documents**” shall have the meaning contained in Section 4.1(r)(i).

“**Series A Preferred Stock**” shall have the meaning contained in Section 4.1(e)(i).

“**Series E Preferred Stock**” shall have the meaning contained in Section 4.1(e)(i).

“**Schedule Update**” shall have the meaning contained in Section 5.7(a).

“**Subsidiary**” when used with respect to any Person, means any corporation or other organization, whether incorporated or unincorporated, of which: (i) at least a majority of the capital stock or other equity interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person (through ownership of securities, by contract or otherwise); or (ii) such Person or any subsidiary of such Person is a general partner of any general limited partnership or a manager of any limited liability company; *provided, however*, that for the purposes of this Agreement, Trupet shall be considered a Subsidiary of BCC unless otherwise explicitly noted herein

“**Surviving Company**” shall have the meaning contained in Section 2.1.

“**Tax**” or “**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, value added or similar tax, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, health care, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, unclaimed property, escheat, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Authority**” means the IRS or any other Governmental Authority responsible for the administration of any Tax.

“**Tax Return**” or “**Tax Returns**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof to be filed on or before the Closing Date.

“**Third Party Indemnified Party**” shall have the meaning contained in Section 5.6(b)(i).

“**Third Party Indemnifying Party**” shall have the meaning contained in Section 5.6(b)(i).

“**Title IV Plan**” shall have the meaning contained in Section 3.1(l)(vi).

“**Transaction**” shall have the meaning contained in the Recitals.

“**Transaction Documents**” shall mean this Agreement, the Trupet SEA and all other Contracts, agreements or other documents arising out of or relating to the transactions contemplated by this Agreement.

“**Trupet**” shall have the meaning contained in the Recitals.

“**Trupet Balance Sheet**” shall have the meaning contained in Section 4.1(r)(vi).

“**Trupet Balance Sheet Date**” shall have the meaning contained in Section 4.1(r).

“**Trupet Financial Statements**” shall have the meaning contained in Section 4.1(r).

“**Trupet LLC Agreement**” means that certain Limited Liability Company Agreement of Trupet LLC, dated as of December 14, 2018, by and among Trupet and the other signatories thereto.

“**Trupet Members**” shall have the meaning contained in Section 5.11.

“**Trupet Transaction**” shall have the meaning contained in the Recitals.

“**WARN**” shall have the meaning contained in Section 3.1(w)(ii).

## ARTICLE II THE MERGER

Section 2.1 *Conversion of Company Interests.* Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law (“DGCL”), at the Effective Time Merger Sub shall be merged with and into Bona Vida, whereupon the separate existence of Merger Sub shall cease and Bona Vida shall continue as the surviving entity (Bona Vida, as the surviving entity in the Merger, sometimes being referred to herein as the “**Surviving Company**”). The Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time, except as otherwise provided in this Agreement, all the property, rights, privileges, powers and franchises, and all and every other interest of Bona Vida and Merger Sub, shall vest in the Surviving Company, and all debts, liabilities and duties of Bona Vida and Merger Sub shall become the debts, liabilities and duties of the Surviving Company.

Section 2.2 *Closing.* The closing of the transactions contemplated hereby (the “**Closing**”) will take place on the first Business Day on or after which all of the conditions in Article VI have been satisfied, unless another time or date is agreed to by BCC and Bona Vida (the “**Closing Date**”). The Closing shall take place electronically or at such location as BCC and Bona Vida shall mutually agree. The Closing shall occur only if each condition set forth in Article VI hereof has either been satisfied or waived, in writing, by the Party for whose benefit such condition exists.

Section 2.3 *Effective Time of the Merger.* Bona Vida and Merger Sub shall cause a duly executed Certificate of Merger or other appropriate documents to be filed with and accepted for record by the Secretary of State of the State of Delaware and shall make all other filings, records and publications required under the DGCL in respect of the Merger (the “**Merger Filings**”). The time at which the Merger shall become effective (the “**Effective Time**”) shall be the time that the Merger Filings are accepted for record by the Secretary of State of the State of Delaware or such later time as Bona Vida and Merger Sub shall have agreed and as shall be designated in the Merger Filings in accordance with the DGCL as the effective time of the Merger.

Section 2.4 *Organizational Documents.*

(a) Following the Effective Time, the Certificate of Incorporation of Bona Vida shall be the Certificate of Incorporation of the Surviving Company until thereafter amended in accordance with applicable Law.

Section 2.5 *Consideration and Exchange of Equity.*

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of any Bona Vida Shareholder or any of the Parties, the Bona Vida Common Stock held by each Bona Vida Shareholder that are issued and outstanding as of immediately prior to the Effective Time shall be automatically converted (subject to adjustment as set forth in Section 2.6) into an amount of BCC Common Stock equal to the Purchase Price, which shall be 468,085,106 shares of BCC Common Stock, subject to any adjustments as provided for herein (the “**Merger Consideration**”), which shall be distributed among the Bona Vida Shareholders in the amounts set forth in Schedule 2.5(a) hereto.

(b) All Bona Vida Common Stock, when so converted at the Effective Time, no longer shall be outstanding and automatically shall be cancelled and shall cease to exist, and each Bona Vida Shareholder shall cease to have any rights with respect thereto.

(c) All Bona Vida warrant holders will be offered the option to purchase each warrant for CAD \$0.75 per share prior to Closing. If warrants are not exercised prior to Closing, any outstanding warrants will be cancelled.

(d) All Bona Vida options will be accelerated and converted into Bona Vida common stock prior to Closing.

(e) At the Effective Time, by virtue of the Merger and without any further action on the part of any of the Parties, each share of common stock, par value \$0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, par value \$0.001 per share, of the Surviving Company.

(f) The aggregate number of shares of BCC Common Stock to be issued as Merger Consideration in connection with the Merger is 468,085,106, subject to adjustment as provided in Section 2.6.

(g) For United States federal income tax purposes, (i) the Merger is intended to constitute a reorganization within the meaning of Section 368(a) of the Code, and the Parties adopt this Agreement as a “plan of reorganization” within the meaning of Section 1.368-2(g) of the Treasury Regulations and (ii) at the Closing, and as part of an overall plan of exchange that includes the Merger and the Trupet Transaction and the Financing and that is intended by the Parties to be treated as an exchange for BCC Common Stock pursuant to Section 351 of the Code, all of the outstanding equity interests of Trupet will be exchanged for BCC Capital Stock pursuant to the Trupet SEA and BCC Common Stock will be issued in the Financing.

Section 2.6 *Merger Consideration Adjustment.*

(a) Stock Transaction. The Merger Consideration shall be equitably adjusted to reflect the effect of any BCC stock split, reverse stock split, stock dividend (including any dividend or other distribution of securities convertible into BCC Common Stock), reorganization, recapitalization, reclassification, or combination after the Execution Date and prior to the Effective Time so as to provide the holders of Bona Vida Common Stock with the same economic effect as contemplated by this Agreement prior to such event and as so adjusted shall, from and after the date of such event, be the Merger Consideration.

Section 2.7 *Dissenting Shares.*

(a) For purposes of this Agreement, “**Dissenting Shares**” means shares of Bona Vida Common Stock issued and outstanding immediately prior to the Effective Time that are held by any holder who has not voted such Bona Vida Common Stock in favor of, or consented to, the adoption of this Agreement and the transactions contemplated hereby, including the Merger, (each a “**Dissenting Shareholder**”) and who is entitled to demand and properly demands appraisal of such shares pursuant to, and who complies in all respects with, the provisions of Section 262 of the Delaware Act. At the Effective Time, Dissenting Shares shall no longer be outstanding and shall automatically be cancelled and cease to exist, and such Dissenting Shareholder shall cease to have any rights with respect thereto, except the right to payment of the fair value of such Dissenting Shares as shall be determined in accordance with the provisions of Section 262 of the DGCL. If any such Dissenting Shareholder shall fail to demand or perfect or otherwise shall effectively waive, withdraw, or otherwise lose the right to appraisal of such shares, then (i) such Dissenting Shares shall cease to be Dissenting Shares and shall be deemed to have been converted into, as of the Effective Time, the right to receive the Merger Consideration issuable in respect of such Bona Vida Common Stock pursuant to Section 2.5(a).

(b) Bona Vida shall give BCC: (i) prompt notice of any written demands for appraisal of any Bona Vida Common Stock, withdrawals of such demands, and any other instruments that relate to such demands received by Bona Vida (whether or not required under the DGCL); and (ii) the right to participate in and direct all negotiations and proceedings with respect to such demands for appraisal. Bona Vida shall not, except with the prior written consent of BCC (such consent not to be unreasonably withheld), make any payment with respect to any demands for appraisal of Bona Vida Common Stock or offer to settle or settle any such demands unless required by the court of the State of Delaware having jurisdiction thereof.

Section 2.8 *Fractional Shares.* No certificates or scrip representing fractional shares of BCC Common Stock shall be issued to Bona Vida stockholders on the surrender for exchange of shares of Bona Vida Common Stock, and such Bona Vida stockholders shall not be entitled to any voting rights, rights to receive any dividends or distributions or other rights as a stockholder of BCC with respect to any fractional shares of BCC Common Stock that would have otherwise been issued to such Bona Vida stockholders. In lieu of any fractional shares of BCC Common Stock to which the holder would otherwise be entitled, BCC shall pay the holder cash equal to such fraction multiplied by \$0.1175.

Section 2.9 *Directors and Officers.* At the Effective Time, by virtue of the Merger and without any action on the part of BCC, Merger Sub, Bona Vida or the holders of any shares of capital stock of any of the foregoing, the individuals set forth on Exhibit C shall be the directors and officers of the Surviving Company until the earlier of their resignation or removal or until their respective successors are duly elected or appointed and qualified, as the case may be, and the Surviving Company and BCC shall take any necessary actions (whether prior to, at or after the Effective Time) as shall be necessary or appropriate to effectuate or carry out the purpose of this Section 2.9.

Section 2.10 *Closing of Transfer Books.* At the Effective Time, the stock transfer books of Bona Vida shall be closed and no transfer of Bona Vida Common Stock shall thereafter be made. If, after the Effective Time, certificates formerly representing any share of Bona Vida Common Stock are presented to BCC or the Surviving Company, they shall be cancelled and exchanged for Merger Consideration in accordance with Section 2.5(a), subject to the provisions hereof and applicable Law in the case of Dissenting Shares.

Section 2.11 *Exemption from Registration; Rule 144.* BCC intends that BCC Common Stock to be issued pursuant to Section 2.5(a) hereof will be issued in a transaction exempt from registration under the Securities Act, by reason of Section 4(a)(2) of the Securities Act, Rule 506 of Regulation D promulgated by the SEC thereunder and/or Regulation S promulgated by the SEC and that all recipients of such shares of BCC Common Stock shall either be “accredited investors” or not “U.S. Persons” as such terms are defined in Regulation D and Regulation S, respectively. The shares of BCC Common Stock to be issued pursuant to Section 2.5(a) hereof will be “restricted securities” within the meaning of Rule 144 under the Securities Act and may not be offered, sold, pledged, assigned or otherwise transferred unless (i) a registration statement with respect thereto is effective under the Securities Act and any applicable state securities laws, or (ii) an exemption from such registration exists and either BCC receives an opinion of counsel to the holder of such securities, which counsel and opinion are satisfactory to BCC, that such securities may be offered, sold, pledged, assigned or transferred in the manner contemplated without an effective registration statement under the Securities Act or applicable state securities laws, or the holder complies with the requirements of Regulation S, if applicable; and the certificates representing such shares of BCC Common Stock will bear an appropriate legend and restriction on the books of BCC’s transfer agent to that effect.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF BONA VIDA

Section 3.1 *Representations and Warranties of Bona Vida*. Bona Vida represents and warrants to BCC that the statements contained in this Section 3.1 are true and correct as of the Execution Date and will be true and correct as of the Closing Date, except as modified by the Disclosure Schedules of Bona Vida attached to this Agreement, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation made herein only to the extent of the disclosure contained in the corresponding Section of the Disclosure Schedules or to the extent that such qualification is reasonably apparent.

(a) Subsidiaries. Each of the Subsidiaries of Bona Vida as of the date of this Agreement and its place of organization is set forth on Schedule 3.1(a). All of the outstanding shares of capital stock of, or other equity or voting interests in, each Subsidiary of Bona Vida that is owned directly or indirectly by Bona Vida have been validly issued, were issued free of pre-emptive rights, are fully paid and non-assessable, and are free and clear of all Encumbrances, including any restriction on the right to vote, sell, or otherwise dispose of such capital stock or other equity or voting interests, except for Permitted Encumbrances or any Encumbrances: (i) imposed by applicable securities Laws; or (ii) arising pursuant to the organizational or charter documents of any non-wholly-owned Subsidiary of Bona Vida. Except for the capital stock of, or other equity or voting interests in, its Subsidiaries, Bona Vida does not own, directly or indirectly, any capital stock of, or other equity or voting interests in, any Person.

(b) Organization and Qualification. Bona Vida and each of its Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither Bona Vida nor any Subsidiary is in violation nor default of any of the provisions of its respective Organizational Documents. Each of Bona Vida and its Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Action has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. Bona Vida and each of its Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by Bona Vida and the consummation by it of the transactions contemplated hereby and thereby have been (subject to the approval of the adoption of this Agreement and the transactions contemplated hereby by the Bona Vida Stockholders) duly authorized by all necessary action on the part of Bona Vida, and no further action is required by Bona Vida or any of its officers, directors or shareholders in connection herewith or therewith. This Agreement and each other Transaction Document to which Bona Vida is a party has been (or upon delivery will have been) duly executed by Bona Vida and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of Bona Vida enforceable against Bona Vida in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable Law. Without limiting the generality of the foregoing, the Bona Vida Board has unanimously (w) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of Bona Vida and its stockholders, (x) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (y) directed that this Agreement be submitted to the Bona Vida Stockholders for adoption, and (z) resolved to recommend the approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, by the Bona Vida Stockholders.

(d) No Conflicts. The execution, delivery and performance by Bona Vida of this Agreement and the other Transaction Documents to which it is a party, the exchange of the Securities and the consummation by Bona Vida of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of Bona Vida's or any Subsidiary's Organizational Documents, or (ii) constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Encumbrance upon any of the properties or assets of Bona Vida or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Bona Vida or Subsidiary debt or otherwise) or other understanding to which Bona Vida or any Subsidiary is a party or by which any property or asset of Bona Vida or any Subsidiary is bound or affected, or (iii) materially conflict with or result in a violation of any Law or other restriction of any court or Governmental Authority to which Bona Vida or a Subsidiary is subject (including federal and state securities Laws), or by which any property or asset of Bona Vida or a Subsidiary is bound or affected; except in the case of each of clauses (ii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Capital Structure.

(i) The authorized capital stock of Bona Vida consists of 75,000,000 shares of Bona Vida Common Stock, \$0.0001 par value, and 10,000,000 shares of preferred stock, \$0.0001 par value per share. Schedule 3.1(e) sets forth, as of the Effective Date of this Agreement, (i) the number of shares of Bona Vida Common Stock that are issued and outstanding, (ii) the number of shares of Bona Vida preferred stock that are issued and outstanding. All issued and outstanding shares of the capital stock of Bona Vida are duly authorized, validly issued, fully paid and nonassessable, and no class of capital stock is entitled to preemptive rights. All shares of Bona Vida Common Stock issued pursuant to the terms of this Agreement shall be duly authorized, validly issued, fully paid and non-assessable, and free of preemptive rights.

(ii) Except as set forth on Schedule 3.1(e) there are no securities, options, warrants, calls, rights, commitments, agreements, rights of first refusal, arrangements or undertakings of any kind to which Bona Vida or any Bona Vida Subsidiary is a party or by which any of them is bound, obligating Bona Vida or any Bona Vida Subsidiary to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional shares of Bona Vida Common Stock or other equity securities or phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any equity security of Bona Vida or any of the Bona Vida Subsidiaries or obligating Bona Vida or any Bona Vida Subsidiary to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, right of first refusal, arrangement or undertaking. There are no outstanding contractual obligations of Bona Vida or any Bona Vida Subsidiary to repurchase, redeem or otherwise acquire any shares of Bona Vida Common Stock or other equity securities of Bona Vida or any Bona Vida Subsidiary. Neither Bona Vida nor any Bona Vida Subsidiary is a party to or, to the Knowledge of Bona Vida, bound by any agreements or understandings concerning the voting (including voting trusts and proxies) of any capital stock of Bona Vida or any of the Bona Vida Subsidiaries.

(f) Certain Fees. Except as disclosed on Schedule 3.1(f), no brokerage, finder's fees, commissions or due diligence fees are or will be payable by Bona Vida to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to this Agreement or the transactions contemplated hereby other than fees to counsel and auditors. BCC shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.1(f) that may be due in connection with this Agreement or the transactions contemplated hereby.

(g) Litigation. Except as disclosed on Schedule 3.1(g), there are no Actions pending or, to the Knowledge of Bona Vida, threatened by or against Bona Vida involving more than, individually or in the aggregate, \$25,000. There is no Action pending or, to the Knowledge of Bona Vida, threatened against or affecting Bona Vida before or by any Governmental Authority which: (i) adversely affects or challenges the legality, validity or enforceability of any part of this Agreement or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither Bona Vida nor any officer or director thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities Laws or a claim of breach of fiduciary duty. There has not been, and to the Knowledge of Bona Vida there is not pending or contemplated, any investigation by the SEC or any other Governmental Authority involving Bona Vida or any current or former officer or director of Bona Vida.

(h) Bad Actors. No "covered person" of Bona Vida (as such term is defined in Rule 506(d) of Regulation D of the Securities Act) is subject to any disqualification under Rule 506(d) of Regulation D of the Securities Act.

(i) Compliance with Laws; Permits.

(i) To its Knowledge, Bona Vida and its Subsidiaries are in material compliance with all applicable Laws, rules, regulations, and policies administered or enforced by the United States Food & Drug Administration (the "FDA"), the U.S. Drug Enforcement Administration ("DEA"), and any other Governmental Authority that regulates the development of Bona Vida's Products, including, without limitation, relating to sales and marketing practices, mislabeling and misbranding requirements, good manufacturing practices, pre- and post-marketing adverse drug experience and adverse drug reaction reporting, and all other pre- and post-marketing reporting requirements, as applicable. Except as disclosed in Schedule 3.1(i)(i), Bona Vida and its Subsidiaries have not received notice of any pending or threatened claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from the FDA or any other applicable Governmental Authority alleging that any operation or activity of Bona Vida or any Subsidiary is, or has been, in violation of any applicable Law.

(ii) Subject to Section 3.1(i)(i), Bona Vida has complied and is currently in compliance with all applicable federal, state, local, foreign or other Laws, except for any instance of non-compliance that has not had, and would not reasonably be expected to have, a Material Adverse Effect.

(iii) All Permits required for Bona Vida to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Schedule 3.1(i)(iii) lists all current Permits issued to Bona Vida, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Schedule 3.1(i)(iii).

(iv) Neither Bona Vida nor any of its officers, directors, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of the FCPA, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and Bona Vida has conducted its business in compliance with the FCPA.

(v) Neither Bona Vida nor any of its officers, directors, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of other United States Laws, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to (A) any official or any government of the United States or any state or local instrumentality or (B) any corporation, limited liability company or other entity.

(vi) None of Bona Vida, any of its Subsidiaries, or any of their respective officers, directors or employees and none of the holders, directly or indirectly, of equity securities of Bona Vida or any of its Subsidiaries, has been excluded, suspended or debarred from participation in any U.S. state or federal, or Canadian provincial or federal health care program or has been convicted of any crime or is subject to a governmental inquiry, investigation or other action, or has engaged in any conduct, that could reasonably be expected to result in debarment, suspension, or exclusion, nor, to the Knowledge of BCC, is any such exclusion, suspension or bar pending or threatened. Schedule Section 4.1(i)(vi) sets forth a complete list of any final adverse legal actions, including but not limited to convictions, exclusions, revocations, suspensions or otherwise, that would be required to be reported to any Governmental Authority prior to or as the result of the execution of the Transaction.

(j) Intellectual Property.

(i) Schedule 3.1(j)(i) lists all: (A) Bona Vida IP Registrations; and (B) Bona Vida Intellectual Property that is not registered but that is material to Bona Vida's business or operations. Bona Vida has taken all reasonable and necessary steps to maintain and enforce the Bona Vida Intellectual Property and to preserve the confidentiality of all trade secrets included therein. All required filings and fees related to Bona Vida IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Bona Vida IP Registrations are otherwise in good standing. To the Knowledge of Bona Vida, all of the Bona Vida Intellectual Property is valid and enforceable, all Bona Vida IP Registrations are subsisting and in full force and effect, and there are no facts or circumstances that would render any Bona Vida IP Registrations invalid or unenforceable. To the Knowledge of Bona Vida, there has been no misrepresentation or failure to disclose, any fact or circumstances in any application for any Bona Vida IP Registrations that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the validity or enforceability of any Bona Vida IP Registrations. Bona Vida or any of its Subsidiaries has not claimed a particular status, including "small entity status," in the application for any Bona Vida IP Registrations, which claim of status was not at the time made, or which has since become, inaccurate or false or that will no longer be true and accurate as a result of the Closing.

(ii) Schedule 3.1(j)(ii) lists all Bona Vida IP Agreements that are material to Bona Vida's business as it presently is being conducted. Bona Vida has made available to BCC true and complete copies of all such Bona Vida IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Bona Vida IP Agreement is valid and binding on Bona Vida in accordance with its terms and is in full force and effect. Neither Bona Vida, nor, to its Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Bona Vida IP Agreement.

(iii) Except as disclosed on Schedule 3.1(j)(iii), Bona Vida is the sole and exclusive legal and beneficial, and with respect to Bona Vida's IP Registrations, record, owner of all right, title and interest in and to Bona Vida's Intellectual Property, or has the valid and enforceable right to use all other Intellectual Property used in or necessary for the conduct of Bona Vida's current business or operations, in each case, free and clear of Encumbrances other than Permitted Encumbrances.

(iv) Since its inception, Bona Vida has entered into binding, written agreements with every current and former employee and with every current and former independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Intellectual Property during the course of employment or engagement with Bona Vida, whereby such employees and independent contractors (A) assign to Bona Vida any ownership interest and right they may have in Bona Vida's Intellectual Property; and (B) acknowledge Bona Vida's exclusive ownership of Bona Vida's Intellectual Property. Bona Vida provided BCC with true and complete copies of all such agreements.

(v) The conduct of Bona Vida's businesses as currently and formerly conducted and as proposed to be conducted, including the use of the Bona Vida Intellectual Property in connection therewith, and the products, processes, and services of Bona Vida have not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person.

(vi) To the Knowledge of Bona Vida, no Person has infringed, misappropriated, or otherwise violated any Bona Vida Intellectual Property. There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending, or, to Bona Vida's Knowledge, threatened (including in the form of offers to obtain a license), (A) alleging any infringement, misappropriation, or other violation by Bona Vida of the Intellectual Property of any Person; (B) challenging the validity, enforceability, registrability, patentability, or ownership of any Bona Vida Intellectual Property or Bona Vida's right, title, or interest in or to any Intellectual Property; or (C) by Bona Vida, alleging any infringement, misappropriation, or other violation by any Person of the Intellectual Property of Bona Vida. To the Knowledge of Bona Vida, there are no facts or circumstances that could reasonably be expected to give rise to any such Action. Bona Vida is not subject to any outstanding or prospective order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the ownership or use of any Bona Vida Intellectual Property.

(k) Bona Vida Products. To Bona Vida's Knowledge, except as set forth on Schedule 3.1(k), since January 1, 2018, there have been no Actions by any Governmental Authority instituted or, to the Knowledge of Bona Vida or any of its Subsidiaries threatened, that seek the recall of any Bona Vida Product or the revocation or suspension of any regulatory license or approval necessary to manufacture, supply, wholesale, sell or offer for sale any Bona Vida Product, except for those licenses and approvals, the absence of which would not have a Material Adverse Effect on Bona Vida.

(l) Benefit Plans. Except as set forth on Schedule 3.1(l), Bona Vida does not sponsor, maintain, or contribute to, and is not obligated to contribute to, and does not have any liability under, has not adopted any Employee Benefit Plans.

(i) Each such Employee Benefit Plan (and, to the Knowledge of Bona Vida, each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and any applicable collective bargaining agreement in all material respects, and complies in form and in operation in all material respects with the applicable requirements of ERISA, the Code, and other applicable Laws.

(ii) All required reports and descriptions (including Form 5500 annual reports, summary annual reports, and summary plan descriptions) have been timely filed and/or distributed in accordance with the applicable requirements of ERISA and the Code with respect to each such Employee Benefit Plan in all material respects. The requirements of COBRA (or similar state law) have been met in all material respects with respect to each such Employee Benefit Plan to which COBRA (or similar state law) is applicable.

(iii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each such Employee Benefit Plan that is an employee pension benefit plan under ERISA §3(2) and all contributions for any period ending on or before the Closing Date that are not yet due have been made to each such Employee Benefit Plan or will be accrued and contributed in accordance with ERISA, the Code, and the past custom and practice of Bona Vida. All applicable premiums or other similar payments for all periods ending on or before the Closing Date have been paid with respect to each such Employee Benefit Plan that is an employee welfare benefit plan under ERISA §3(1).

(iv) Each such Employee Benefit Plan that is intended to meet the requirements of a “qualified plan” under Section 401(a) of the Code has received a determination letter from the Internal Revenue Service that such Employee Benefit Plan is so qualified, or can rely on an advisory or opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, and nothing has occurred since the date of such letter that would reasonably be expected to adversely affect the qualified status of any such Employee Benefit Plan.

(v) To the Knowledge of Bona Vida, there have been no “prohibited transactions” (as defined in Section 406 of ERISA and Section 4975 of the Code and for which no prohibited transaction exemption is available) with respect to any such Employee Benefit Plan during the prior three (3) years. To the Knowledge of Bona Vida, no fiduciary has any liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any such Employee Benefit Plan. No Action with respect to such Employee Benefit Plan (including with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or, to the Knowledge of Bona Vida, threatened, and no such Employee Benefit Plan within the past three (3) years has been the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction, or similar program sponsored by an Governmental Authority.

(vi) None of such Employee Benefit Plans is a pension plan that is subject to Title IV of ERISA (a “**Title IV Plan**”), a “multiemployer pension plan” (as defined in Section 3(37) of ERISA) (a “**Multiemployer Plan**”), a “multiple employer plan” (as defined in Section 413(c) of the Code), or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA). Bona Vida does not maintain, sponsor, or contribute to, and is not required to contribute to (or in the past six years has not maintained, sponsored, contributed to, or been required to contribute to) a Title IV Plan or a Multiemployer Plan. Bona Vida and its ERISA Affiliates have neither incurred in the past six (6) years nor do they reasonably expect to incur (directly or indirectly) any material liability under Title I or Title IV of ERISA (or related provisions of the Code) relating to any such Employee Benefit Plan.

(vii) None of such Employee Benefit Plans provides post-termination or retiree health benefits to any individual for any reason, except as required pursuant to COBRA (or similar state law), and Bona Vida does not have any obligation or liability to provide such benefits to any individual.

(viii) Bona Vida does not have a commitment or obligation, and has not made any representations to any employee or other individual or entity (whether or not legally binding), to adopt, amend, modify, or terminate any such Employee Benefit Plan or collective bargaining agreement, or to adopt a new benefit plan, in connection with the transactions contemplated by this Agreement or otherwise.

(ix) Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement, directly or in combination with any termination of employment, will result in the acceleration, vesting, funding, or creation of any rights of any director, officer, retiree, independent contractor, consultant or employee to payments or benefits, or increases or enhancements in any payments or benefits or any loan forgiveness, in each case, from Bona Vida.

(x) No Employee Benefit Plan is a nonqualified deferred compensation plan within the meaning of Section 409A(d)(1) of the Code (each such Employee Benefit Plan, a “**Deferred Compensation Plan**”); and (ii) Bona Vida has not (a) granted to any person an interest in any Deferred Compensation Plan which interest has been or, upon the lapse of a substantial risk of forfeiture with respect to such interest, will be subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(5)(A) of the Code, or (b) modified the terms of or operated any Deferred Compensation Plan in a manner that could cause an interest previously granted under such plan to become subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(5)(A) of the Code. Bona Vida does not have any obligation to gross-up, indemnify, or reimburse any individual or entity for any excise taxes, interest, or penalties incurred pursuant to Section 409A of the Code.

(m) Tax Matters. Except as set forth on Schedule 3.1(m), to Bona Vida’s Knowledge:

(i) Bona Vida and each of its Subsidiaries has timely filed, or has caused to be timely filed on its behalf, all income and other material Tax Returns that it was required to file under applicable Laws (after giving effect to any filing extension properly granted by a Governmental Authority having the authority to do so). All such Tax Returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws. All Taxes due and owing by Bona Vida and each of its Subsidiaries have been paid, except for amounts that are being contested in good faith. Neither Bona Vida nor any of its Subsidiaries has any obligation to pay Taxes pursuant to Section 965 of the Code. Since the Balance Sheet Date, neither Bona Vida nor any of its Subsidiaries has incurred any liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(ii) There are no Encumbrances for Taxes (other than Taxes not yet due and payable) on any of the assets of Bona Vida or its Subsidiaries.

(iii) Neither Bona Vida nor any of its Subsidiaries has entered into any agreement with any Tax Authority to extend the period of limitations for any Taxes. No Tax audit, examination or other Action is now pending against Bona Vida or any of its Subsidiaries or has been threatened in writing, and no Tax deficiency has been asserted or threatened in writing against Bona Vida or any of its Subsidiaries that remains unpaid.

(iv) Neither Bona Vida nor any of its Subsidiaries (1) is a party to or bound by any Tax indemnity, Tax sharing, Tax allocation or similar Contract (other than customary commercial leases or other Contracts that are not primarily related to Taxes and were entered into in the ordinary course of business), or (2) has any liability for Taxes of another Person (other than Bona Vida) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or Non-U.S. Law), as a transferee or successor, by Contract or otherwise.

(v) Bona Vida has not constituted either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(vi) Bona Vida and each of its Subsidiaries has withheld or has caused to be withheld, and has paid over or has caused to have been paid over to the appropriate Governmental Authorities, all Taxes required to be so withheld and paid over for all periods under all applicable Law in connection with amounts paid or owing to any employee, shareholder, stockholder, partner, member, independent contractor, creditor, customer, non-resident or other party and all filings (including Forms W-2 and 1099) required with respect thereto have been properly completed and timely filed. Bona Vida and each of its Subsidiaries has correctly classified those individuals performing services as common law employees, leased employees, independent contractors or agents of Bona Vida or its Subsidiaries.

(vii) Bona Vida has made available to BCC complete and correct copies of all federal, state and local (i) income Tax Returns of, and (ii) examination reports and statements of deficiencies assessed against or agreed to by, Bona Vida in each case for years ending on or after December 31, 2014.

(viii) No claim has ever been made by any taxing authority in any jurisdiction where Bona Vida or its Subsidiaries does not currently file Tax Returns that it is or may be subject to Tax or required to file a Tax Return in that jurisdiction.

(ix) Bona Vida will not be required to include any item of income or gain in, or be required to exclude any item of deduction or loss from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in, or improper, method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or prior to the Closing Date; (iii) intercompany transaction or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Law) occurring or arising in a taxable period ending on or prior to the Closing Date; (iv) installment sale or open transaction disposition made on or prior to the Closing Date; (v) election under Section 108(i) of the Code; (vi) prepaid amount or advance payment received on or prior to the Closing Date; (vii) use of the “deferral method of accounting”; or (viii) the application of Section 951 or Section 951A of the Code with respect to income earned or recognized or payments received on or prior to the Closing Date. Bona Vida does not use the cash method of tax accounting.

(x) Bona Vida has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(xi) Bona Vida has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return that could reasonably be expected to result in the imposition of penalties under Section 6662 of the Code or any comparable provisions of state, local or non-U.S. applicable Law. Bona Vida has not engaged in any “listed transaction,” as set forth in Section 1.6011-4(b)(2) of the U.S. Treasury Regulation.

(xii) Neither Bona Vida nor any of its Subsidiaries owns any interest in any entity or arrangement classified as a trust, partnership or disregarded entity for U.S. federal income Tax purposes.

(xiii) The prices and terms for the provision of any property or services between or among Bona Vida and its affiliates, or its branches, offices or permanent establishments comply with the principles set forth in Section 482 of the Code (and any similar provisions of state, local or foreign Law), are arm’s length for purposes of all applicable transfer pricing Laws, and all related documentation required by such Laws has been timely prepared or obtained and, if necessary, retained.

(xiv) Neither Bona Vida nor any of its Subsidiaries has any operations outside of the United States, including branches, offices or permanent establishments.

(xv) There are no closing agreements or similar arrangements with any Governmental Authority with regard to the determination of the Tax liability of Bona Vida or any of its Subsidiaries that would have continuing effect on periods (or portions thereof) ending after the Closing Date. There are no requests or rulings or determinations in respect of any Tax or Tax asset pending between the Bona Vida or any of its Subsidiaries and any Governmental Authority.

(xvi) Neither Bona Vida nor any of its Subsidiaries has taken any action, agreed to take any action or failed to take any action, or has Knowledge of any fact or circumstance that, in each case, could reasonably be expected to prevent (a) the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code or (b) the exchange of all of the outstanding equity interests of Trupet for BCC capital stock pursuant to the Trupet SEA, together with the Merger and the Financing, from qualifying as an exchange under Section 351 of the Code.

(n) Environmental, Health and Safety Matters.

(i) Bona Vida has been and is in compliance with all EHSR, other than such instances of non-compliance which, individually or in the aggregate, will not have a Material Adverse Effect.

(ii) Without limiting the generality of the foregoing, Bona Vida has obtained and is in compliance with, all permits, licenses and other authorizations that are required pursuant to all EHSR for the occupation of its facilities and the operation of its business.

(iii) Bona Vida has not received any written or oral notice, report or other information regarding any actual or alleged violation of any EHSR, or any Liabilities, including any investigatory, remedial or corrective obligations, relating to any of its facilities arising under any EHSR.

(o) Contracts, Schedule 3.1(o) sets forth a complete and accurate list of all material Contracts to which Bona Vida is a party or by which Bona Vida is subject, including the following:

(i) the Organizational Documents of Bona Vida;

(ii) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of \$25,000 per annum;

(iii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will: (A) extend over a period of more than one year; (B) result in a material loss to Bona Vida; or (C) involve consideration in excess of \$25,000;

(iv) any agreement concerning a partnership or joint venture;

(v) any material agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any Indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$25,000 or under which it has imposed a security interest on any of its assets, tangible or intangible;

(vi) any agreement concerning confidentiality or noncompetition other than with clients and vendors in the ordinary course of business;

- (vii) any profit sharing, unit option, unit purchase, unit appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former managers, directors, officers, or employees;
- (viii) any collective bargaining agreement;
- (ix) any agreement other than on an employment-at-will basis for the employment of any individual on a full-time, part-time, consulting, or other basis or providing severance benefits, if the amount payable after January 1, 2019 exceeds \$50,000;
- (x) any agreement under which it has advanced or loaned any amount of money to any of its managers, directors, officers or employees outside the ordinary course of business;
- (xi) any agreement under which the consequences of a default or termination may have a Material Adverse Effect on Bona Vida;
- (xii) any agreement that provides for the indemnification by Bona Vida of any Person or the assumption of any Tax, environmental or other Liability of any Person;
- (xiii) any agreement that relates to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
- (xiv) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising agreements to which Bona Vida is a party;
- (xv) any agreement with any Governmental Authority to which the Company is a party;
- (xvi) any agreement that grants any right of first refusal, right of first offer, or similar right with respect to any material assets, rights or properties of Bona Vida;
- (xvii) any agreement that obligates Bona Vida to conduct business on an exclusive or preferential basis or that contains a "most favored nation" or similar covenant with any third party, or upon consummation of the Merger will obligate Bona Vida or any Affiliates of Bona Vida to conduct business on an exclusive or preferential basis or that contains a "most favored nation" or similar covenant with any third party;
- (xviii) any agreement that contains any provision that requires the purchase of all or a material portion of Bona Vida's requirements for a given product or service from a given third party, which product or service is material to Bona Vida;
- (xix) any other agreement (or group of related agreements) the performance of which involves consideration in excess of \$25,000; or

(xx) Bona Vida has delivered to BCC a correct and complete copy of each written Contract listed on Schedule 3.1(o). With respect to each such Contract: (i) the Contract is legal, valid, binding, enforceable, and in full force and effect; (ii) Bona Vida has not received written notice from the counterparty that it is in breach or default; (iii) no party has repudiated any provision of such agreement or informed Bona Vida that it does not intend to renew such Contract; and (iv) no event of default, termination event, or material breach that, with notice or the lapse of time or both, would result in an event of default or termination event (in each case as defined or referred to in such Contract) by Bona Vida or any other party thereto has occurred or has occurred and is continuing under any such Contract.

(p) Title to Assets: Real Property.

(i) Bona Vida has good and valid (and, in the case of owned real property, good and marketable fee simple) title to, or a valid leasehold interest in, all real property and personal property and other assets reflected in the Bona Vida Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for Permitted Encumbrances.

(ii) Schedule 3.1(p)(ii) lists: (A) the street address of each parcel of real property; (B) if such property is leased or subleased by Bona Vida, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (C) the current use of such property. With respect to leased real property, Bona Vida has delivered or made available to BCC true, complete and correct copies of any leases affecting the real property. Bona Vida is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased real property. The use and operation of the real property in the conduct of Bona Vida's business does not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. There are no Actions pending nor, to the Knowledge of Bona Vida, threatened against or affecting the real property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

(iii) Condition and Sufficiency of Assets. The assets of Bona Vida reflected in the Balance Sheet or acquired after the date thereof (but excluding inventory sold since the date thereof in the ordinary course of business) are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost, except for obsolete assets that are not material to the business of Bona Vida. The assets of Bona Vida owned, leased or licensed by Bona Vida comprise all of the assets, properties and rights of every type and description, whether real or personal, tangible or intangible, used in the conduct of the business of Bona Vida and are sufficient for the continued conduct of Bona Vida's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of Bona Vida as currently conducted.

(q) Guarantees. Bona Vida is not a guarantor or otherwise is liable for any liability or obligation (including Indebtedness) of any other Person.

(r) Insurance.

(i) Schedule 3.1(r) contains a true, complete and correct list of all insurance policies, binders, and fidelity or surety bonds maintained by or on behalf of Bona Vida or any of its respective assets, properties, directors, members, managers and officers. Bona Vida has delivered to BCC true, complete and correct copies of all such insurance policies, binders and fidelity or surety bonds in effect as of the Execution Date (the "**Policies**").

(ii) Each Policy is in full force and effect and is valid, binding and enforceable in accordance with its respective terms. Neither the execution and delivery of this Agreement or the Transaction Documents to which it is a party nor the consummation of the Merger will cause the lapse or result in the termination of any Policy. Bona Vida is not in default under any Policy.

(iii) Bona Vida has not received any notice from the insurer under any Policy disclaiming or disputing coverage, reserving rights with respect to a particular claim or such Policy in general or canceling or materially amending any such Policy (including the amount of the premium payable in respect thereof), and there is no claim by Bona Vida pending under any such Policy.

(iv) All premiums due and payable for the Policies have been duly paid, and such policies (or extensions, renewals or replacements thereof with comparable policies) will be in full force and effect without interruption until the Closing Date.

(v) Policies (A) are of the type and provide the coverage of insurance policies customarily carried by Persons conducting businesses similar to the business of Bona Vida, (ii) are sufficient to comply with all applicable Laws and Contracts to which the Company is a party or by which Bona Vida is bound and (iii) insure all insurable assets of the Company up to their respective full replacement values.

(s) Financial Statements. Bona Vida has delivered to BCC unaudited balance sheets, statements of profit and loss and cash flow statements for the periods from January 1 through December 31, 2018 (the "**Bona Vida Financial Statements**"). To its Knowledge, the Bona Vida Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, subject to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes. The unaudited balance sheet of Bona Vida as of December 31, 2018 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**". To its Knowledge, Bona Vida maintains a standard system of accounting established and administered in accordance with GAAP. To its Knowledge, the Bona Vida Financial Statements have been prepared based on information derived from the books and records of Bona Vida and present fairly the financial condition, results of operations, changes in financial position of Bona Vida, and shareholder' equity at the dates and for the periods indicated, do not contain any untrue statements or omit to state any material fact necessary to make the Bona Vida Financial Statements not misleading, and have been prepared in conformity with GAAP consistently applied.

(t) Absence of Certain Changes, Events and Conditions. Except as set forth on Schedule 3.1(t), since the Balance Sheet Date: (i) Bona Vida and each Bona Vida Subsidiary has conducted its business in all material respects in the ordinary course consistent with past practice, (ii) there has not been any Material Adverse Effect, and (iii) no actions have been taken by Bona Vida or any Bona Vida Subsidiary which, if such actions were taken after the Execution Date and prior to Closing, would be in violation of Section 5.2.

(u) Undisclosed Liabilities. Except as set forth in the Bona Vida Financial Statements or Schedule 3.1(u), Bona Vida has no Liabilities (absolute, accrued, contingent or otherwise) other than (i) Liabilities included in the most recent Bona Vida Financial Statements or (ii) normal or recurring Liabilities in the ordinary course of business consistent with past practice.

(v) Customers and Suppliers.

(i) Schedule 3.1(v)(i) sets forth: (A) each customer who has paid aggregate consideration to Bona Vida for goods or services rendered in an amount greater than or equal to \$50,000 for each of the two most recent fiscal years (collectively, the “**Bona Vida Material Customers**”); and (B) the amount of consideration paid by each Bona Vida Material Customer during such periods. Except as provided on Schedule 3.1(v)(i), Bona Vida has not received any notice, and to its Knowledge it has no reason to believe, that any Bona Vida Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with Bona Vida.

(ii) Schedule 3.1(v)(ii) sets forth (a) each supplier to whom Bona Vida has paid consideration for goods or services rendered in an amount greater than or equal to \$50,000 for each of the two (2) most recent fiscal years (collectively, the “**Bona Vida Material Suppliers**”); and (b) the amount of purchases from each Bona Vida Material Supplier during such periods. Bona Vida has not received any notice, and to its Knowledge has no reason to believe, that any Bona Vida Material Suppliers has ceased, or intends to cease, to supply goods or services to Bona Vida or to otherwise terminate or materially reduce its relationship with Bona Vida.

(w) Employees.

(i) With respect to the business of Bona Vida, except as set forth on Schedule 3.1(w)(i):

(A) Schedule 3.1(w)(i)(A) sets forth a true, correct and complete list of each person currently employed by Bona Vida (the “**Bona Vida Employees**”) and with respect to each such Bona Vida Employee the following information: (i) the employer of such Bona Vida Employee, (ii) the amount of salary currently being paid on a gross annualized basis, the hourly pay rate (if applicable) of such Bona Vida Employee and the amount of compensation paid in 2018; (iii) the nature and amount of all compensation proposed to be paid during calendar year 2019, (d) the material terms of any employment or similar agreement with such Bona Vida Employee; and (iv) the nature and amount of any perquisites or personal benefits currently being provided to or for the account of such Bona Vida Employee, other than the employee benefit plans of general application described herein. Schedule 3.1(w)(i)(A) contains a list of individuals who are (A) “leased employees” within the meaning of Section 414(n) of the Code or (B) “independent contractors” within the meaning of the Code and the rules and regulations promulgated thereunder, and in each case, the amount paid by BCC during calendar year 2018 and the hourly pay rate or other compensatory arrangements with respect to each such person.

(B) Except as set forth on Schedule 3.1(w)(i)(B), Bona Vida is currently conducting and, and since January 1, 2018, has conducted its operations in compliance with any Law, agreement, plan or program applicable to Bona Vida relating to labor or employment relations or practices (including terms and conditions of employment, management-labor relations, wage and hour issues, meal and rest periods, data privacy and data protection, immigration, classification as exempt employees or independent contractors, equal opportunity, occupational safety and health, collective bargaining, nondiscrimination, harassment, immigration, the payment of social security and other Taxes), except for any such violations that would not, individually or in the aggregate, reasonably be expected to (i) subject Bona Vida to any material liability or (ii) adversely affect in any material respect Bona Vida's ability to conduct its business after the Closing as presently conducted. There are no pending or, to the Knowledge of Bona Vida, threatened charges of unfair labor practices, employment discrimination or other wrongful action with respect to any aspect of employment of any person employed or formerly employed by Bona Vida. All persons who have performed services for Bona Vida and have been classified as independent contractors have satisfied the requirements of all material federal and state laws to be so classified, and as applicable Bona Vida have fully and accurately reported their compensation on IRS Forms 1099 or other applicable tax forms for independent contractors when required to do so. Bona Vida is not engaged in and, since January 1, 2018, has not engaged in any unfair labor practice.

(C) There are no pending or, to the Knowledge of Bona Vida, threatened, legal actions, lawsuits, arbitrations, administrative or other proceedings, charges, complaints, investigations, inspections, audits or notices of violations or possible violations brought by or on behalf of, or otherwise involving, any current or former Bona Vida Employee, any person alleged to be a current or former Bona Vida Employee, any applicant for employment, or any class of the foregoing, or any Governmental Authority, that involve the labor or employment relations and practices of Bona Vida, including any claims for actual or alleged harassment or discrimination based on race, national origin, age, sex, sexual orientation, religion, disability, or similar tortuous conduct, wage and hour claims, breach of contract, wrongful termination, defamation, intentional or negligent infliction of emotional distress, interference with contract or interference with actual or prospective economic advantage (collectively, "**Labor Actions**"). To the Knowledge of Bona Vida, there is no valid basis for any such Labor Actions. There are no pending or, to the Knowledge of Bona Vida, threatened or anticipated material grievances or arbitration proceedings arising out of or under any labor union or collective bargaining agreement. Except as set forth on Schedule 3.1(w)(i)(C), there are no claims pending or, to the Knowledge of Bona Vida, reasonably expected or threatened, against Bona Vida under any workers' compensation or long term disability plan or policy applicable to any current or former Bona Vida Employees.

(D) None of the current officers or executives of Bona Vida or other key Bona Vida Employees has notified Bona Vida that he or she is terminating or intends to terminate his or her employment with Bona Vida prior to, upon or within twelve (12) months following the Closing Date. There has not been, and to the Knowledge of Bona Vida, there will not be, any adverse change relating to relations with Bona Vida Employees as a result of the transactions contemplated by this Agreement. To the Knowledge of Bona Vida, no officer or executive of Bona Vida or other key Bona Vida Employee is party to any confidentiality, non-competition, proprietary rights or other such agreement that would materially restrict the performance of such Person's employment duties with Bona Vida or the ability of Bona Vida to conduct its business.

(E) Except as set forth in the Schedule 3.1(w)(i)(E), Bona Vida has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of the federal Worker Adjustment and Retraining Notification Act or any similar state, local or foreign Law (including any state Laws relating to plant closings or mass layoffs) (collectively, "**WARN**") during the last six (6) years. To the Knowledge of Bona Vida, Bona Vida is and has been in compliance with WARN, and Bona Vida has not incurred any liability or obligation under WARN which remains unsatisfied.

(F) Bona Vida has provided all Bona Vida Employees with all wages, benefits, relocation benefits, stock options, bonuses and incentives and all other compensation which became due and payable through the date of this Agreement. Bona Vida has not instituted any "freeze" of, or delayed or deferred the grant of, any cost-of-living or other salary adjustments for any Employees. Neither the execution or delivery of this Agreement, nor the continuing conduct of the business of Bona Vida as currently conducted or contemplated, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default of, any contract under which the Bona Vida Employees are now obligated.

(G) there is no collective bargaining agreement or relationship with any labor organization;

- (H) no labor organization or group of employees has filed any representation petition or made any written or oral demand for recognition;
- (I) to the Knowledge of Bona Vida, no union organizing or decertification efforts are underway or threatened;
- (J) no labor strike, work stoppage, slowdown, or other material labor dispute has occurred since January 1, 2018, and none is underway or, to the Knowledge of Bona Vida, threatened;
- (K) there is no workmen's compensation liability, experience or matter outside the Ordinary Course of Business;
- (L) there are no employment contracts or severance agreements with any employees of Bona Vida; and
- (M) there are no written personnel policies, rules, or procedures applicable to employees of Bona Vida.

(ii) With respect to this transaction, any notice required under any employment-related Law or a collective bargaining agreement has been given, and all bargaining obligations with any employee representative have been, as of the Closing Date, satisfied.

(iii) No employment agreement of Bona Vida contains any severance, change of control or similar type of provision which would trigger a payment by BCC following consummation of the transactions contemplated by this Agreement, except as set forth on Schedule 3.1(w)(iii).

(x) Notes and Accounts Receivable. All notes and accounts receivable of Bona Vida are reflected properly on the books and records of Bona Vida, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with its terms at its recorded amounts, subject only to the reserve for bad debts set forth on the face of the Bona Vida Financial Statements (rather than in any notes thereto) as adjusted for the passage of time through the Effective Time in accordance with the past custom and practice of Bona Vida.

(y) Books and Records. The books and records including capital account books of Bona Vida, all of which have been made available to BCC, are complete and correct in all material respects and have been maintained in electronic form in accordance with sound business practices. The books and records of Bona Vida contain accurate records of all meetings, and actions taken by written consent of, the Bona Vida Shareholders, the Bona Vida Board and any committee of the Bona Vida Board, and for at least the past five (5) years no meeting, or action taken by written consent, of any such Bona Vida Shareholders, Bona Vida Board or committee of the Bona Vida Board has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of Bona Vida.

(z) Restricted Securities. By receiving the Merger Consideration, each Bona Vida Shareholder acknowledges and agrees that: (i) the BCC Common Stock to be issued pursuant to this Agreement is being acquired by such Bona Vida Shareholder for its own account and not with a view to or for distribution or reselling such BCC Common Stock or any part thereof in violation of the Securities Act or any applicable state securities Laws; (ii) the BCC Common Stock will not be registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, which depends, in part, upon the accuracy of Bona Vida and each Bona Vida Shareholder's representations as expressed in this Agreement; (iii) the BCC Common Stock to be issued in connection with this Agreement will be "restricted securities" under applicable U.S. federal securities Laws and may be disposed of only pursuant to an effective registration statement under the Securities Act or an exemption from registration under the Securities Act. Each Bona Vida Shareholder acknowledges that BCC has no obligation to register for resale the BCC Common Stock to be issued pursuant to this Agreement.

(aa) Shareholder Status. By receiving the Merger Consideration, each Bona Vida Shareholder acknowledges and agrees that at the time such Bona Vida Shareholder was offered the BCC Common Stock, it was, and as of the Execution Date it is, an "accredited investor" within the meaning of Rule 501 under the Securities Act. A copy of the definition is contained on Schedule 3.1(aa). Such Bona Vida Shareholder is not subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3).

(bb) Disclosure. No statement, representation or warranty by Bona Vida in this Agreement, including the Disclosure Schedules hereto, contains any untrue statement of material fact, or omits to state a material fact, necessary to make such statements, representations and warranties not misleading. There is no fact known to the Knowledge of Bona Vida which has specific application to Bona Vida or, so far as can reasonably be foreseen, may in the future have a Materially Adverse Effect on Bona Vida or any Subsidiary which has not been set forth in this Agreement or the Disclosure Schedules hereto.

(cc) OFAC. None of Bona Vida, any Bona Vida Subsidiary or, to the Knowledge of Bona Vida, any director, officer, agent, employee, or Affiliate of Bona Vida or any of its Subsidiaries or any Person acting on behalf of Bona Vida or any Bona Vida Subsidiary is named on any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**") pursuant to Executive Order 13224 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as in effect on the Execution Date, or any similar list issued by OFAC or any other department or agency of the United States of America under the applicable economic sanctions and/or export control Laws (collectively, the "**OFAC Lists**"), or is owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in any OFAC Lists.

(dd) Certain Securities Law Matters. Each Bona Vida Shareholder by his, her or its acceptance of delivery of the Merger Consideration, (i) acknowledges the opportunity to review a legal opinion provided by counsel to BCC and the matters presented in such opinion, and (ii) is not relying solely upon the opinion in making an investment decision to accept the Merger Consideration or appraisal rights under the DGCL.

Section 3.2 *Survival.* The foregoing representations and warranties shall survive the Closing Date through the General Expiration Date except as provided in Section 5.6(c)(ii).

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF BCC AND MERGER SUB

Section 4.1 *Representations and Warranties of BCC and Merger Sub.* BCC represents and warrants to Bona Vida that the statements contained in this Section 4.1 are true and correct as of the Execution Date and will be true and correct as of the Closing Date, except as modified by the Disclosure Schedules of BCC attached to this Agreement, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation made herein only to the extent of the disclosure contained in the corresponding Section of the Disclosure Schedules or to the extent that such qualification is reasonably apparent.

(a) Subsidiaries. Each of the Subsidiaries of BCC as of the date of this Agreement and its place of organization is set forth on Schedule 4.1(a). All of the outstanding shares of capital stock of, or other equity or voting interests in, each Subsidiary of BCC that is owned directly or indirectly by BCC have been validly issued, were issued free of pre-emptive rights, are fully paid and non-assessable, and are free and clear of all Encumbrances, including any restriction on the right to vote, sell, or otherwise dispose of such capital stock or other equity or voting interests, except for Permitted Encumbrances or any Encumbrances: (i) imposed by applicable securities Laws; or (ii) arising pursuant to the organizational or charter documents of any non-wholly-owned Subsidiary of BCC. Except for the capital stock of, or other equity or voting interests in, its Subsidiaries, BCC does not own, directly or indirectly, any capital stock of, or other equity or voting interests in, any Person.

(b) Organization and Qualification. BCC and each of its Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither BCC nor any Subsidiary is in violation nor default of any of the provisions of its respective Organizational Documents. Each of BCC and its Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Action has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. BCC and each of its Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by BCC and each of its Subsidiaries and the consummation by each of the transactions contemplated hereby and thereby have been (subject to the approval of the adoption of this Agreement and the transactions contemplated hereby by the BCC Stockholders and the sole stockholder of Merger Sub) duly authorized by all necessary action on the part of BCC and each of its Subsidiaries and no further action is required by BCC or any its Subsidiaries or their respective officers, directors, or shareholders in connection herewith or therewith. This Agreement and each other Transaction Document to which BCC or any of its Subsidiaries is a party has been (or upon delivery will have been) duly executed by BCC and each such Subsidiary and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of BCC and each such Subsidiary enforceable against BCC and each such Subsidiary in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable Law. Without limiting the generality of the foregoing, (1) the BCC Board has unanimously (w) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of BCC and its stockholders, (x) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (y) directed that this Agreement be submitted to the BCC Stockholders for adoption, and (z) resolved to recommend the approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, by the BCC Stockholders; and (2) the Board of Directors of Merger Sub has unanimously (w) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of Merger Sub and its stockholder, (x) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (y) directed that this Agreement be submitted to the stockholder of Merger Sub for adoption, and (z) resolved to recommend the approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, by the stockholder of Merger Sub.

(d) No Conflicts. The execution, delivery and performance by BCC and each of its Subsidiaries of this Agreement and the other Transaction Documents to which it is a party, the exchange of the Securities and the consummation by BCC and each of its Subsidiaries of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of BCC's or any Subsidiary's Organizational Documents, or (ii) constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Encumbrance upon any of the properties or assets of BCC or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a BCC or Subsidiary debt or otherwise) or other understanding to which BCC or any Subsidiary is a party or by which any property or asset of BCC or any Subsidiary is bound or affected, or (iii) materially conflict with or result in a violation of any Law or other restriction of any court or Governmental Authority to which BCC or a Subsidiary is subject (including federal and state securities Laws), or by which any property or asset of BCC or a Subsidiary is bound or affected; except in the case of each of clauses (ii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(c) Capital Structure.

(i) The authorized capital stock of BCC consists of 580,000,000 shares of BCC Common Stock, \$0.001 par value, 20,000,000 shares of preferred stock, \$0.001 par value per share, of which 1,000 shares are designated as Series A preferred stock (“**Series A Preferred Stock**”) and 2,900,000 shares are designated as Series E preferred stock (“**Series E Preferred Stock**”). Schedule 4.1(e)(i) sets forth, as of the Effective Date, (i) the number of shares of BCC Common Stock that are issued and outstanding, (ii) the number of shares of Series A Preferred Stock that are issued and outstanding and (iii) the number of shares of Series E Preferred Stock that are issued and outstanding. All issued and outstanding shares of the capital stock of BCC are duly authorized, validly issued, fully paid and nonassessable, and no class of capital stock is entitled to preemptive rights. All shares of BCC Common Stock issued pursuant to the terms of this Agreement shall be duly authorized, validly issued, fully paid and non-assessable, and free of preemptive rights.

(ii) Except as set forth on Schedule 4.1(e)(ii) there are no securities, options, warrants, calls, rights, commitments, agreements, rights of first refusal, arrangements or undertakings of any kind to which BCC or any BCC Subsidiary is a party or by which any of them is bound, obligating BCC or any BCC Subsidiary to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional shares of BCC Common Stock, shares of Preferred Stock or other equity securities or phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any equity security of BCC or any of the BCC Subsidiaries or obligating BCC or any BCC Subsidiary to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, right of first refusal, arrangement or undertaking. There are no outstanding contractual obligations of BCC or any BCC Subsidiary to repurchase, redeem or otherwise acquire any shares of BCC Common Stock, shares of Preferred Stock, or other equity securities of BCC or any BCC Subsidiary. Neither BCC nor any BCC Subsidiary is a party to or, to the Knowledge of BCC, bound by any agreements or understandings concerning the voting (including voting trusts and proxies) of any capital stock of BCC or any of the BCC Subsidiaries.

(iii) The membership interests of Trupet set forth on Schedule 4.1(e)(iii) constitute all of the issued and outstanding equity interests in Trupet as of the Effective Date, and such membership interests are owned of record by the applicable Trupet Members listed on Schedule 4.1(e)(iii). The membership interests listed on Schedule 4.1(e)(iii) constitute all of the interests in and to Trupet that are held by each Trupet Member. Except as set forth on Schedule 4.1(e)(iii), there exist no rights to purchase, subscriptions, warrants, options, conversion rights, preemptive rights or similar rights, and there are no outstanding equity, appreciation, phantom interest, profits participation or other benefit plans relating to the membership interests of Trupet. All issued and outstanding membership interests of Trupet are: (i) duly authorized, validly issued, fully paid and non-assessable; (ii) not subject to any preemptive rights created by statute, the Trupet organizational documents, or any agreement to which Trupet is a party; and (iii) free of any Encumbrances created by Trupet in respect thereof or by any third party. All issued and outstanding membership interests of Trupet were issued in compliance with applicable Law.

(f) Certain Fees. Except as set forth on Schedule 4.1(f), no brokerage, finder's fees, commissions or due diligence fees are or will be payable by BCC or any BCC Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to this Agreement or the transactions contemplated hereby other than fees to counsel and auditors. Bona Vida shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 4.1(f) that may be due in connection with this Agreement or the transactions contemplated hereby.

(g) Litigation. Except as disclosed on Schedule 4.1(g), there are no Actions pending or, to the Knowledge of BCC, threatened by or against BCC or any BCC Subsidiary involving more than, individually or in the aggregate, \$25,000. There is no Action pending or, to the Knowledge of BCC, threatened against or affecting BCC or any BCC Subsidiary before or by any Governmental Authority which: (i) adversely affects or challenges the legality, validity or enforceability of any of this Agreement or the issuance of the Merger Consideration or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither BCC or any BCC Subsidiary nor any officer or director thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities Laws or a claim of breach of fiduciary duty. There has not been, and, to the Knowledge of BCC, there is not pending or contemplated, any investigation by the SEC or any other Governmental Authority involving BCC or any BCC Subsidiary or any current or former director or officer thereof.

(h) Bad Actors. No "covered person" of BCC or any BCC Subsidiary (as such term is defined in Rule 506(d) of Regulation D of the Securities Act) is subject to any disqualification under Rule 506(d) of Regulation D of the Securities Act.

(i) Compliance with Laws; Permits.

(i) To the Knowledge of BCC, BCC and each of its Subsidiaries are in material compliance with all applicable Laws, rules, regulations, and policies administered or enforced by the FDA, the DEA, and any other Governmental Authority that regulates the development of BCC's Products and the Products of each of its Subsidiaries, including, without limitation, relating to sales and marketing practices, mislabeling and misbranding requirements, good manufacturing practices, pre- and post-marketing adverse drug experience and adverse drug reaction reporting, and all other pre- and post-marketing reporting requirements, as applicable. Except as disclosed in Schedule 4.1(i)(i), BCC or any of its Subsidiaries has not received notice of any pending or threatened claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from the FDA or any other applicable Governmental Authority alleging that any operation or activity of BCC or any of its Subsidiary is, or has been, in violation of any applicable Law.

(ii) Subject to Section 4.1(i)(i), BCC and each BCC Subsidiary have complied and are currently in compliance with all applicable federal, state, local, foreign or other Laws, except for any instance of non-compliance that has not had, and would not reasonably be expected to have, a Material Adverse Effect.

(iii) All Permits required for BCC and each BCC Subsidiary to conduct its respective business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Schedule 4.1(i)(iii) lists all current Permits issued to BCC and each BCC Subsidiary, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Schedule 4.1(i)(iii).

(iv) Neither BCC, any BCC Subsidiary or any of their officers, directors, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of the FCPA, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and BCC and each BCC Subsidiary has conducted its business in compliance with the FCPA.

(v) Neither BCC, any BCC Subsidiary or any of their officers, directors, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of other United States Laws, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to (A) any official or any government of the United States or any state or local instrumentality or (B) any corporation, limited liability company or other entity.

(vi) None of BCC, any of its Subsidiaries, or any of their respective officers, directors or employees and none of the holders, directly or indirectly, of equity securities of BCC or any of its Subsidiaries, has been excluded, suspended or debarred from participation in any U.S. state or federal health care program or has been convicted of any crime or is subject to a governmental inquiry, investigation or other action, or has engaged in any conduct, that could reasonably be expected to result in debarment, suspension, or exclusion, nor, to the Knowledge of BCC, is any such exclusion, suspension or bar pending or threatened. Schedule Section 4.1(i)(vi) sets forth a complete list of any final adverse legal actions, including but not limited to convictions, exclusions, revocations, suspensions or otherwise, that would be required to be reported to any Governmental Authority prior to or as the result of the execution of the Transaction.

(j) Intellectual Property.

(i) Schedule 4.1(j)(i) lists all: (A) BCC IP Registrations; and (B) BCC Intellectual Property that is not registered but that is material to BCC's and each of its Subsidiaries' business or operations. BCC and each of its Subsidiaries has taken all reasonable and necessary steps to maintain and enforce the BCC Intellectual Property and to preserve the confidentiality of all trade secrets included therein. All required filings and fees related to BCC IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all BCC IP Registrations are otherwise in good standing. To the Knowledge of BCC, all of the Intellectual Property held by BCC and its Subsidiaries is valid and enforceable, all Intellectual Property Registrations are subsisting and in full force and effect, and there are no facts or circumstances that would render any BCC IP Registrations invalid or unenforceable. To the Knowledge of BCC, there has been no misrepresentation or failure to disclose, any fact or circumstances in any application for any BCC IP Registrations that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the validity or enforceability of any BCC IP Registrations. BCC or any of its Subsidiaries has not claimed a particular status, including "small entity status," in the application for any BCC IP Registrations, which claim of status was not at the time made, or which has since become, inaccurate or false or that will no longer be true and accurate as a result of the Closing.

(ii) Schedule 4.1(j)(ii) lists all BCC IP Agreements that are material to BCC's business as it presently is being conducted. BCC has made available to Bona Vida true and complete copies of all such BCC IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each BCC IP Agreement is valid and binding on BCC or its Subsidiary, as applicable, in accordance with its terms and is in full force and effect. None of BCC, its Subsidiaries, or, to its Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any BCC IP Agreement.

(iii) Except as disclosed on Schedule 4.1(j)(iii), BCC or one of its Subsidiaries is the sole and exclusive legal and beneficial, and with respect to BCC's or its Subsidiary's IP Registrations, record, owner of all right, title and interest in and to BCC's or its Subsidiary's Intellectual Property, and BCC or its Subsidiary has the valid and enforceable right to use all other Intellectual Property used in or necessary for the conduct of BCC's or its Subsidiary's current business or operations, in each case, free and clear of Encumbrances other than Permitted Encumbrances.

(iv) Since its inception, BCC and its Subsidiaries have entered into binding, written agreements with every current and former employee and with every current and former independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Intellectual Property during the course of employment or engagement with BCC or its Subsidiary, whereby such employees and independent contractors (A) assign to BCC or its Subsidiary any ownership interest and right they may have in BCC's or its Subsidiary's Intellectual Property; and (B) acknowledge BCC's or its Subsidiary's exclusive ownership of BCC's or its Subsidiary's Intellectual Property. BCC provided Bona Vida with true and complete copies of all such agreements.

(v) the conduct of BCC's and its Subsidiaries' businesses as currently and formerly conducted and as proposed to be conducted, including the use of the BCC Intellectual Property in connection therewith, and the products, processes, and services of BCC and its Subsidiaries have not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person.

(vi) To the Knowledge of BCC, no Person has infringed, misappropriated, or otherwise violated any Intellectual Property held by BCC or its Subsidiaries. There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending, or, to BCC's Knowledge, threatened (including in the form of offers to obtain a license), (A) alleging any infringement, misappropriation, or other violation by BCC or any of its Subsidiaries of the Intellectual Property of any Person; (B) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual Property held by BCC or its Subsidiaries, or BCC's or any of its Subsidiaries' right, title, or interest in or to any Intellectual Property; or (C) by BCC or any of its Subsidiaries, alleging any infringement, misappropriation, or other violation by any Person of the Intellectual Property of BCC or its Subsidiaries. To the Knowledge of BCC, there are no facts or circumstances that could reasonably be expected to give rise to any such Action. Neither BCC nor its Subsidiaries are subject to any outstanding or prospective order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the ownership or use of any Intellectual Property of BCC or its Subsidiaries.

(vii) BCC Intellectual Property.

(A) Schedule 4.1(j)(vii)(A) identifies all BCC's and its Subsidiaries' Intellectual Property and all Intellectual Property licensed to BCC or any of its Subsidiaries under a BCC IP Agreement and that are: (1) used in the development, maintenance, use or support of any BCC's or any of its Subsidiaries' product, (2) incorporated in or distributed or licensed with such BCC's or any of its Subsidiaries' product in any manner for use in connection with such BCC's or any of its Subsidiaries' product, or (3) used to deliver, host or otherwise provide services with respect to such BCC's or any of its Subsidiaries' product, (except for non-customized, off-the-shelf software that is commercially available pursuant to shrink-wrap, click-through or other standard form agreements or with an annual license fee or replacement value of less than \$10,000).

(B) Except as set forth on Schedule 4.1(j)(vii)(B), all BCC Intellectual Property is fully transferable, alienable or licensable by BCC or any of its Subsidiaries without restriction and without payment of any kind to any third party. BCC or any of its Subsidiaries has not transferred ownership of, or granted any exclusive license of (or exclusive right to use), or authorized the retention of any exclusive rights to use or joint ownership of, any BCC Intellectual Property or other Intellectual Property to any other Person. Except as set forth on Schedule 4.1(j)(vii)(B), BCC or any of its Subsidiaries is not subject to any BCC IP Agreement (other than with respect to current customers pursuant to BCC's any of its Subsidiaries' standard form of customer agreement entered into in the ordinary course of business) that includes any unperformed obligations that require BCC or any of its Subsidiaries to develop any product or other Intellectual Property, including any enhancements or customizations that are part of or used in connection with existing Bona Vida Products (collectively, "**Customizations**"), and BCC or one of its Subsidiaries owns and will continue to own all right, title and interest in and to all such Customizations developed by BCC or any of its Subsidiaries.

(C) BCC Products. To BCC's Knowledge, except as set forth on Schedule 3.1(k)(vii), since January 1, 2018, there have been no Actions by any Governmental Authority instituted or, to the Knowledge of BCC or any of its Subsidiaries threatened, that seek the recall of any BCC Product or the revocation or suspension of any regulatory license or approval necessary to manufacture, supply, wholesale, sell or offer for sale any BCC Product, except for those licenses and approvals, the absence of which would not have a Material Adverse Effect on BCC.

(k) Benefit Plans. Except as set forth on Schedule 4.1(k), neither BCC nor any of its Subsidiaries sponsor, maintain, or contribute to, or are obligated to contribute to, or have any liability under, any Employee Benefit Plans.

(i) Each such Employee Benefit Plan (and, to the Knowledge of BCC, each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and any applicable collective bargaining agreement in all material respects, and complies in form and in operation in all material respects with the applicable requirements of ERISA, the Code, and other applicable Laws.

(ii) All required reports and descriptions (including Form 5500 annual reports, summary annual reports, and summary plan descriptions) have been timely filed and/or distributed in accordance with the applicable requirements of ERISA and the Code with respect to each such Employee Benefit Plan in all material respects. The requirements of COBRA (or similar state law) have been met in all material respects with respect to each such Employee Benefit Plan to which COBRA (or similar state law) is applicable.

(iii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each such Employee Benefit Plan that is an employee pension benefit plan under ERISA §3(2) and all contributions for any period ending on or before the Closing Date that are not yet due have been made to each such Employee Benefit Plan or will be accrued and contributed in accordance with ERISA, the Code, and the past custom and practice of BCC or its Subsidiaries, as applicable. All applicable premiums or other similar payments for all periods ending on or before the Closing Date have been paid with respect to each such Employee Benefit Plan that is an employee welfare benefit plan under ERISA §3(1).

(iv) Each such Employee Benefit Plan that is intended to meet the requirements of a “qualified plan” under Code §401(a) has received a determination letter from the Internal Revenue Service that such Employee Benefit Plan is so qualified, or can rely on an advisory or opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, and nothing has occurred since the date of such letter that would reasonably be expected to adversely affect the qualified status of any such Employee Benefit Plan.

(v) To the Knowledge of BCC, there have been no “prohibited transactions” (as defined in Section 406 of ERISA and Section 4975 of the Code and for which no prohibited transaction exemption is available) with respect to any such Employee Benefit Plan during the prior three (3) years. To the Knowledge of BCC, no fiduciary has any liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any such Employee Benefit Plan. No Action with respect to such Employee Benefit Plan (including with respect to the administration or the investment of the assets of any such Employee Benefit Plan) (other than routine claims for benefits) is pending or, to the Knowledge of BCC, threatened, and no such Employee Benefit Plan within the past three (3) years has been the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction, or similar program sponsored by an Governmental Authority.

(vi) None of such Employee Benefit Plans is a Title IV Plan, a Multiemployer Plan, a “multiple employer plan” (as defined in Section 413(c) of the Code), or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA). Neither BCC nor any of its ERISA Affiliates maintains, sponsors, contributes to, or is required to contribute to (or in the past six (6) years has maintained, sponsored, contributed to, or been required to contribute to) a Title IV Plan or a Multiemployer Plan. BCC and its ERISA Affiliates have neither incurred in the past six (6) years nor do they reasonably expect to incur (directly or indirectly) any material liability under Title I or Title IV of ERISA (or related provisions of the Code) relating to any such Employee Benefit Plan.

(vii) None of such Employee Benefit Plans provides post-termination or retiree health benefits to any individual for any reason, except as required pursuant to COBRA (or similar state law), and neither BCC nor any of its Subsidiaries have any obligation or liability to provide such benefits to any individual.

(viii) Neither BCC nor any of its Subsidiaries have a commitment or obligation, and have not made any representations to any employee or other individual or entity (whether or not legally binding), to adopt, amend, modify, or terminate any such Employee Benefit Plan or collective bargaining agreement, or to adopt a new benefit plan, in connection with the transactions contemplated by this Agreement or otherwise.

(ix) Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement, directly or in combination with any termination of employment, will result in the acceleration, vesting, funding, or creation of any rights of any director, officer, retiree, independent contractor, consultant or employee to payments or benefits, or increases or enhancements in any payments or benefits or any loan forgiveness, in each case, from BCC or any of its Subsidiaries.

(x) No Employee Benefit Plan is a Deferred Compensation Plan; and (ii) neither BCC nor any of its Subsidiaries have (a) granted to any person an interest in any Deferred Compensation Plan which interest has been or, upon the lapse of a substantial risk of forfeiture with respect to such interest, will be subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(5)(A) of the Code, or (b) modified the terms of or operated any Deferred Compensation Plan in a manner that could cause an interest previously granted under such plan to become subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(5)(A) of the Code. Neither BCC nor any of its Subsidiaries have any obligation to gross-up, indemnify, or reimburse any individual or entity for any excise taxes, interest, or penalties incurred pursuant to Section 409A of the Code.

(l) Tax Matters. Except as set forth on Schedule 4.1(l), to BCC's Knowledge:

(i) BCC and each of its Subsidiaries has timely filed, or has caused to be timely filed on its behalf, all income and other material Tax Returns that it was required to file under applicable Laws (after giving effect to any filing extension properly granted by a Governmental Authority having the authority to do so). All such Tax Returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws. All Taxes due and owing by BCC and each of its Subsidiaries have been paid, except for amounts that are being contested in good faith. Neither BCC nor any of its Subsidiaries has any obligation to pay Taxes pursuant to Section 965 of the Code. Since the Balance Sheet Date, neither BCC nor any of its Subsidiaries has incurred any liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(ii) There are no Encumbrances for Taxes (other than Taxes not yet due and payable) on any of the assets of BCC or its Subsidiaries.

(iii) Neither BCC nor any of its Subsidiaries has entered into any agreement with any Tax Authority to extend the period of limitations for any Taxes. No Tax audit, examination or other Action is now pending against BCC or any of its Subsidiaries or has been threatened in writing, and no Tax deficiency has been asserted or threatened in writing against BCC or any of its Subsidiaries that remains unpaid.

(iv) Neither BCC nor any of its Subsidiaries (1) is a party to or bound by any Tax indemnity, Tax sharing, Tax allocation or similar Contract (other than customary commercial leases or other Contracts that are not primarily related to Taxes and were entered into in the ordinary course of business), or (2) has any liability for Taxes of another Person (other than Bona Vida) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or Non-U.S. Law), as a transferee or successor, by Contract or otherwise.

(v) BCC has not constituted either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(vi) Neither BCC nor any of its Subsidiaries has taken any action, agreed to take any action or failed to take any action, or has Knowledge of any fact or circumstance that, in each case, could reasonably be expected to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(vii) The reincorporation of BCC from Nevada to Delaware immediately prior to the Merger qualifies as a reorganization pursuant to Section 368(a)(1)(F) of the Code.

(viii) BCC and each of its Subsidiaries has withheld or has caused to be withheld, and has paid over or has caused to have been paid over to the appropriate Governmental Authorities, all Taxes required to be so withheld and paid over for all periods under all applicable Law in connection with amounts paid or owing to any employee, shareholder, stockholder, partner, member, independent contractor, creditor, customer, non-resident or other party and all filings (including Forms W-2 and 1099) required with respect thereto have been properly completed and timely filed. BCC and each of its Subsidiaries has correctly classified those individuals performing services as common law employees, leased employees, independent contractors or agents of BCC or its Subsidiaries.

(ix) BCC has made available to Bona Vida complete and correct copies of all federal, state and local (i) income Tax Returns of, and (ii) examination reports and statements of deficiencies assessed against or agreed to by, BCC in each case for years ending on or after December 31, 2014.

(x) No claim has ever been made by any taxing authority in any jurisdiction where BCC or its Subsidiaries does not currently file Tax Returns that it is or may be subject to Tax or required to file a Tax Return in that jurisdiction.

(xi) BCC will not be required to include any item of income or gain in, or be required to exclude any item of deduction or loss from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in, or improper, method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or prior to the Closing Date; (iii) intercompany transaction or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Law) occurring or arising in a taxable period ending on or prior to the Closing Date; (iv) installment sale or open transaction disposition made on or prior to the Closing Date; (v) election under Section 108(i) of the Code; (vi) prepaid amount or advance payment received on or prior to the Closing Date; (vii) use of the “deferral method of accounting”; or (viii) the application of Section 951 or Section 951A of the Code with respect to income earned or recognized or payments received on or prior to the Closing Date. BCC does not use the cash method of tax accounting.

(xii) BCC has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(xiii) BCC has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return that could reasonably be expected to result in the imposition of penalties under Section 6662 of the Code or any comparable provisions of state, local or non-U.S. applicable Law. BCC has not engaged in any “listed transaction,” as set forth in Section 1.6011-4(b)(2) of the U.S. Treasury Regulation.

(xiv) Neither BCC nor any of its Subsidiaries owns any interest in any entity or arrangement classified as a trust, partnership or disregarded entity for U.S. federal income Tax purposes.

(xv) The prices and terms for the provision of any property or services between or among BCC and its affiliates, or its branches, offices or permanent establishments comply with the principles set forth in Section 482 of the Code (and any similar provisions of state, local or foreign Law), are arm’s length for purposes of all applicable transfer pricing Laws, and all related documentation required by such Laws has been timely prepared or obtained and, if necessary, retained.

(xvi) Neither BCC nor any of its Subsidiaries has any operations outside of the United States, including branches, offices or permanent establishments.

(xvii) There are no closing agreements or similar arrangements with any Governmental Authority with regard to the determination of the Tax liability of BCC or any of its Subsidiaries that would have continuing effect on periods (or portions thereof) ending after the Closing Date. There are no requests or rulings or determinations in respect of any Tax or Tax asset pending between BCC or any of its Subsidiaries and any Governmental Authority.

(xviii) Neither BCC nor any of its Subsidiaries has taken any action, agreed to take any action or failed to take any action, or has Knowledge of any fact or circumstance that, in each case, could reasonably be expected to prevent (a) the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code or (b) the exchange of all of the outstanding equity interests of Trupet for BCC capital stock pursuant to the Trupet SEA, together with the Merger and the Financing, from qualifying as an exchange under Section 351 of the Code.

(xix) Neither BCC nor Merger Sub is or will be an “investment company” within the meaning of Section 351 of the Code at any time (A) immediately after the Merger or (B) on the Closing Date.

(xx) BCC has no plan or intention to, after the Merger, make any dividends or distributions to holders of BCC stock who are former Bona Vida stockholders other than regular, normal dividends or distributions made to all holders of record of BCC stock on the relevant record date with respect to such dividends or distributions.

(xxi) Merger Sub is a newly formed corporation that is a direct, wholly-owned subsidiary of BCC and Merger Sub was formed solely for the purpose of consummating the Merger and has not conducted and will not conduct any activities that are not related to the Merger. Merger Sub has held no assets and incurred no liabilities from the time of its formation until the Effective Time. At all times prior to the Effective Time, BCC has directly owned and immediately prior to the Effective Time will continue to directly own all of the outstanding stock of Merger Sub. No stock of Merger Sub will be issued in the Merger.

(xxii) Taking into account any issuance of additional shares of the capital of BCC; any issuance of shares of the capital of BCC for services; the exercise of any BCC rights to acquire shares, warrants, or subscriptions; a public offering of shares and the sale, exchange, transfer by gift, or other disposition of any of the shares of the capital of BCC to be received in the Merger or Trupet Transaction, shareholders of Bona Vida stock whose shares of Bona Vida are converted into BCC Common Stock pursuant to the Merger and the owners of the equity interests in Trupet who will transfer their equity interest in Trupet to BCC in exchange for BCC Common Stock pursuant to the Trupet Transaction will be in Control of BCC. For purposes of this section 4.1(l), "Control" means at least 80 percent of the total combined voting power of all outstanding shares of all classes of stock entitled to vote and at least 80 percent of the total number of all outstanding shares of all other classes of stock of Bona Vida.

(xxiii) There is no plan or intention on the part of BCC or any person related to BCC within the meaning of Treasury Regulation section 1.368-1(e)(4) to redeem or otherwise reacquire any BCC Common Stock to be issued pursuant to the Merger or Trupet Transaction. There is no understanding between BCC and any stockholder of Bona Vida or equity owner of Trupet that such person's ownership of BCC stock would be transitory.

(xxiv) Immediately after the consummation of the Merger and Trupet Transaction, the only shares of the capital of BCC or other securities outstanding will be BCC Common Stock, which are voting shares entitled to vote in connection with the election of directors of BCC.

(xxv) BCC is not and immediately after the Merger will not be a "personal service corporation" within the meaning of section 269A of the Code.

BCC has no plan or intention to (i) liquidate Bona Vida, (ii) merge Bona Vida with and into another entity, (iii) sell, dispose of or otherwise transfer (including transfer to affiliates) any of the stock of Bona Vida, or (iv) cause Bona Vida to sell, dispose of, or otherwise transfer (including transfers to affiliates) any of its assets held at the Effective Time, except for dispositions made in the ordinary course of business, or transfers described in section 368(a)(2)(C) of the Code or Treasury Regulations section 1.368-2(k), in which latter case the foregoing representations set forth in this clause (xv) shall be deemed to apply to any transferee. There is no current plan or intention by BCC to dispose of the transferred equity interests in Trupet received by BCC in the Trupet Transaction other than in the normal course of business operations or other than to transfer the Trupet equity interests to a wholly-owned subsidiary of BCC. Any of the Trupet equity interests transferred to such a wholly-owned subsidiary will be retained by such subsidiary and such subsidiary will have no plan or intention to dispose of the Trupet equity interests.

(m) Environmental, Health and Safety Matters.

(i) BCC has been and is in compliance with all EHSR, other than such instances of non-compliance which, individually or in the aggregate, will not have a Material Adverse Effect.

(ii) Without limiting the generality of the foregoing, BCC has obtained and is in compliance with, all permits, licenses and other authorizations that are required pursuant to all EHSR for the occupation of its facilities and the operation of its business.

(iii) BCC has not received any written or oral notice, report or other information regarding any actual or alleged violation of any EHSR, or any Liabilities, including any investigatory, remedial or corrective obligations, relating to any of its facilities arising under any EHSR.

(n) Contracts. Schedule 4.1(n) sets forth a complete and accurate list of all material Contracts to which BCC or any of its Subsidiaries is a party or by which BCC or any of its Subsidiaries is subject, including the following:

(i) the Organizational Documents of BCC and each of its Subsidiaries;

(ii) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of \$25,000 per annum;

(iii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will: (A) extend over a period of more than one year; (B) result in a material loss to BCC or any of its Subsidiaries; or (C) involve consideration in excess of \$25,000;

(iv) any agreement concerning a partnership or joint venture;

(v) any material agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any Indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$25,000 or under which it has imposed a security interest on any of its assets, tangible or intangible;

(vi) any agreement concerning confidentiality or noncompetition other than with clients and vendors in the ordinary course of business;

- (vii) any profit sharing, unit option, unit purchase, unit appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former directors, officers, or employees;
- (viii) any collective bargaining agreement;
- (ix) any agreement other than on an employment-at-will basis for the employment of any individual on a full-time, part-time, consulting, or other basis or providing severance benefits, if the amount payable after January 1, 2019 exceeds \$50,000;
- (x) any agreement under which it has advanced or loaned any amount of money to any of its directors, officers or employees outside the ordinary course of business;
- (xi) any agreement under which the consequences of a default or termination may have a Material Adverse Effect on BCC or any of its Subsidiaries;
- (xii) any agreement that provides for the indemnification by BCC or any of its Subsidiaries of any Person or the assumption of any Tax, environmental or other Liability of any Person;
- (xiii) any agreement that relates to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
- (xiv) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising agreements to which BCC or any of its Subsidiaries is a party;
- (xv) any agreement with any Governmental Authority to which BCC or any of its Subsidiaries is a party;
- (xvi) any agreement that grants any right of first refusal, right of first offer, or similar right with respect to any material assets, rights or properties of BCC or any of its Subsidiaries;
- (xvii) any agreement that obligates BCC or any of its Subsidiaries to conduct business on an exclusive or preferential basis or that contains a "most favored nation" or similar covenant with any third party, or upon consummation of the Merger will obligate BCC or any Subsidiaries or Affiliates of BCC to conduct business on an exclusive or preferential basis or that contains a "most favored nation" or similar covenant with any third party;
- (xviii) any agreement that contains any provision that requires the purchase of all or a material portion of BCC's or any of its Subsidiaries' requirements for a given product or service from a given third party, which product or service is material to BCC or its Subsidiary, as applicable; or

(xix) any other agreement (or group of related agreements) the performance of which involves consideration in excess of \$25,000.

BCC has delivered to Bona Vida a correct and complete copy of each written Contract listed on Schedule 4.1(n). With respect to each such Contract: (i) the Contract is legal, valid, binding, enforceable, and in full force and effect; (ii) BCC or any of its Subsidiaries has not received written notice from the counterparty that it is in breach or default; (iii) no party has repudiated any provision of such agreement or informed BCC or its Subsidiaries, as applicable, that it does not intend to renew such Contract; and (iv) to the Knowledge of BCC, no event of default, termination event, or material breach that, with notice or the lapse of time or both, would result in an event of default or termination event (in each case as defined or referred to in such Contract) by BCC, any of its Subsidiaries or any other party thereto has occurred or has occurred and is continuing under any such Contract.

(o) Title to Assets: Real Property.

(i) BCC and its Subsidiaries have good and valid (and, in the case of owned real property, good and marketable fee simple) title to, or a valid leasehold interest in, all real property and personal property and other assets reflected in most recent audited BCC Financial Statements, or the Trupet Financial Statements with respect to Trupet, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the filing of the most recent audited BCC Financial Statements or since the Trupet Balance Sheet Date with respect to Trupet. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for Permitted Encumbrances.

(ii) Schedule 4.1(o)(ii) lists: (A) the street address of each parcel of real property; (B) if such property is leased or subleased by BCC or any of its Subsidiaries, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (C) the current use of such property. With respect to leased real property, BCC has delivered or made available to Bona Vida true, complete and correct copies of any leases affecting the real property. BCC or any of its Subsidiaries is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased real property. The use and operation of the real property in the conduct of BCC's or its Subsidiaries' business does not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. There are no Actions pending nor, to the Knowledge of BCC, threatened against or affecting the real property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

(iii) Condition and Sufficiency of Assets. The assets of BCC and its Subsidiaries reflected in the most recent BCC Financial Statements or the Trupet Balance Sheet with respect to Trupet or acquired after the date thereof (but excluding inventory sold since the date thereof in the ordinary course of business) are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost, except for obsolete assets that are not material to the business of BCC or any of its Subsidiaries. The assets of BCC and its Subsidiaries owned, leased or licensed by BCC or any of its Subsidiaries comprise all of the assets, properties and rights of every type and description, whether real or personal, tangible or intangible, used in the conduct of the business of BCC and its Subsidiaries and are sufficient for the continued conduct of BCC's and its Subsidiaries' business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of BCC and its Subsidiaries as currently conducted.

(p) Guarantees. BCC or any of its Subsidiaries is not a guarantor or otherwise is liable for any liability or obligation (including Indebtedness) of any other Person.

(q) Insurance.

(i) Schedule Section 4.1(q) contains a true, complete and correct list of all insurance policies, binders, and fidelity or surety bonds maintained by or on behalf of BCC, any of its Subsidiaries or any of their respective assets, properties, directors, members, managers and officers. BCC has delivered to Bona Vida true, complete and correct copies of all such Policies.

(ii) Each Policy is in full force and effect and is valid, binding and enforceable in accordance with its respective terms. Neither the execution and delivery of this Agreement or the Transaction Documents to which it is a party nor the consummation of the Merger will cause the lapse or result in the termination of any Policy. BCC or any of its Subsidiaries is not in default under any Policy.

(iii) BCC or any of its Subsidiaries has not received any notice from the insurer under any Policy disclaiming or disputing coverage, reserving rights with respect to a particular claim or such Policy in general or canceling or materially amending any such Policy (including the amount of the premium payable in respect thereof), and there is no claim by BCC or any of its Subsidiaries pending under any such Policy.

(iv) All premiums due and payable for the Policies have been duly paid, and such policies (or extensions, renewals or replacements thereof with comparable policies) will be in full force and effect without interruption until the Closing Date.

(v) the Policies (A) are of the type and provide the coverage of insurance policies customarily carried by Persons conducting businesses similar to the business of BCC and its Subsidiaries, (ii) are sufficient to comply with all applicable Laws and Contracts to which BCC or any of its Subsidiaries is a party or by which BCC or any of its Subsidiaries is bound and (iii) insure all insurable assets of BCC and its Subsidiaries up to their respective full replacement values.

(r) SEC Documents: Financial Statements.

(i) From January 1, 2016, BCC has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act as if BCC has been required to file reports under Section 13(a) or 15(d) of the Exchange Act (all of the foregoing filed prior to the date this representation is made including all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein are referred to as the “**SEC Documents**”). BCC has made available to Bona Vida, or filed and made publicly available on EDGAR, true and complete copies of the SEC Documents. Except as set forth on Schedule 4.1(r), each of the SEC Documents was filed with the SEC within the time frames prescribed by the SEC for the filing of such SEC Documents (including any extensions of such time frames permitted by Rule 12b-25 under the Exchange Act pursuant to timely filed Forms 12b-25) such that each filing was timely filed (or deemed timely filed pursuant to Rule 12b-25 under the Exchange Act) with the SEC. Except as set forth in Schedule 4.1(r)(i), as of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents. Except as set forth in Schedule 4.1(r)(i), none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Since the filing of the SEC Documents, except as set forth on Schedule 4.1(r)(i), no event has occurred that would require an amendment or supplement to any of the SEC Documents and as to which such an amendment has not been filed and made publicly available on the SEC’s EDGAR system no less than five (5) days prior to the date this representation is made. Except as set forth on Schedule 4.1(r)(i), BCC has not received any written comments from the SEC staff that have not been resolved to the satisfaction of the SEC staff.

(ii) BCC is not, nor has BCC been since February 4, 2016, a “shell company,” as such term is defined in paragraph (i)(1)(i) of Rule 144 of the 1933 Act or Rule 12b-2 of the Exchange Act of 1934.

(iii) BCC is not required to be registered as, and is not an Affiliate of, and immediately following the Closing will not be required to register as, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

(iv) BCC has established and maintains disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Exchange Act) and such controls and procedures are effective in ensuring that material information relating to the BCC, including BCC Subsidiaries, is made known to the principal executive officer and the principal financial officer.

(v) As of their respective dates, the consolidated financial statements of BCC (the “**BCC Financial Statements**”) and its Subsidiaries included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with GAAP, consistently applied, during the periods involved (except: (i) as may be otherwise indicated in such financial statements or the notes thereto; or (ii) in the case of unaudited interim statements, to the extent they may be subject to normal year-end adjustments, may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of BCC as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). The accounting firm that expressed its opinion with respect to the consolidated financial statements included in BCC’s most recently filed annual report on Form 10-K, and reviewed the consolidated financial statements included in BCC’s most recently filed quarterly report on Form 10-Q, was independent of BCC pursuant to the standards set forth in Rule 2-01 of Regulation S-X promulgated by the SEC and as required by the applicable rules and guidance from the PCAOB, and such firm was (or is, as applicable) otherwise qualified to render such opinion under applicable Law and the rules and regulations of the SEC and the PCAOB. There is no transaction, arrangement or other relationship between BCC and an unconsolidated or other off-balance-sheet entity that is required to be disclosed by BCC in its reports pursuant to the Exchange Act that has not been so disclosed in the SEC Documents prior to the date of this Agreement.

(vi) To the extent made available to BCC by Trupet prior to the Execution Date, BCC has delivered to Bona Vida unaudited balance sheets, statements of profit and loss and cash flow statements of Trupet for the periods from January 1 through December 31, 2017 and 2018 (the “**Trupet Financial Statements**”). To its Knowledge, the Trupet Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, subject to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes. The balance sheet of Trupet as of December 31, 2018 is referred to herein as the “**Trupet Balance Sheet**” and the date thereof as the “**Trupet Balance Sheet Date**”. To its Knowledge, Trupet maintains a standard system of accounting established and administered in accordance with GAAP. To its Knowledge, the Trupet Financial Statements have been prepared based on information derived from the books and records of Trupet and present fairly the financial condition, results of operations, changes in financial position of Trupet, and member’ equity at the dates and for the periods indicated, do not contain any untrue statements or omit to state any material fact necessary to make the Trupet Financial Statements not misleading, and have been prepared in conformity with GAAP consistently applied.

(s) Absence of Certain Changes, Events and Conditions. Except as set forth on Schedule 4.1(s), since the filing of the most recent audited BCC Financial Statements and since the Trupet Balance Sheet Date with respect to Trupet: (i) BCC and each BCC Subsidiary has conducted its business in all material respects in the ordinary course consistent with past practice, (ii) there has not been any Material Adverse Effect, and (iii) no actions have been taken by BCC or any of its Subsidiaries which, if such actions were taken after the Execution Date and prior to Closing, would be in violation of Section 5.1.

(t) Undisclosed Liabilities. Except as set forth in the BCC Financial Statement, the Trupet Financial Statements or Schedule 4.1(t), BCC or any of its Subsidiaries has no Liabilities (absolute, accrued, contingent or otherwise) other than (i) Liabilities included in the most recently filed audited BCC Financial Statements or the most recent Trupet Financial Statements with respect to Trupet or (ii) normal or recurring Liabilities in the ordinary course of business consistent with past practice.

(u) Customers and Suppliers.

(i) Schedule 4.1(u)(i) sets forth: (A) each customer who has paid aggregate consideration to BCC and each of its Subsidiaries for goods or services rendered in an amount greater than or equal to \$50,000 for each of the two most recent fiscal years (collectively, the “**BCC Material Customers**”); and (B) the amount of consideration paid by each BCC Material Customer during such periods. Except as provided on Schedule 4.1(u)(i), BCC or any of its Subsidiaries has not received any notice, and to its Knowledge it has no reason to believe, that any BCC Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with BCC or any of its Subsidiaries.

(ii) Schedule 4.1(u)(ii) sets forth (a) each supplier to whom BCC and each of its Subsidiaries has paid consideration for goods or services rendered in an amount greater than or equal to \$50,000 for each of the two (2) most recent fiscal years (collectively, the “**BCC Material Suppliers**”); and (b) the amount of purchases from each BCC Material Supplier during such periods. BCC or any of its Subsidiaries has not received any notice, and to its Knowledge has no reason to believe, that any BCC Material Suppliers has ceased, or intends to cease, to supply goods or services to BCC or any of its Subsidiaries or to otherwise terminate or materially reduce its relationship with BCC or any of its Subsidiaries.

(v) Employees.

(i) With respect to the business of BCC and each of its Subsidiaries:

(A) Schedule 4.1(v)(i)(A) sets forth a true, correct and complete list of each person currently employed by BCC and each of its Subsidiaries (the “**Employees**”) and with respect to each such Employee the following information: (i) the employer of such Employee, (ii) the amount of salary currently being paid on a gross annualized basis, the hourly pay rate (if applicable) of such Employee and the amount of compensation paid in 2018; (iii) the nature and amount of all compensation proposed to be paid during calendar year 2019, (d) the material terms of any employment or similar agreement with such Employee; and (iv) the nature and amount of any perquisites or personal benefits currently being provided to or for the account of such Employee, other than the employee benefit plans of general application described herein. Schedule 4.1(v)(i)(A) contains a list of individuals who are (A) “leased employees” within the meaning of Section 414(n) of the Code or (B) “independent contractors” within the meaning of the Code and the rules and regulations promulgated thereunder, and in each case, the amount paid by BCC during calendar year 2018 and the hourly pay rate or other compensatory arrangements with respect to each such person.

(B) Except as set forth on Schedule 4.1(v)(i)(B), BCC and each of its Subsidiaries are currently conducting and, and since January 1, 2016, have conducted their operations in compliance with any Law, agreement, plan or program applicable to BCC or any of its Subsidiaries relating to labor or employment relations or practices (including terms and conditions of employment, management-labor relations, wage and hour issues, meal and rest periods, data privacy and data protection, immigration, classification as exempt employees or independent contractors, equal opportunity, occupational safety and health, collective bargaining, nondiscrimination, harassment, immigration, the payment of social security and other Taxes), except for any such violations that would not, individually or in the aggregate, reasonably be expected to (i) subject BCC or any of its Subsidiaries to any material liability or (ii) adversely affect in any material respect BCC's or any of its Subsidiaries' ability to conduct its business after the Closing as presently conducted. There are no pending or, to the Knowledge of BCC, threatened charges of unfair labor practices, employment discrimination or other wrongful action with respect to any aspect of employment of any person employed or formerly employed by BCC or any of its Subsidiaries. All persons who have performed services for BCC and each of its Subsidiaries and have been classified as independent contractors have satisfied the requirements of all material federal and state laws to be so classified, and as applicable BCC or any of its Subsidiaries has fully and accurately reported their compensation on IRS Forms 1099 or other applicable tax forms for independent contractors when required to do so. BCC or any of its Subsidiaries is not engaged in and, since January 1, 2016, has not engaged in any unfair labor practice.

(C) There are no pending or, to the Knowledge of BCC, threatened, Labor Actions involving BCC or any of its Subsidiaries. To the Knowledge of BCC, there is no valid basis for any such Labor Actions. There are no pending or, to the Knowledge of BCC, threatened or anticipated material grievances or arbitration proceedings arising out of or under any labor union or collective bargaining agreement. Except as set forth on Schedule 4.1(v)(i)(C), there are no claims pending or, to the Knowledge of BCC, reasonably expected or threatened, against BCC or any of its Subsidiaries under any workers' compensation or long term disability plan or policy applicable to any current or former Employees.

(D) None of the current officers or executives of BCC or any of its Subsidiaries or other key Employees has notified BCC or any of its Subsidiaries that he or she is terminating or intends to terminate his or her employment with BCC or any of its Subsidiaries prior to, upon or within twelve (12) months following the Closing Date. There has not been, and to the Knowledge of BCC, there will not be, any adverse change relating to relations with Employees as a result of the transactions contemplated by this Agreement. To the Knowledge of BCC, no officer or executive of BCC or any of its Subsidiaries or other key Employee is party to any confidentiality, non-competition, proprietary rights or other such agreement that would materially restrict the performance of such Person's employment duties with BCC or any of its Subsidiaries or the ability of BCC or any of its Subsidiaries to conduct its business.

(E) Except as set forth in the Schedule 4.1(v)(i)(E), BCC or any of its Subsidiaries has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of the WARN during the last six (6) years. To the Knowledge of BCC, BCC or each of its Subsidiaries are and have been in compliance with WARN, and BCC or any of its Subsidiaries has not incurred any liability or obligation under WARN which remains unsatisfied.

(F) BCC or each of its Subsidiaries have provided all Employees with all wages, benefits, relocation benefits, stock options, bonuses and incentives and all other compensation which became due and payable through the date of this Agreement. BCC or any of its Subsidiaries has not instituted any "freeze" of, or delayed or deferred the grant of, any cost-of-living or other salary adjustments for any Employees. Neither the execution or delivery of this Agreement, nor the continuing conduct of the business of BCC and each of its Subsidiaries as currently conducted or contemplated, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default of, any contract under which the Employees are now obligated.

(G) there is no collective bargaining agreement or relationship with any labor organization;

(H) no labor organization or group of employees has filed any representation petition or made any written or oral demand for recognition;

(I) to the Knowledge of BCC, no union organizing or decertification efforts are underway or threatened and no other question concerning representation exists;

(J) no labor strike, work stoppage, slowdown, or other material labor dispute has occurred, and none is underway or, to the Knowledge of BCC, threatened;

(K) there is no workmen's compensation liability, experience or matter outside the Ordinary Course of Business;

(L) there are no employment contracts or severance agreements with any employees of BCC; and

(M) there are no written personnel policies, rules, or procedures applicable to employees of BCC.

(ii) With respect to this transaction, any notice required under any employment-related Law or a collective bargaining agreement has been given, and all bargaining obligations with any employee representative have been, as of the Closing Date, satisfied. No employment agreement of BCC contains any severance, change of control or similar type of provision which would trigger a payment by Bona Vida following consummation of the transactions contemplated by this Agreement.

(w) Notes and Accounts Receivable. All notes and accounts receivable of BCC and each of its Subsidiaries are reflected properly on their respective books and records, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with its terms at its recorded amounts, subject only to the reserve for bad debts set forth on the face of the BCC Financial Statements or the Trupet Financial Statements (rather than in any notes thereto), as applicable, as adjusted for the passage of time through the Effective Date in accordance with the past custom and practice of BCC or its Subsidiaries, as applicable.

(x) Books and Records. The minute books and shareholder books of BCC and each of its Subsidiaries, all of which have been made available to Bona Vida, are complete and correct in all material respects and have been maintained in electronic form in accordance with sound business practices. The minute books of BCC and each of its Subsidiaries contain accurate records of all meetings, and actions taken by written consent of, the board of directors (or other applicable governing body) of BCC and each of its Subsidiaries, any committees thereof, and shareholders (or members) of BCC and each of its Subsidiaries, as applicable, and for the fiscal years beginning with September 1, 2017, no meeting, or action taken by written consent, of any such board of directors (or other applicable governing body) of BCC and each of its Subsidiaries, committees thereof, shareholders (or members) of BCC and each of its Subsidiaries, as applicable, has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of BCC.

(y) Disclosure. No statement, representation or warranty by BCC in this Agreement, including the Disclosure Schedules hereto, contains any untrue statement of material fact, or omits to state a material fact, necessary to make such statements, representations and warranties not misleading. There is no fact known to the Knowledge of BCC which has specific application to BCC or any of its Subsidiaries or, so far as can reasonably be foreseen, may in the future have a Materially Adverse Effect on BCC or any Subsidiary which has not been set forth in this Agreement or the Disclosure Schedules hereto.

(z) OFAC. None of BCC, any Subsidiary of BCC or, to the Knowledge of BCC, any director, officer, agent, employee, or Affiliate of BCC or any of its Subsidiaries or any Person acting on behalf of BCC or any Subsidiary of BCC is named on any OFAC Lists, or is owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in any OFAC Lists.

(aa) Merger Sub. Merger Sub was organized in the State of Delaware on February 28, 2019 and has conducted no activity except in connection with its organization and approval of this Agreement. Merger Sub has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by Merger Sub and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Merger Sub and no further action is required by Merger Sub, its officers, directors, or shareholders in connection herewith or therewith. This Agreement and each other Transaction Document to which Merger Sub is a party has been (or upon delivery will have been) duly executed by Merger Sub and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of Merger Sub enforceable against Merger Sub in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable Law.

Section 4.2 *Survival.* The foregoing representations and warranties shall survive the Closing Date through the General Expiration Date except as provided in Section 5.6(c)(ii).

ARTICLE V  
COVENANTS

Section 5.1 *Covenants of BCC.*

(a) Affirmative Pre-Closing Covenants. BCC covenants and agrees that, between the Effective Date of this Agreement and the earlier to occur of (i) the termination of this Agreement in accordance with Section 7.1, and (ii) the Closing (the **"Interim Period"**), except to the extent required by Law, as may be consented to by Bona Vida in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly required or permitted pursuant to this Agreement or as set forth on Schedule 5.1(a), BCC shall, and shall cause each of the BCC Subsidiaries to:

- (i) preserve and maintain its existence, rights, franchises, licenses and privileges in the jurisdiction of its formation and qualify or remain qualified to do business in each jurisdiction where it is required to so qualify;
- (ii) conduct its business in the ordinary course of business consistent with past practice;
- (iii) maintain its books and records in the ordinary course of business;
- (iv) pay its debts, Taxes and other obligations when due;
- (v) file with the SEC in a timely manner and keep current all reports and other documents required to be filed by BCC under the Securities Act, Exchange Act or any other applicable Law;
- (vi) take all actions necessary to satisfy the closing conditions in Section 6.5; and
- (vii) provide any assistance required by Bona Vida or any Subsidiaries of BCC with respect to completion of any regulatory filings required for execution of or resulting from the Transaction.

(b) Affirmative Post-Closing Covenants. BCC covenants and agrees that after the Closing BCC shall use commercially reasonable efforts to cause the BCC Common Stock to be listed on the Nasdaq Capital Market.

(c) Negative Covenants. Without limiting the foregoing, BCC covenants and agrees that, during the Interim Period, except to the extent required by Law, as may be consented to by Bona Vida in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly contemplated, required or permitted pursuant to this Agreement or as set forth on Schedule 5.1(c), BCC shall not, and shall not cause or permit any BCC Subsidiary to, do any of the following:

- (i) amend or propose to amend the Organizational Documents of BCC or any BCC Subsidiary;
- (ii) split, combine, reclassify or subdivide any shares of stock or other equity securities or ownership interests of BCC or any BCC Subsidiary;
- (iii) declare, set aside or pay any dividend on or make any other distributions (whether in cash, stock, property or otherwise) with respect to shares of capital stock of BCC or any BCC Subsidiary or other equity securities or ownership interests in BCC or any BCC Subsidiary;
- (iv) redeem, repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock or other equity interests of BCC or any BCC Subsidiary;
- (v) issue, sell, pledge, dispose, encumber or grant, confer, award or modify any shares of BCC's or any of the BCC Subsidiaries' capital stock, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of BCC's or any of the BCC Subsidiaries' capital stock or other equity interests;
- (vi) acquire or agree to acquire (including by merger, consolidation or acquisition of stock or assets) any real property, corporation, partnership, limited liability company, other business organization or any division or material amount of assets thereof;
- (vii) sell, mortgage, pledge, transfer, dispose of or encumber, or effect a deed in lieu of foreclosure with respect to, any real property or any non-real property assets (including by merger, consolidation or acquisition of shares, membership interests or assets), except in the ordinary course of business consistent with past practice;
- (viii) incur, create, assume, refinance, replace or prepay any Indebtedness for borrowed money or issue or amend the terms of any debt securities of BCC or any of the BCC Subsidiaries, or assume, guarantee or endorse, or otherwise become responsible for the Indebtedness of any other Person;
- (ix) make any loans, advances or capital contributions to, or investments in, any other Person (including to any of its officers, trustees, Affiliates, agents or consultants), or make any change in any such arrangements, other than travel advances or other loans that do not violate the Sarbanes-Oxley Act of 2002 and any applicable rules and regulations thereunder;

(x) enter into, renew, modify, amend or terminate, or waive, release, compromise or assign any rights or claims under, any Contract listed on Schedule 3.1(o) (or any Contract that, if existing as of the Execution Date, would be listed on Schedule 3.1(o));

(xi) waive, release, assign, settle or compromise any Action;

(xii) (A) except in the ordinary course of business consistent with past practice, hire any employee of BCC or any BCC Subsidiary or promote or appoint any Person to a position of officer of BCC or any BCC Subsidiary, (B) increase the amount, rate or terms of compensation or benefits of any service provider or consultant, except (i) pursuant to the terms of an existing Contract existing prior to the Execution Date, or (ii) in the ordinary course of business consistent with past practice, (C) except in the ordinary course of business consistent with past practice or as required under applicable Law, enter into, adopt, amend or terminate any Employee Benefit Plan, (D) accelerate the vesting, funding or payment of any compensation, benefit or award under any Employee Benefit Plan, other than in accordance with the existing terms of any Employee Benefit Plan, or (E) grant any awards under the any bonus, incentive, performance or other compensation plan or arrangement (whether cash or equity-based);

(xiii) fail to maintain all financial books and records in all material respects in accordance with GAAP (or any interpretation thereof) and consistent with past practices or make any material change to its methods of accounting in effect at August 31, 2018, except as required by a change in GAAP (or any interpretation thereof) or in applicable Law, or make any change, other than in the ordinary course of business consistent with past practice, with respect to accounting policies, principles or practices unless required by GAAP or the SEC;

(xiv) fail to duly and timely file all material reports and other material documents required to be filed with any Governmental Authority, subject to extensions permitted by Law or applicable rules and regulations;

(xv) (A) make, change or rescind any material election relating to Taxes, (B) change a method of Tax accounting or change any Tax accounting period, (C) file any amendment to a Tax Return, (D) settle or compromise any Tax liability, audit, claim or assessment, (E) enter into any closing agreement related to Taxes or obtain any Tax ruling, (F) surrender any right to claim any Tax refund, (G) prepare or file any Tax Return (other than an amendment to a Tax Return) in a manner inconsistent with past practice, or (H) take any action similar to the foregoing that could have the effect of materially increasing the Tax liability or materially reducing any Tax asset of BCC;

(xvi) adopt a plan of merger, complete or partial liquidation or resolutions providing for or authorizing such merger, liquidation or a dissolution, consolidation, recapitalization or bankruptcy reorganization;

(xvii) form any new funds or joint ventures;

(xviii) engage any financial advisor in connection with the transactions contemplated hereby unless the directors of BCC have concluded in good faith (after consultation with outside legal counsel) that failure to engage another financial advisor would be inconsistent with their duties under applicable Law;

(xix) take any action that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby; or

(xx) authorize, or enter into any Contract, agreement or binding commitment or arrangement to do any of the foregoing.

Section 5.2 *Covenants of Bona Vida.*

(a) Affirmative Covenants. Bona Vida covenants and agrees that, during the Interim Period, except to the extent required by Law, as may be consented to by BCC in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly required or permitted pursuant to this Agreement or as set forth on Schedule 5.2(a), Bona Vida shall, and shall cause each of the Bona Vida Subsidiaries to:

(i) preserve and maintain its existence, rights, franchises, licenses and privileges in the jurisdiction of its formation and qualify or remain qualified to do business in each jurisdiction where it is required to so qualify;

(ii) conduct its business in the ordinary course of business consistent with past practice;

(iii) maintain its books and records in the ordinary course of business;

(iv) pay its debts, Taxes and other obligations when due;

(v) take all actions necessary to satisfy the closing conditions in Section 6.4;

(vi) offer all holders of warrants to purchase Bona Vida Common Stock to exercise such warrants for CAD \$0.75, and to cancel, effective as of the Closing, all warrants to purchase Bona Vida Common Stock not exercised prior to Closing; and

(vii) convert all outstanding options to purchase Bona Vida Common Stock into Bona Vida Common Stock.

(b) Negative Covenants. Without limiting the foregoing, Bona Vida covenants and agrees that, during the Interim Period, except to the extent required by Law, as may be consented to by BCC (and such consent may be provided by the Chairman of BCC) in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly contemplated, required or permitted pursuant to this Agreement or as set forth on Schedule 5.2(b), Bona Vida shall not, and shall not cause or permit any Bona Vida Subsidiary to, do any of the following:

- (i) amend or propose to amend the Organizational Documents of Bona Vida or any Bona Vida Subsidiary;
- (ii) split, combine, reclassify or subdivide any Bona Vida Common Stock, or other equity securities or ownership interests of Bona Vida or any Bona Vida Subsidiary (other than any wholly owned Bona Vida Subsidiary);
- (iii) declare, set aside or pay any dividend on or make any other distributions (whether in cash, Bona Vida Common Stock, other equity interests, property or otherwise) with respect to the Bona Vida Common Stock or any Bona Vida Subsidiary or other equity securities or ownership interests in Bona Vida or any Bona Vida Subsidiary;
- (iv) redeem, repurchase or otherwise acquire, directly or indirectly, any Bona Vida Common Stock or other equity interests of Bona Vida or any Bona Vida Subsidiary;
- (v) issue, sell, pledge, dispose, encumber or grant, confer, award or modify any Bona Vida Common Stock or other equity interests of Bona Vida or any Bona Vida Subsidiary, or any options, warrants, convertible securities or other rights of any kind to acquire any Bona Vida Common Stock or other equity interests of Bona Vida or any Bona Vida Subsidiary;
- (vi) acquire or agree to acquire (including by merger, consolidation or acquisition of stock or assets) any real property, corporation, partnership, limited liability company, other business organization or any division or material amount of assets thereof;
- (vii) sell, mortgage, pledge, transfer, dispose of or encumber, or effect a deed in lieu of foreclosure with respect to, any real property or any non-real property assets (including by merger, consolidation or acquisition of shares, membership interests or assets), except in the ordinary course of business consistent with past practice;
- (viii) incur, create, assume, refinance, replace or prepay any Indebtedness for borrowed money or issue or amend the terms of any debt securities of Bona Vida or any of the Bona Vida Subsidiaries, or assume, guarantee or endorse, or otherwise become responsible for the Indebtedness of any other Person;
- (ix) make any loans, advances or capital contributions to, or investments in, any other Person (including to any of its officers, trustees, Affiliates, agents or consultants), or make any change in any such arrangements, other than travel advances;

(x) enter into, renew, modify, amend or terminate, or waive, release, compromise or assign any rights or claims under, any Contract listed on Schedule 3.1(o) (or any Contract that, if existing as of the Execution Date, would be a Contract listed on Schedule 3.1(o))

(xi) waive, release, assign, settle or compromise any Action;

(xii) (A) except in the ordinary course of business consistent with past practice, hire any employee of Bona Vida or any Bona Vida Subsidiary or promote or appoint any Person to a position of officer of Bona Vida or any Bona Vida Subsidiary, (B) increase the amount, rate or terms of compensation or benefits of any service provider or consultant, except (i) pursuant to the terms of an existing Contract existing prior to the Execution Date, or (ii) in the ordinary course of business consistent with past practice, (C) except in the ordinary course of business consistent with past practice or as required under applicable Law, enter into, adopt, amend or terminate any Employee Benefit Plan, (D) accelerate the vesting, funding or payment of any compensation, benefit or award under any Employee Benefit Plan, other than in accordance with the existing terms of any Employee Benefit Plan, or (E) grant any awards under the any bonus, incentive, performance or other compensation plan or arrangement (whether cash or equity-based);

(xiii) fail to maintain all financial books and records in all material respects in accordance with GAAP (or any interpretation thereof) and consistent with past practices or make any material change to its methods of accounting in effect on December 31, 2018 except as required by a change in GAAP (or any interpretation thereof) or in applicable Law, or make any change, other than in the ordinary course of business consistent with past practice, with respect to accounting policies, principles or practices unless required by GAAP;

(xiv) fail to duly and timely file all material reports and other material documents required to be filed with any Governmental Authority, subject to extensions permitted by Law or applicable rules and regulations;

(xv) (A) make, change or rescind any material election relating to Taxes, (B) change a method of Tax accounting or change any Tax accounting period, (C) file any amendment to a Tax Return, (D) settle or compromise any Tax liability, audit, claim or assessment, (E) enter into any closing agreement related to Taxes or obtain any Tax ruling, (F) surrender any right to claim any Tax refund, (G) prepare or file any Tax Return (other than an amendment to a Tax Return) in a manner inconsistent with past practice, or (H) take any action similar to the foregoing that could have the effect of materially increasing the Tax liability or materially reducing any Tax asset of Bona Vida;

(xvi) adopt a plan of merger, complete or partial liquidation or resolutions providing for or authorizing such merger, liquidation or a dissolution, consolidation, recapitalization or bankruptcy reorganization;

(xvii) form any new funds or joint ventures;

(xviii) engage any financial advisor in connection with the transactions contemplated hereby unless the managers of Bona Vida have concluded in good faith (after consultation with outside legal counsel) that failure to engage another financial advisor would be inconsistent with their duties under applicable Law;

(xix) take any action that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby; or

(xx) authorize, or enter into any Contract, agreement or binding commitment or arrangement to do any of the foregoing.

Section 5.3 *Cooperation with Respect to Actions.* In the event of an Action by any Person, including any Governmental Authority, seeking to restrain, prevent, prohibit, materially delay or restructure the transactions contemplated hereby, the Parties shall cooperate and exercise commercially reasonable efforts to seek a resolution of such Action so as to eliminate any impediment to Closing.

Section 5.4 *Press Releases and Public Announcements.* The Parties hereby agree that they shall not issue any press release, public statement or any other public disclosure concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other Parties. Notwithstanding the foregoing, BCC may, without obtaining the consent of Bona Vida, issue a press release, public statement or other public disclosure concerning this Agreement and the transactions contemplated hereby as may be required by applicable Law; *provided*, that, prior to making such announcement, BCC shall have delivered a draft of such press release, public statement or disclosure to Bona Vida and shall have given Bona Vida reasonable opportunity to comment thereon.

Section 5.5 *Governance.* Prior to the Closing, BCC shall have taken all corporate action necessary so that, effective immediately following the Closing, (a) the number of directors that will comprise the full BCC Board shall be five (5), and (b) the Persons set forth on Schedule 5.5 shall be the directors of BCC, each of whom shall serve until their respective successors are duly elected or appointed and qualified.

Section 5.6 *Indemnification.*

(a) Indemnification for Breach of Agreement.

(i) Indemnification by Bona Vida Shareholders. Subject to Section 5.6(c), in the event that Bona Vida breaches any of its representations, warranties, and covenants contained in the Agreement, and, *provided* that BCC or the BCC Representative makes a written claim for indemnification against Bona Vida or a Bona Vida Shareholder prior to the applicable expiration date in Section 5.6(c)(ii) (pursuant to this Section 5.6(a)(i) in the case of a direct claim by BCC against Bona Vida or a Bona Vida Shareholder or, pursuant to Section 5.6(b) below in the case of a third party claim), then the Bona Vida Shareholders agree as a condition of receiving delivery of the Merger Consideration to severally, and not jointly, indemnify BCC or any Affiliate (a “**BCC Indemnified Party**”) from and against the entirety of any Damages BCC or any Affiliate may suffer through and after the date of the claim for indemnification resulting from, arising out of, relating to, or caused by such breach by Bona Vida.

(ii) Indemnification by BCC. Subject to Section 5.6(c), in the event BCC breaches any of its representations, warranties, and covenants contained in the Agreement, and, *provided* that any Bona Vida Shareholder makes a written claim for indemnification against BCC prior to the applicable expiration date in Section 5.6(c)(ii) (pursuant to this Section 5.6(a)(ii) in the case of a direct claim by the Bona Vida Shareholder against BCC or pursuant to Section 5.6(b) below in the case of a third party claim), then BCC agrees to indemnify the Bona Vida Shareholder or any Affiliate (a “**Bona Vida Indemnified Party**” and together with the BCC Indemnified Party, the “**Indemnified Parties**”) from and against the entirety of any Damages the Bona Vida Shareholder may suffer through and after the date of the claim for indemnification resulting from, arising out of, relating to, or caused by such breach by BCC.

(iii) Mike Young shall be appointed as representative and attorney-in-fact to act on behalf of BCC (the “**BCC Representative**”) with respect to any Action asserted by BCC arising out of or relating to this Agreement and the transactions contemplated hereby and shall be authorized to initiate an Action on behalf of BCC alleging a breach of this Agreement and seeking to reduce the Merger Consideration as a result of such breach, subject to the provisions of Section 5.6(c), and to take any and all actions and make any decisions required or permitted to be taken by the BCC Representative pursuant to this Agreement, including the exercise of the power to give and receive notices and communications; agree to, negotiate, enter into settlements and compromises of, and comply with orders with respect to claims for indemnification pursuant to this Agreement; litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to this Agreement; engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist the BCC Representative in complying with his or her duties and obligations; and take all actions necessary or appropriate in the good faith judgment of the BCC Representative for the accomplishment of the foregoing.

(iv) Damian Dalla-Longa shall be appointed as representative and attorney-in-fact to act on behalf of the Bona Vida Shareholders (the “**Bona Vida Representative**”) with respect to any Action asserted by the Bona Vida Shareholders arising out of or relating to this Agreement and the transactions contemplated hereby and shall be authorized to initiate an Action on behalf of the Bona Vida Shareholders relating to this Agreement and the transactions contemplated hereby, subject to the provisions of Section 5.6(c), and to take any and all actions and make any decisions required or permitted to be taken by the Bona Vida Representative pursuant to this Agreement, including the exercise of the power to give and receive notices and communications; agree to, negotiate, enter into settlements and compromises of, and comply with orders with respect to claims for indemnification pursuant to this Agreement; litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to this Agreement; engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist the Bona Vida Representative in complying with her duties and obligations; and take all actions necessary or appropriate in the good faith judgment of the Bona Vida Representative for the accomplishment of the foregoing.

(v) In the event BCC consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of BCC shall assume the obligations set forth in this Section 5.6.

(vi) This Section 5.6 is intended for the irrevocable benefit of, and to grant third party rights to, the Indemnified Parties and shall be binding on all successors and assigns of BCC, Bona Vida and each Bona Vida Shareholder. This Section 5.6 shall not be amended in a manner that is adverse to the Indemnified Parties (including their successors) or terminated without the consent of each of the Indemnified Parties (including their successors) affected thereby. Each of the Indemnified Parties shall be entitled to enforce the covenants contained in this Section 5.6. The provisions of this Section 5.6 shall survive the consummation of the transactions contemplated hereby.

(b) Third Party Claims; Procedure.

(i) Promptly (and in any event within five days after the service of any summons or other document) after acquiring knowledge of any third party Action for which one or more of either a BCC Indemnified Party or a Bona Vida Indemnified Party (the “**Third Party Indemnified Party**”) may seek indemnification against the Bona Vida Shareholders or BCC, respectively (the “**Third Party Indemnifying Party**”) pursuant to this Section 5.6, the Third Party Indemnified Party shall give written notice thereof to the Third Party Indemnifying Party. Failure to provide notice shall not relieve the Third Party Indemnifying Party of its obligations under this Section 5.6, except to the extent of any actual damage caused by that failure. The Third Party Indemnifying Party shall have the right to assume the defense of any Action with one law firm reasonably acceptable to the Third Party Indemnified Party upon delivery of notice to that effect to the Third Party Indemnified Party. If the Third Party Indemnifying Party, after written notice from the Third Party Indemnified Party, fails to take timely action to defend the action resulting from the Action or otherwise respond to the Action, or if the Third Party Indemnifying Party’s counsel has reasonably determined that there may be a conflict between the Third Party Indemnified Party and the Third Party Indemnifying Party in the defense of such Action, the Third Party Indemnified Party shall have the right to defend the action resulting from the Action by counsel of its own choosing, but at the cost and expense of the Third Party Indemnifying Party. The Third Party Indemnified Party shall have the right to settle or compromise any Action against it, and recover from the Third Party Indemnifying Party any amount paid in settlement or compromise thereof, if it has given written notice thereof to the Third Party Indemnifying Party and the Third Party Indemnifying Party has failed to take timely action to defend the Action; otherwise, the Third Party Indemnified Party shall have no right to settle or compromise any Action. The Third Party Indemnifying Party shall have the right to settle or compromise any Action against the Third Party Indemnified Party without the consent of the Third Party Indemnified Party *provided* that the terms of the settlement or compromise provide for the unconditional release of the Third Party Indemnified Party, require the payment of monetary damages only, is not likely to result in criminal proceedings and is not likely to have a Material Adverse Effect on the Third Party Indemnified Party or its business.

(ii) Upon its receipt of any amount paid by the Third Party Indemnifying Party pursuant to this Section 5.6, the Third Party Indemnified Party shall deliver to the Third Party Indemnifying Party such documents as it may reasonably request assigning to the Third Party Indemnifying Party any and all rights, to the extent indemnified, that the Third Party Indemnified Party may have against third parties with respect to the Proceeding for which indemnification is being received.

(c) Limitations on Indemnification.

(i) Notwithstanding anything to the contrary contained herein, except as provided in this Section 5.6(c), no BCC Indemnified Party shall be entitled to receive an indemnification payment with respect to any Action specified in this Section 5.6 unless the Action, or the aggregate amount of all Actions made by the BCC Indemnified Party hereunder, equals or exceeds \$50,000 (in which case all of such Actions back to the first dollar will be recoverable).

(ii) (A) Subject to Section 5.6(c)(iii), the Parties agree that the right of any Indemnified Party to undertake an Action pursuant to Sections 5.6(a) and (b) shall survive the Closing until 11:59 p.m. in New York City on the date that is eighteen (18) months following the Closing Date (the “**General Expiration Date**”); *provided, however*, that if, at any time prior to the General Expiration Date, any Indemnified Party delivers a written notice in accordance with Section 5.6(a)(i) or Section 5.6(a)(ii) asserting in good faith an Action for recovery under Section 5.6(a) or (b), then the Action asserted in such notice shall survive the General Expiration Date until such time as such Action is fully and finally resolved; (B) notwithstanding anything to the contrary in Section 5.6 (including 5.6(c)(ii)(A) hereof), the Parties agree that the right of any Indemnified Party to undertake an Action pursuant to Sections 5.6(a) and (b) with respect to (1) fraud, gross negligence, willful misconduct or intentional breach shall survive the Closing until the expiration of the statute of limitation applicable to the subject matter thereof, (2) with respect to the Tax representations made by BCC and Bona Vida pursuant to the provisions of Sections 3.1(l) and 4.1(l) respectively, shall survive the Closing for a period of ninety (90) days following the expiration of the applicable statute of limitations period, and (3) the covenants and agreements of the Parties in this Agreement and the Transaction Documents which by their terms contemplate actions or impose obligations following the Closing shall survive the Closing and remain in full force and effect in accordance with their respective terms. To the extent that any covenants and agreements in this Agreement or the Transaction Documents contemplate performance prior to the Closing, such covenants and agreements shall terminate to such extent upon the Closing; *provided*, that the failure of such provisions to survive shall not prevent an Indemnified Party from making any claim for a breach of such provisions that occurred prior to the Closing.

(iii) Notwithstanding anything in this Agreement to the contrary, the maximum liability of any Bona Vida Shareholder for Damages shall be equal to the value of the Merger Consideration received by such Bona Vida Shareholder at the Effective Time.

(iv) Subject to Section 7.3, the Parties agree that the indemnification right set forth in this Agreement shall be the Parties sole and exclusive remedy with respect to the transactions contemplated by this Agreement, except for specific performance or other equitable remedy.

(v) If any Bona Vida Shareholder is liable for Damages hereunder, such Bona Vida Shareholder shall have the option of discharging such liability in cash, BCC Common Stock at a value of \$0.1175 per share (subject to adjustment for stock splits, stock dividends, combinations or similar events), or a combination thereof. If BCC is liable for Damages hereunder, BCC shall discharge such liability in cash.

(vi) In the event of any reclassification, recapitalization, stock split, stock dividend (including any dividend or distribution of securities convertible into BCC Common Stock) or subdivision with respect to BCC Common Stock, any change or conversion of BCC Common Stock into other securities, any other dividend or distribution with respect to the BCC Common Stock (or if a record date with respect to any of the foregoing should occur), after the date of this Agreement, appropriate and proportionate adjustments shall be made to the number of shares of BCC Common Stock and the price per share thereof that may be issuable for indemnification purposes pursuant to this Agreement.

Section 5.7 *Disclosure Schedule Updates.*

(a) From time to time during the period between the Execution Date and immediately prior to the Closing, BCC or Bona Vida may at its option supplement or amend and deliver updates to its Disclosure Schedule (each, a “**Schedule Update**”) that are necessary to correct any representation or warranty that has become inaccurate or incomplete solely due to a fact, event or circumstance that arises after the Execution Date and which, if existing or occurring on or prior to the Execution Date, would have been required to be set forth or described in such Disclosure Schedule.

(b) If the existence of any matter set forth in a Schedule Update (each, a “**New Matter**”) or all such New Matters, taken as a whole: (i) would not result in the failure of the conditions set forth in Section 6.4(a), Section 6.4(c), Section 6.5(a) or Section 6.5(c), and (ii) was not the result of an intentional breach of this Agreement by BCC or Bona Vida, then such Schedule Update shall be deemed to have amended the appropriate Section of the Disclosure Schedule of BCC or Bona Vida, to have qualified the applicable representations and warranties contained in this Agreement and to have cured any inaccuracy in or breach of any representation or warranty that otherwise might have existed hereunder by reason of the existence of such New Matter for purposes of determining whether or not the conditions set forth in Section 6.4(a), Section 6.4(c), Section 6.5(a) or Section 6.5(c) (as applicable) have been satisfied, but any information disclosed in such Schedule Update shall not cure any inaccuracy in or breach of any representation or warranty contained in this Agreement for purposes of the indemnification rights contained in Section 5.6.

(c) If the existence of any New Matter, individually or in the aggregate with all New Matters, taken as a whole, (i) would result in the failure of the conditions set forth in [Section 6.4\(a\)](#), [Section 6.4\(c\)](#), [Section 6.5\(a\)](#) or [Section 6.5\(c\)](#), or (ii) such New Matter is the result of an intentional breach of this Agreement by BCC or Bona Vida (which, for purposes of clauses (i) and (ii), it should be assumed that such breach is continuing as of the Closing), the other Party shall have the right to either (x) terminate this Agreement pursuant to [Section 7.1\(c\)](#) or [Section 7.1\(d\)](#) (as applicable) or (y) consummate the transactions contemplated by this Agreement. If such other Party elects to consummate the transactions contemplated by this Agreement notwithstanding such New Matter, then such Schedule Update shall be deemed to have amended the appropriate Section of such Disclosure Schedule, to have qualified the applicable representations and warranties contained in this Agreement and to have cured any inaccuracy in or breach of any representation or warranty that otherwise might have existed hereunder by reason of the existence of such New Matter for purposes of determining whether or not the conditions set forth in [Section 6.4\(a\)](#), [Section 6.4\(c\)](#), [Section 6.5\(a\)](#) or [Section 6.5\(c\)](#) have been satisfied, but any information disclosed in such Schedule Update shall not cure any inaccuracy in or breach of any representation or warranty contained in this Agreement for purposes of the indemnification rights contained in [Section 5.6](#).

(d) The representations, warranties and covenants of BCC and Bona Vida, and each Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of such Indemnified Party (including by any of its Representatives) or by reason of the fact that such Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of such Indemnified Party's waiver of any condition set forth in [Section 6.3](#), [Section 6.4](#) or [Section 6.5](#) as the case may be.

**Section 5.8** *Lock-Up.* On the Closing Date, holders of at least sixty percent (60%) of the issued and outstanding shares of Bona Vida Common Stock shall enter into a single lock-up agreement with BCC (the "**Lock-Up Agreement**") in a form substantially similar to [Exhibit B](#) hereto, for the period beginning on the Closing Date and expiring on the six (6) month anniversary of the Closing Date, pursuant to which each Bona Vida Shareholder shall acknowledge and agree not to offer, sell, contract to sell, hypothecate or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the sale, hypothecation or disposition (whether by actual or effective economic sale, hypothecation or disposition due to cash settlement or otherwise) by the Bona Vida Shareholder or any Affiliate of the Bona Vida Shareholder or any Person in privity with the Bona Vida Shareholder or any Affiliate of the Bona Vida Shareholder), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the SEC in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, with respect to any and all of the Lock-Up Securities unless such transaction is a Permitted Disposition. Notwithstanding the foregoing, and subject to all Permitted Dispositions and all applicable Law, on the six (6) month anniversary of the Closing Date each Bona Vida Shareholder shall be entitled to freely dispose of 100% of such Bona Vida Shareholder's BCC Common Stock, *provided, however*, if any BCC Common Stock held by the Bona Vida Shareholders is subject to an effective Registration Statement, the restrictions set forth in this [Section 5.8](#) with respect to any registered BCC Common Stock shall be modified as follows: (a) on the three (3) month anniversary of the Closing Date, such Bona Vida Shareholder may freely dispose up to 20% of such Bona Vida Shareholder's registered BCC Common Stock; and (b) on the six month anniversary of the Closing Date, such Bona Vida Shareholder may freely dispose of the remaining 80% of such Bona Vida Shareholder's registered BCC Common Stock. For the avoidance of doubt, the provisions of the immediately prior sentence shall only apply to registered BCC Common Stock and shall not expand the rights of holders of BCC Common Stock to the extent that such shares are not subject to an effective Registration statement or any prospectus does not meet the requirements of Section 5(b) of the Securities Act. Furthermore, nothing contained in this [Section 5.8](#) shall be deemed to conflict with Rule 144 under the Securities Act.

Section 5.9 *Mutual Pre-Closing Covenants.* After the execution of this Agreement the Parties covenant to work in good faith to prepare, negotiate and enter into, or cause to be prepared, negotiated and entered into, (i) employment agreements with the Bona Vida Executives and (ii) a stockholder agreement with the Bona Vida Shareholders regarding protections of minority interests.

Section 5.10 *Further Assurances.* If any further action is necessary or desirable to carry out the purposes of this Agreement, the Parties agree to take such further action (including the execution and delivery of such further instruments and documents) as the other Party may request, all at the sole cost and expense of the requesting Party (unless the requesting party is entitled to indemnification therefore under Section 5.6 hereof).

Section 5.11 *Registration Rights.* Prior to the Closing BCC and the Bona Vida Shareholders shall enter into a Registration Rights Agreement (the “**Registration Rights Agreement**”), pursuant to which BCC shall use commercially reasonable efforts to register the shares of BCC Common Stock issuable to the Bona Vida Shareholders as part of the Merger Consideration, which registration rights shall be subordinate to the rights of investors in a proposed securities offering through a broker-dealer and pari passu with the rights of the investors who received registration rights under a Registration Rights Agreement entered into as of November 20, 2018 (the “**November Investors**”) and the members of Trupet who receive BCC Common stock in connection with BCC’s potential acquisition of Trupet as contemplated herein (the “**Trupet Members**”). Bona Vida acknowledges that the Staff of the Securities and Exchange Commission (“**SEC**”) has a policy limiting the number of shares that can be registered in any one or related registration statements. While BCC anticipates that there may be some room to include some shares of BCC Common Stock issued to the Bona Vida Shareholders as part of the Merger Consideration (the “**Extra Shares**”), the ultimate decision will be made by the Staff of the SEC. To the extent that any Extra Shares can be included in the registration statement, each of the November Investors, the Bona Vida Shareholders and the Trupet Members shall, as individual groups, be entitled to provide 1/3 of the Extra Shares. The number of Extra Shares that may be provided by each November Investor, each Bona Vida Shareholder and each Trupet Member shall be made on a pro rata basis based on the percentage of BCC Common Stock that such individual November Investor, Bona Vida Shareholder or Trupet Member owns compared to the total number of shares of BCC Common Stock issued to all investors in its investor group.

(a) BCC, Merger Sub and Bona Vida will use their respective commercially reasonable best efforts to cause the Merger to qualify as a “reorganization” under Section 368(a) of the Code. Parent, Merger Sub and the Company agree not to (and not to permit or cause any Affiliate or Subsidiary to) take any actions or fail to take any reasonable actions that would reasonably be expected to cause the Merger to fail to qualify as a “reorganization” under Section 368(a) of the Code. BCC, Merger Sub and Bona Vida will use their respective commercially reasonable best efforts to cause the Merger, together with the Trupet Transaction and the Financing, to qualify as an exchange under Section 351 of the Code. Parent, Merger Sub and the Company agree not to (and not to permit or cause any Affiliate or Subsidiary to) take any actions or fail to take any reasonable actions that would reasonably be expected to cause the Merger, together with the Trupet Transaction and the Financing, to fail to qualify as an exchange under Section 351 of the Code.

(b) BCC and its affiliates (including the Surviving Company) will use commercially reasonable efforts to continue the historic business of Bona Vida (or alternatively, if Bona Vida has more than one line of business, continue at least one significant line of Bona Vida’s historic business) or use a significant portion (at least 33-1/3% by value) of Bona Vida’s historic business assets in a business within the meaning of Treasury Regulations Section 1.368-1(d).

(c) BCC, Merger Sub and Bona Vida will treat, and will not take any Tax reporting position inconsistent with the treatment of, (i) the Merger as a “reorganization” within the meaning of Section 368(a) of the Code for U.S. federal, state and other relevant Tax purposes and (ii) the Merger, together with the Trupet Transaction and the Financing, as an exchange under Section 351 of the Code. The Parties will duly file their respective tax returns for the taxable year including the Closing Date containing the information required under Treasury Regulation Section 1.351-3. The Parties will cooperate with each other in timely providing the information necessary for the filing of such information and, if requested by the other Parties, will consult with each other in good faith in preparing such information.

(d) Without the prior written consent of the Bona Vida Representative, neither BCC nor any of its Affiliates will (a) amend any Tax Return of Bona Vida for a period ending on or prior to the Closing Date (a “**Pre-Closing Tax Period**”), (b) initiate contact with taxing authorities regarding Taxes or Tax items of Bona Vida with respect to any Pre-Closing Tax Period, (c) make any voluntary disclosures with respect to Taxes or Tax items of Bona Vida for Pre-Closing Tax Periods, (d) make any Tax election that has retroactive effect to any Pre-Closing Tax Period of Bona Vida, (e) take any action having retroactive effect to the Closing Date or prior to the Closing Date with respect to Bona Vida that could reasonably be expected to adversely affect the tax treatment of the Merger to Bona Vida shareholders or (f) agree to waive or extend the statute of limitations relating to any Taxes of Bona Vida or its Affiliates for any Pre-Closing Tax Period.

Section 5.13 *Bona Vida Percentage Interest.* Immediately after the consummation of the transactions contemplated in this Agreement, the Bona Vida Shareholders, in the aggregate, shall own 46.0% of the voting power and 46.0% of the economic interests in BCC, the calculation of which shall (i) be on a fully diluted basis and (ii) exclude the shares of BCC Common Stock issued in the Financing.

Section 5.14 *BCC Equity Plan.* The Parties shall jointly develop an equity incentive plan reserving for issuance 8,650,000 shares of BCC Common Stock for issuance and distribution in accordance with Exhibit D hereto (the “**Equity Plan**”).

Section 5.15 *Financing.* BCC shall use commercially reasonable efforts to complete a financing (the “**Financing**”) which shall be approved, in writing, by Trupet and Bona Vida.

Section 5.16 *Confidentiality.* From and after the Closing, each Party shall, and shall cause its Affiliates and its and their respective directors, officers, employees, consultants, counsel, accountants, and other agents (collectively, “**Representatives**”) to hold, in confidence any and all information, in any form, concerning any other Party, except to the extent that such Party can show that such information: (a) is generally available to and known by the public through no fault of such Party, any of its Affiliates, or their respective Representatives; or (b) is lawfully acquired by such Party, any of its Affiliates, or their respective Representatives from and after the Closing from sources that are not prohibited from disclosing such information by any obligation. If any Party or any of its Affiliates or their respective Representatives is compelled to disclose any information by Order or Law, such Party shall promptly notify the other Parties in writing and shall disclose only that portion of such information which is legally required to be disclosed; *provided, however*, such Party shall use reasonable best efforts to obtain as promptly as possible an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 5.17 *Information Provided to Stockholders.* Bona Vida shall prepare, with the cooperation of BCC, information to be sent to the holders of shares of Bona Vida Company Stock in connection with soliciting their approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, and BCC shall prepare, with the cooperation of Bona Vida, information to be sent to the holders of shares of BCC Common Stock in connection with soliciting their approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger. BCC and Bona Vida shall each use commercially reasonable efforts to cause information provided to such Party’s stockholders to comply with applicable federal and state securities Laws. Each of BCC and Bona Vida agrees to provide promptly to the other such information concerning its business and financial statements and affairs (which for BCC, shall include Trupet) as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate for inclusion in the information sent, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other’s counsel and auditors in the preparation of the information to be sent to the stockholders of each Party. Bona Vida will promptly advise BCC, and BCC will promptly advise Bona Vida, in writing if at any time prior to the Effective Time either Bona Vida or BCC shall obtain knowledge of any facts that might make it necessary or appropriate to amend or supplement the information sent in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable Law. The information sent by Bona Vida shall contain the recommendation of the Bona Vida Board that the holders of shares of Bona Vida Company Stock approve the adoption of this Agreement, including the Merger. The information sent by BCC shall contain the recommendation of the BCC Board that the holders of shares of BCC Common Stock approve the adoption of this Agreement and the transactions contemplated hereby, including the Merger. Anything to the contrary contained herein notwithstanding, neither Bona Vida nor BCC shall include in the information sent to its stockholders any information with respect to the other party or its affiliates or associates, the form and content of which information shall not have been approved by such party in its reasonable discretion prior to such inclusion. To the extent required by the DGCL, Bona Vida shall deliver to any Bona Vida stockholder who has not executed the written stockholder consent (i) a notice of the taking of the actions described in the written stockholder consent in accordance with Section 228(e) of the DGCL and (ii) a notice of appraisal rights in accordance with Section 262 of the Delaware Act.

ARTICLE VI  
CLOSING DELIVERABLES AND CONDITIONS TO CLOSING

Section 6.1 *Closing Deliverables of BCC.* The obligations of Bona Vida to consummate the transactions contemplated by this Agreement shall be subject to the delivery to Bona Vida (or Bona Vida's waiver), at or prior to the Closing, of each of the following by BCC:

- (a) The Merger Consideration specified on Schedule 2.1;
- (b) An employment agreement for each of the Bona Vida Executives as provided for in Section 5.9, duly executed by BCC;
- (c) The Lock-Up Agreement, duly executed by BCC;
- (d) A stockholders agreement as provided for in Section 5.9, duly executed by BCC;
- (e) A copy of resolutions of the BCC Board approving this Agreement and all related matters contemplated by the Agreement, duly executed by the BCC Board;
- (f) The Registration Rights Agreement as provided for in Section 5.11, duly executed by BCC; and

(g) An officer's certificate of BCC in a form reasonably acceptable to Bona Vida certifying that: (i) the representations and warranties of BCC are true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date); (ii) BCC has performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by BCC at or prior to the Closing Date; and (iii) there has been no Material Adverse Effect since the Effective Date.

Section 6.2 *Closing Deliverables of Bona Vida.* The obligations of BCC to consummate the transactions contemplated by this Agreement shall be subject to the delivery to BCC (or BCC's waiver, at or prior to the Closing) of each of the following:

- (a) An employment agreement for each of the Bona Vida Executives as provided for in Section 5.9, duly executed by each such Bona Vida Executive;

(b) The Lock-Up Agreement, duly executed by holders of at least sixty percent (60%) of the issued and outstanding shares of Bona Vida Common Stock immediately prior to the Effective Time;

(c) A stockholders agreement as provided for in Section 5.9, duly executed by holders of at least sixty percent (60%) of the issued and outstanding shares of Bona Vida Common Stock immediately prior to the Effective Time;

(d) The Registration Rights Agreement as provided for in Section 5.11, duly executed by holders of at least sixty percent (60%) of the issued and outstanding shares of Bona Vida Common Stock immediately prior to the Effective Time;

(e) Resignations of each director and officer of Bona Vida;

(f) An officer's certificate of Bona Vida in a form reasonably acceptable to BCC certifying that: (i) the representations and warranties of Bona Vida are true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date); (ii) Bona Vida has performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by Bona Vida at or prior to the Closing Date; and (iii) there has been no Material Adverse Effect since the Effective Date;

(g) Evidence satisfactory to BCC, in BCC's reasonable discretion, that the number of Dissenting Shares shall not be greater than five percent (5%) of the issued and outstanding shares of Bona Vida Common Stock as set forth on Schedule 3.1(e);

(h) A copy of resolutions of the Bona Vida Board approving this Agreement and all related matters contemplated by the Agreement, duly executed by the Bona Vida Board.

Section 6.3 *Conditions to each Party's Obligations.* The respective obligations of each Party to consummate the transactions contemplated hereby shall be subject to the satisfaction or (to the extent permitted by Law) waived by BCC and Bona Vida, at or prior to the Closing, of the following conditions:

(a) Orders. No Order shall be in effect that enjoins, prohibits or otherwise prevents, or purports to enjoin, prohibit or otherwise prevent, the consummation of the Transaction or the Merger.

(b) Applicable Law. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any applicable Law that has the effect of making the Transactions illegal or otherwise restraining or prohibiting the consummation of the Transaction or the Merger or materially changes to the Transaction or the Merger.

(c) Actions. No Action shall be pending seeking to enjoin, restrain, or otherwise prohibit or make illegal the Transaction or the Merger, or threatened in writing to seek any of the foregoing.

Section 6.4 *Conditions to BCC's Obligation to Close.* The obligations of BCC to consummate the transactions contemplated hereby shall be subject to the satisfaction or (to the extent permitted by Law) waived by BCC, at or prior to the Closing, of the following conditions:

(a) Representations and Warranties of Bona Vida. (i) Other than the representations and warranties set forth in Section 3.1(a), Section 3.1(b), Section 3.1(c) and Section 3.1(e) (the "**Bona Vida Fundamental Representations**"), each of the representations and warranties of Bona Vida set forth in this Agreement shall be true and correct in all material respects (without giving effect to any qualification as to materiality or Bona Vida Material Adverse Effect) as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct as of such date), and (ii) the Bona Vida Fundamental Representations shall be true and correct in all respects as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct in all respects as of such date).

(b) Performance of Covenants and Obligations of Bona Vida. Bona Vida shall have performed in all material respects all obligations, and complied in all material respects with all agreements and covenants, required to be performed by it under this Agreement on or prior to the Closing Date.

(c) Material Adverse Change. On the Closing Date, there shall not exist any event, circumstance, change or effect arising after the date of this Agreement that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on Bona Vida.

(d) Good Standing. Bona Vida and each Bona Vida Subsidiary shall be in good standing (or its equivalent) in the jurisdiction under the Laws in which the it is organized.

(e) Consents. Each of the consents identified on Schedule 6.4(c) shall have been obtained and shall be in full force and effect, where such consents may be obtained prior to the Closing.

(f) Deliverables. Bona Vida shall have delivered all agreements, documents certificates and other items set forth in Section 6.2.

Section 6.5 *Conditions to Bona Vida's Obligation to Close.* The obligations of Bona Vida to consummate the transactions contemplated hereby shall be subject to the satisfaction or (to the extent permitted by Law) waived by Bona Vida, at or prior to the Closing, of the following conditions

(a) Representations and Warranties of BCC. (i) Other than the representations and warranties set forth in Section 4.1(a), Section 4.1(b), Section 4.1(c) and Section 4.1(e) (the "**BCC Fundamental Representations**"), each of the representations and warranties of BCC set forth in this Agreement shall be true and correct in all material respects (without giving effect to any qualification as to materiality or Material Adverse Effect) as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct as of such date), and (ii) the BCC Fundamental Representations shall be true and correct in all respects as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct in all material respects as of such date).

- (b) Performance of Covenants and Obligations of BCC. BCC shall have performed in all material respects all obligations, and complied in all material respects with all agreements and covenants, required to be performed by it under this Agreement on or prior to the Closing.
- (c) Material Adverse Change. On the Closing Date, there shall not exist any event, circumstance, change or effect arising after the date of this Agreement that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on BCC.
- (d) Good Standing. BCC and each BCC Subsidiary shall be in good standing (or its equivalent) in the jurisdiction under the Laws in which the it is organized.
- (e) Exchange Consideration. BCC shall have issued or paid, as applicable, to each Bona Vida Shareholder, effective as of the Closing, the Merger Consideration. In lieu of actual delivery of the Merger Consideration, a written representation of BCC's stock transfer agent that it shall deliver the Merger Consideration by overnight deliver following notice that the Closing has occurred shall comply with this Section 6.5(e).
- (f) Consents. Each of the consents identified on Schedule 6.5(f) shall have been obtained and shall be in full force and effect, where such consents may be obtained prior to the Closing.
- (g) Deliverables. BCC shall have delivered all agreements, documents certificates and other items set forth in Section 6.1.
- (h) Financing. BCC shall have completed the Financing, which has been approved, in writing, by Bona Vida and Trupet, and shall have received written notice confirming same from BCC's broker-dealer.
- (i) Trupet. BCC's acquisition of Trupet shall have been consummated.
- (j) Reverse Stock Split. The Reverse Stock Split shall have occurred.
- (k) Equity Plan. The BCC Board and shareholders of BCC shall have adopted the Equity Plan.
- (l) Merger Sub Approvals. BCC shall have obtained (and shall have provided copies thereof to Bona Vida) the written consents of the sole stockholder of Merger Sub and the Board of Directors of Merger Sub, in each case, approving the adoption of this Agreement and the transactions contemplated hereby, including the Merger and approving the execution, delivery and performance by such entity of this Agreement, in form and substance reasonably satisfactory to Bona Vida.

ARTICLE VII  
TERMINATION

Section 7.1 *Termination.* This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written agreement of BCC and Bona Vida;

(b) by either BCC or Bona Vida, by prior written notice to the other Party, if the Closing shall not have occurred for any reason on or prior to the Outside Date; *provided, however*, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to any Party whose failure to perform any of its obligations under this Agreement required to be performed by it at or prior to the Closing has been the cause of, or resulted in, the failure of the Closing to occur;

(c) by BCC, upon written notice to Bona Vida if (i) any of the conditions set forth in Section 6.4 shall have become incapable of fulfillment and shall not have been waived by BCC, (ii) Bona Vida fails to perform in any material respect any of its covenants or agreements contained in this Agreement required to be performed by it on or prior to the Closing, and, within ten (10) Business Days after written notice of such breach to Bona Vida, such breach shall not have been cured by Bona Vida or waived by BCC, or (iii) Bona Vida shall breach any of its representations or warranties hereunder such that the conditions set forth in Section 6.4 would not be satisfied if such conditions were required to be satisfied on the date of the breach, and, within ten (10) Business Days after written notice of such breach to Bona Vida, Bona Vida shall continue to be in breach of such representation or warranty; *provided, however*, this Agreement may not be terminated by BCC pursuant to this Section 7.1(c) if BCC is then in breach of any representation, warranty, covenant or agreement set forth in this Agreement such that BCC is not then capable of satisfying the conditions set forth in Section 6.5;

(d) by Bona Vida, upon written notice to BCC, if (i) any of the conditions set forth in Section 6.5 shall have become incapable of fulfillment and shall not have been waived by Bona Vida, (ii) BCC fails to perform in any material respect any of the covenants or agreements contained in this Agreement required to be performed by it on or prior to the Closing, and, within ten (10) Business Days after written notice of such breach to BCC, such breach shall not have been cured or waived by Bona Vida, or (iii) BCC shall breach any of its representations or warranties hereunder such that the conditions set forth in Section 6.5 would not be satisfied if such conditions were required to be satisfied on the date of the breach, and, within ten (10) Business Days after written notice of such breach to BCC, BCC shall continue to be in breach of such representation or warranty; *provided, however*, this Agreement may not be terminated by Bona Vida pursuant to this Section 7.1(d) if Bona Vida is then in breach of any representation, warranty, covenant or agreement set forth in this Agreement such that Bona Vida is not then capable of satisfying the conditions set forth in Section 6.4;

(e) by Bona Vida or BCC if a Governmental Authority shall have issued an Order or taken any other Action, in either case, having the effect of restraining, enjoining or otherwise prohibiting, or attempting to restrain, enjoin or otherwise prohibit, the Transactions or the Merger and such Order or other Action shall have become final and nonappealable;

(f) by Bona Vida or BCC if (i) a New Matter disclosed in a Schedule Update provided to such Party pursuant to Section 5.7(c) gives such Party the right to terminate this Agreement under Section 5.7(c), and (ii) such Party provides written notice of its election to terminate the Agreement under this Section 7.1(f) within ten (10) Business Days following its receipt of any such Schedule Update.

(g) by Damian Dalla-Longa, notwithstanding anything in this Agreement to the contrary, upon written notice to BCC if, in his sole discretion, it has become reasonably apparent that the parties will not be able to agree on the terms of the employment agreements to be delivered pursuant to Section 5.9.

Section 7.2 *Procedure and Effect of Termination.* In the event of the termination of this Agreement and the abandonment of the transactions contemplated hereby pursuant to Section 7.1, written notice thereof shall be given by the Party so terminating to the other Parties to this Agreement, and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further action by the Parties. If this Agreement is terminated pursuant to Section 7.1 hereof:

(a) this Agreement shall become null and void and of no further force or effect, except that the obligations provided for in this Article VII, Section 5.16 and Article IX hereof shall survive any such termination of this Agreement; and

(b) Subject to Section 7.2(b) and Section 9.14, there shall be no liability on the part of any Party, except that nothing herein shall relieve any Party from liability for any fraud, intentional breach, willful misconduct or gross negligence.

Section 7.3 *Breakup Fee.* In the event: (i) this Agreement is terminated pursuant to Section 7.1(g); (ii) Bona Vida consummates a Change of Control Transaction within twelve (12) months of the date this Agreement is terminated; and (iii) the value of such Change of Control Transaction shall be greater than or equal to the value of the Merger Consideration or is otherwise a superior transaction for the Bona Vida Shareholders from a financial point of view, then, upon written demand from BCC, Bona Vida shall, within seven (7) days of Bona Vida's receipt of such written demand, pay to BCC an amount equal to four hundred thousand dollars (\$400,000).

#### ARTICLE VIII SURVIVAL

Section 8.1 *Survival.* The representations and warranties, covenants and agreements in this Agreement or in any certificate, schedule, instrument or other document delivered pursuant to this Agreement shall survive the Closing consistent with the indemnification provisions set forth in Section 5.6 hereof.

ARTICLE IX  
MISCELLANEOUS

Section 9.1 *Amendment and Modification.* This Agreement may be amended, modified or supplemented only by written agreement of BCC and Bona Vida at any time prior to the Closing Date.

Section 9.2 *Waiver of Compliance; Consents.* Any failure of BCC or Bona Vida to comply with any obligation, covenant, agreement or condition herein may be waived only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.2.

Section 9.3 *Notices and Addresses.* All notices, offers, acceptance and any other acts under this Agreement shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by FedEx or similar receipted next business day delivery, or by email followed by overnight next business day delivery as follows:

to BCC:	81 Prospect Street Brooklyn, NY 11201 Attention: David Lelong David@sportendurancehq.com
with a copy to:	Nason, Yeager, Gerson, Harris & Fumero, P.A. 3001 PGA Boulevard, Suite 305 Palm Beach Gardens, Florida 33410 Attention: Michael D. Harris, Esq. Email: mharris@nasonyeager.com
to Bona Vida:	442 Broadway, 2 <sup>nd</sup> Floor New York, NY 10013 Attention: Damian Dalla-Longa Email: damian@bonavida.com
with a copy to:	Norton Rose Fulbright Canada LLP Suite 3800, Royal Bank Plaza, South Tower, 200 Bay Street, P.O. Box 84 Toronto, Ontario M5J 2Z4 Attention: Waled Soliman, Esq. Email: waled.soliman@nortonrosefulbright.com

or to such other address as any of them, by notice to the other may designate from time to time. Time shall be counted to, or from, as the case may be, the date of delivery.

Section 9.4 *Assignment; Third Party Beneficiaries.* Neither this Agreement nor any right, interest or obligation hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement is not intended to confer any rights or remedies upon any Person other than the Parties hereto.

Section 9.5 *Governing Law.* This Agreement and all Actions arising out of or in connection with this Agreement, including any Actions alleging any Party committed any tort, shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to the conflicts of law provisions of the State of Delaware or of any other jurisdiction.

Section 9.6 *Exclusive Jurisdiction.* Any action brought by a Party against the other Parties concerning the transactions contemplated by this Agreement shall be brought only in the state courts of New York State sitting in New York County, New York or the Federal District Court for the Southern District of New York. The Parties to this Agreement hereby irrevocably waive any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens.

Section 9.7 *Counterparts.* This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the Parties and delivered to each other Party (including by means of electronic delivery), it being understood that the Parties need not sign the same counterpart. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf"), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

Section 9.8 *Severability.* In case any one or more of the provisions contained in this Agreement should be finally determined to be invalid, illegal or unenforceable in any respect against a Party hereto, it shall be adjusted if possible to effect the intent of the Parties. In any event, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, and such invalidity, illegality or unenforceability shall only apply as to such Party in the specific jurisdiction where such final determination shall have been made.

Section 9.9 *Titles.* The Article and Section headings contained in this Agreement are solely for the purpose of reference and shall not in any way affect the meaning or interpretation of this Agreement.

Section 9.10 *Entire Agreement.* This Agreement, the Transaction Documents and the Disclosure Schedules, embody the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein. There are no representations, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein and therein.

Section 9.11 *Rules of Construction.* Each Party to this Agreement has been represented by counsel during the preparation and execution of this Agreement, and therefore waives any rule of construction that would construe ambiguities against the Party drafting the Agreement.

Section 9.12 *Waiver of Jury Trial.* EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.13 *Expenses.* Except as otherwise provided in this Agreement, all Parties hereto shall pay their own expenses, including legal and accounting fees, in connection with the transactions contemplated herein.

Section 9.14 *Interpretation.* This Agreement shall be read and construed in the English language. As used in this Agreement, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and singular shall include the plural. References herein to a Party or other Person include their respective successors and permitted assigns. The words "include," "includes" and "including" when used herein shall be deemed to be followed by the phrase "without limitation" unless such phrase otherwise appears. Unless the context otherwise requires, references herein to articles, sections, schedules, and exhibits shall be deemed references to articles and sections of, and schedules and exhibits to, this Agreement. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular article, Section or provision hereof. Except when used together with the word "either" or otherwise for the purpose of identifying mutually exclusive alternatives, the term "or" has the inclusive meaning represented by the phrase "and/or." Any deadline or time period set forth in this Agreement that by its terms ends on a day that is not a Business Day shall be automatically extended to the next succeeding Business Day. All references in this Agreement to "dollars" or "\$" shall mean United States Dollars.

Section 9.15 *Equitable 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 the specific terms hereof or were otherwise breached. It is accordingly agreed that, in addition to the other rights of the Parties under this Agreement, the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any federal or state court located in the State of Delaware (as to which the Parties agree to submit to jurisdiction for the purpose of such action), this being in addition to any other remedy to which the Parties are entitled under this Agreement.

Section 9.16 *Enforcement Costs.* Should any Party institute any Action to enforce the terms of this Agreement, the prevailing Party shall be entitled to receive all reasonable costs and expenses (including reasonable attorneys' fees) incurred by such prevailing Party in connection with such Proceeding. A Party entitled to recover costs and expenses under this Section 9.17 shall also be entitled to recover all costs and expenses (including reasonable attorneys' fees) incurred in the enforcement of any judgment or settlement obtained in such action or proceeding provision (and in any such judgment provision shall be made for the recovery of such post-judgment costs and expenses). For the purposes of determining who is a prevailing Party, if a plaintiff is awarded relief on any claim or cause of action, it shall be deemed to be a prevailing Party, except as provided in the next sentence. If a plaintiff is awarded relief on any claim or cause of action but a counterclaim plaintiff or crossclaim plaintiff is also awarded relief on a claim or cause of action, no Party shall be deemed to be a prevailing Party.

Section 9.17 *Recitals.* The recitals to this Agreement are hereby incorporated herein as though fully set forth herein.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the Execution Date.

**SPORT ENDURANCE, INC.:**

By: /s/ Mike Young  
Name: Mike Young  
Title: Chairman

**BONA VIDA, INC.:**

By: /s/ Damian Dalla-Longa  
Name: Damian Dalla-Longa  
Title: Chief Executive Officer

**BCC MERGER SUB, INC.:**

By: /s/ Mike Young  
Name: Mike Young  
Title: Chairman

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AMENDMENT TO AGREEMENT AND PLAN OF MERGER

THIS AMENDMENT TO AGREEMENT AND PLAN OF MERGER (this “**Amendment**”), dated as of May 3, 2019 (the “**Effective Date**”), is by and among Better Choice Company, Inc. a Delaware corporation (formerly Sport Endurance, Inc., a Nevada corporation) (“**BCC**”) and Bona Vida, Inc., a Delaware corporation (“**Bona Vida**”).

WHEREAS, BCC, Bona Vida and BCC Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of BCC, are parties to the Agreement and Plan of Merger, dated as of February 28, 2019 (the “**Merger Agreement**”); and

WHEREAS, BCC and Bona Vida wish to amend the certain terms of the Merger Agreement in accordance with Section 9.1 of the Merger Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), BCC and Bona Vida hereby agree as follows:

**ARTICLE I**  
**Amendment**

1. Amendment of Recitals. The fifth WHEREAS clause of the Merger Agreement is hereby deleted and restated in its entirety as follows:

“WHEREAS, the BCC Board has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of BCC and its stockholders, and (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger.”

2. Amendment of Section 4.1(r)(i). The first sentence of Section 4.1(r)(i) of the Merger Agreement is hereby deleted and restated in its entirety as follows:

“From February 4, 2016, BCC has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act as if BCC has been required to file reports under Section 13(a) or 15(d) of the Exchange Act (all of the foregoing filed prior to the date this representation is made including all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein are referred to as the “**SEC Documents**”).”

3. Amendment of Section 4.1(r)(iii). Section 4.1(r)(iii) of the Merger Agreement is hereby deleted and restated in its entirety as follows:

“Upon the Closing, BCC is not required to be registered as, and is not an Affiliate of, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

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4. Amendment of Section 4.1(r)(iv). Section 4.1(r)(iv) of the Merger Agreement is hereby deleted and restated in its entirety as follows:

“BCC has established and maintains disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Exchange Act). Such controls and procedures were not effective, as disclosed in BCC’s most recent Form 10-K, in ensuring that material information relating to BCC, including BCC Subsidiaries, is made known to the principal executive officer and the principal financial officer.”

5. Amendment of Section 5.9. Section 5.9 of the Merger Agreement is hereby deleted and restated in its entirety as follows:

“After the execution of this Agreement the Parties covenant to work in good faith to prepare, negotiate and enter into, or cause to be prepared, negotiated and entered into, employment agreements with the Bona Vida Executives.”

6. Amendment of Amendment of Section 5.17. Section 5.9 of the Merger Agreement is hereby deleted and restated in its entirety as follows:

“Bona Vida shall prepare, with the cooperation of BCC, information to be sent to the holders of shares of Bona Vida Common Stock in connection with soliciting their approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger. Bona Vida shall use commercially reasonable efforts to cause the information provided to Bona Vida’s stockholders to comply with applicable federal and state securities Laws. BCC agrees to provide promptly to Bona Vida such information concerning its business and financial statements and affairs (which for BCC, shall include Trupet) as, in the reasonable judgment of Bona Vida or its counsel, may be required or appropriate for inclusion in the information sent, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with Bona Vida’s counsel and auditors in the preparation of the information to be sent to the stockholders of Bona Vida. Bona Vida will promptly advise BCC in writing if at any time prior to the Effective Time Bona Vida shall obtain knowledge of any facts that might make it necessary or appropriate to amend or supplement the information sent in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable Law. The information sent by Bona Vida shall contain the recommendation of the Bona Vida Board that the holders of shares of Bona Vida Common Stock approve the adoption of this Agreement and the transactions contemplated hereby, including the Merger. Anything to the contrary contained herein notwithstanding, Bona Vida shall not include in the information sent to its stockholders any information with respect to BCC or its affiliates (including Trupet) or associates, the form and content of which information shall not have been approved by BCC in its reasonable discretion prior to such inclusion. To the extent required by the DGCL, Bona Vida shall deliver to any Bona Vida stockholder who has not executed the written stockholder consent (i) a notice of the taking of the actions described in the written stockholder consent in accordance with Section 228(e) of the DGCL and (ii) a notice of appraisal rights in accordance with Section 262 of the Delaware Act.

7. Amendment of Section 6.1(d). Section 6.1(d) of the Merger Agreement is hereby deleted and restated in its entirety as follows:  
“[Reserved];”
8. Amendment of Section 6.2(c). Section 6.2(c) of the Merger Agreement is hereby deleted and restated in its entirety as follows:  
“[Reserved];”
9. Amendment of Exhibit C. Exhibit C to the Merger Agreement is hereby deleted and restated in its entirety as provided in Appendix 1 hereto.
10. Amendment of Exhibit D. Exhibit D to the Merger Agreement is hereby deleted and restated in its entirety as provided in Appendix 2 hereto.
11. Amendment of Schedule 2.5(a). Schedule 2.5(a) to the Merger Agreement is hereby deleted and restated in its entirety as provided in Appendix 3 hereto.

**ARTICLE II  
MISCELLANEOUS**

1. Capitalized Terms. Capitalized terms used herein, but not otherwise defined herein, shall have the meanings ascribed to them in the Merger Agreement.
2. Reference to and Effect on the Agreement.
  - (a) This Amendment is effective as of the Effective Date.
  - (b) Except as expressly amended by this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.
  - (c) Each reference in the Merger Agreement to “this Agreement”, “hereunder”, “hereof”, “herein”, or words of like import shall mean and be a reference to the Merger Agreement as amended hereby. No reference to this Amendment need be made in any instrument or document at any time referring to the Agreement, a reference to the Agreement in any of such instruments or documents to be deemed to be a reference to the Agreement as amended hereby.

3. Entire Agreement. This Amendment read in conjunction with the Merger Agreement, the Transaction Documents and the Disclosure Schedules, embody the entire agreement and understanding of the parties hereto and thereto in respect of the subject matter contained herein and therein.
4. Incorporation by Reference. Article IX of the Merger Agreement (except for Sections 9.2 and 9.10) is hereby incorporated by reference *mutatis mutandis*.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment as of the Effective Date.

**BETTER CHOICE COMPANY, INC.**

By: /s/ David Lelong

Name: David Lelong

Title: President

**BONA VIDA, INC.**

By: /s/ Damian Dalla-Longa

Name: Damian Dalla-Longa

Title: CEO

*[Signature Page to the Amendment to Agreement and Plan of Merger]*

APPENDIX 1

EXHIBIT C

<b>Officers</b>	
Co-CEO	Lori Taylor
Co-CEO	Damian Dalla-Longa
President	Anthony Santarsiero
Title TBD	Gustavo Gonzalez
SVP Finance; Secretary	Kyle McCollum
<b>Directors</b>	
Chairman	Michael Galego
Director	Michael Young
Director	Lori Taylor
Director	Damian Dalla-Longa
Director	Jeff Davis

APPENDIX 2

EXHIBIT D

MIP Equity (10.0%)	4,500,000
<b><u>MIP Allocations at Effective Time</u></b>	
Anthony Santarsiero	1,000,000
Lori Taylor	1,150,000
Damian Dalla-Longa	1,200,000
Kyle McCollum	400,000
Gustavo Gonzalez	TBD
<b>Equity Reserved for Future Employees</b>	<b>750,000</b>

**APPENDIX 3**

**SCHEDULE 2.5(A)**

<u>Name on Stock Certificate</u>	<u>Beneficial Owner</u>	<u>BCC Shares</u>	<u>BTTR Shares</u>
		<u>Pre Rollback</u>	<u>Post Rollback (26:1)</u>
Aaron McIntosh	Aaron McIntosh	4,940,000	1,680,765
Ryan Rezaie	Ryan Rezaie	3,880,000	1,320,115
Michael Young	Michael Young	1,060,000	360,650
Fletcher Robbe	Fletcher Robbe	900,000	306,212
Gaspar Patronas	Gaspar Patronas	400,000	136,094
Ashwant Venkatram	Ashwant Venkatram	400,000	136,094
Anthony Smith	Anthony Smith	400,000	136,094
Max Albert	Max Albert	400,000	136,094
Jason Rezaie	Jason Rezaie	400,000	136,094
Damian Dalla-Longa	Damian Dalla-Longa	4,900,000	1,667,156
Kyle McCollum	Kyle McCollum	2,300,000	782,543
Navy Capital Green Private Holdings SPC	Navy Capital Green Private Holdings SPC	3,736,000	1,271,121
Zola Global Investors Ltd.	Zola Global Investors Ltd.	2,381,700	810,340
TD Investor Co ITF 5J5636 Anson Investments Master Fund LP	Anson Advisors Inc.	2,335,000	794,451
Darren Richie	Darren Richie	1,680,000	571,596
Gundyco ITF XIB Private Capital LP, A/C 515-00863-29	XIB Private Capital LP	1,167,500	397,225
Glen Gibbons	Glen Gibbons	3,390,000	1,153,400
Cottingham Capital Partners, LLC	Cottingham Capital Partners, LLC	666,666	226,824
Kristin Rogus	Kristin Rogus	500,000	170,118
Leede Jones Gable Inc. - Acct: 064-5303-A	1917478 Ontario Corp.	467,000	158,890
PI Financial ITF 2437357 Ontario Inc. - Acct: 025-8546-1	2437357 Ontario	467,000	158,890
PI Financial ITF 025-9618-7	Fortuna Investment Corp.	467,000	158,890
Haywood Securities Inc. TM1-4386-C	Glen Gibbons	467,000	158,890
Canaccord Genuity Wealth Management	Igor Gimelshtein	420,300	143,001
HGC Merchant Partners LP	HGC Merchant Partners LP	350,250	119,168
William Colton Saunders	William Colton Saunders	250,000	85,059
George Scorsis	George Scorsis	233,500	79,445
BMO Nesbitt Burns ITF Samara Fund Ltd. 402-21276-27	Samara Fund Ltd.	233,500	79,445
BMO Nesbitt Burns ITF Parkwood LP Fund	Parkwood Limited Partnership Fund	233,500	79,445
James Frank Allan	James Frank Allan	233,500	79,445
Bansco & Co ITF a/c 7804904717	Brad White	150,000	51,035
Eugene C. McBurney	Eugene C. McBurney	100,000	34,024
Brianna Kristen Davies	Brianna Kristen Davies	116,750	39,723
Fidelity Clearing Canada ULC ITF Justin Moorehead - E120000L	Justin Moorehead	116,750	39,723
Anamasam Inc	Anamasam Inc	110,000	37,426
Echelon Wealth Partners E5DAZ28A	Hibiscus Drive Ltd.	93,400	31,778
Matthew Rollason	Matthew Rollason	10,000	3,402
Russell Pistone	Russell Pistone	10,000	3,402
Jorge Beruff	Jorge Beruff	10,000	3,402
Navy Capital Green Private Holdings SPC	Navy Capital Green Private Holdings SPC	1,111,111	378,040
Cambridge Capital Ltd.	Cambridge Capital Ltd.	444,444	151,216
Anamasam Inc	Anamasam Inc	666,666	226,824
Waliel Soliman	Waliel Soliman	444,444	151,216
Bliss Investments LLC	Bliss Investments LLC	444,444	151,216
Scotia Capital Inc. ITF Gregory Steers	Gregory Steers	222,223	75,608
Dre Industries LLC	Dre Industries LLC	222,222	75,608
RBC Dominion Securities ITF David Lubotta	David Lubotta	222,222	75,608
Haywood Securities ITF Glen Gibbons	Glen Gibbons	222,220	75,607
Delano USA Capital Corp	Delano USA Capital Corp	200,000	68,047
George Scorsis	George Scorsis	111,111	37,804
Apolo Capital Advisory Corp.	Apolo Capital Advisory Corp.	111,111	37,804
Paul Moisselin	Paul Moisselin	22,222	7,561
2655111 Ontario Inc	2655111 Ontario Inc	3,360,001	1,143,193
Advantex Finance Inc	Advantex Finance Inc	3,333,333	1,134,120
Michael Galego	Michael Galego	200,000	68,047
Sean Stiefel	Sean Stiefel	200,000	68,047
David Lubotta	David Lubotta	200,000	68,047
Richard Gibbons	Richard Gibbons	200,000	68,047
Stephanie Kubacki	Stephanie Kubacki	350,000	119,083
Talaal Rshaidat	Talaal Rshaidat	250,000	85,059
<b>Total Common Equity</b>			
<b>Fully Diluted Share Count (Units + Warrants + Options)</b>		<b>52,914,090</b>	<b>18,003,273</b>



SECURITIES EXCHANGE AGREEMENT

THIS SECURITIES EXCHANGE AGREEMENT (this "Agreement") is made and entered into as of February 2, 2019 by and among Sport Endurance, Inc., a Nevada corporation which is in the process of reincorporating as Better Choice Company Inc., a Delaware corporation ("BCC"), Trupet LLC, a Delaware limited liability company ("Trupet"), and the holders of the Membership Interests of Trupet whose names are set forth on the signature pages hereto other than BCC (each, a "Trupet Member," and collectively, the "Trupet Members"). Each of BCC, Trupet and the Trupet Members shall be known individually as a "Party" and collectively as the "Parties."

WHEREAS, BCC is the owner of certain Trupet Membership Interests; and

WHEREAS, BCC and Trupet have entered into a non-binding letter of intent with respect to a proposed transaction through which BCC shall acquire 100% of the remaining outstanding Membership Interests of Trupet from the Trupet Members in exchange for shares of BCC Common Stock.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 *Definitions.* For the purposes of this Agreement, capitalized words and terms have the following meanings:

"Action" means any claim, action, cause of action, suit, litigation, arbitration, investigation, audit, assessment, complaint, demand or other legal proceeding (whether sounding in contract, tort or otherwise, whether civil or criminal, and whether brought at law or in equity) that is commenced, brought, conducted, tried or heard by or before, or otherwise involving, any Governmental Authority or arbitration or mediation proceeding.

"Affiliate" means any 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.

"Agreement" shall have the meaning contained in the Preamble.

"Balance Sheet" shall have the meaning contained in Section 3.1(r).

"Balance Sheet Date" shall have the meaning contained in Section 3.1(r).

"BCC" shall have the meaning contained in the Preamble.

"BCC Board" shall mean the board of directors of BCC.

"BCC Common Stock" means the common stock, \$0.001 par value per share, of BCC.

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“BCC Equity Consideration” means: (i) if BCC has not affected a reverse stock split or otherwise does not have sufficient authorized shares of BCC Common Stock, 1,000 shares of Series B Preferred Stock, which are convertible into a number of shares of BCC Common Stock equal to 38.2% as provided in Section 6.4(k); and (ii) if BCC has affected a reverse stock split or otherwise has sufficient authorized BCC Common Stock, a number of shares of BCC Common Stock as provided in Section 6.4(k), in each case subject to any adjustment pursuant to Section 6.3(h).

“BCC Financial Statements” shall have the meaning contained in Section 4.1(r)(2).

“BCC Fundamental Representations” shall mean those representations in Sections 4.1(c) and (e).

“BCC Indemnified Party” shall have the meaning contained in Section 5.7(a)(i).

“BCC IP Agreements” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other contracts related to any Intellectual Property (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, to which BCC is a party, beneficiary or otherwise bound.

“BCC IP Registrations” means all BCC Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“BCC Material Customers” shall have the meaning contained in Section 4.1(u)(i).

“BCC Material Suppliers” shall have the meaning contained in Section 4.1(u)(ii).

“BCC Representative” shall have the meaning contained in Section 5.7(a)(iii).

“Bloomberg” shall mean Bloomberg, L.P., or any successor.

“Bona Vida” shall have the meaning contained in Section 6.4(i).

“Bona Vida Shareholders” shall have the meaning contained in Section 5.12.

“Business Day” means any day, other than a Saturday, Sunday or other day on which the principal commercial banks in New York, New York are not open for business during normal business hours.

“Change of Control Transaction” means the occurrence of (a) an acquisition by any Person or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock, membership interests or other equity securities of Trupet, by contract or otherwise) of greater than 50% of Trupet’s voting power, (b) a consolidation or merger of Trupet with or into any other Person (whether or not Trupet is the surviving Person), any other business combination, including without limitation a reorganization, recapitalization, share exchange, spin-off or scheme of arrangement, or any other transaction or series of related transactions in which greater than 50% of Trupet’s voting power is transferred through a merger, consolidation, tender offer or similar transaction, (c) the sale, lease, transfer, exclusive license or other disposition or encumbrance of all or substantially all of Trupet’s assets; (d) any event in which a majority of the Trupet Managers, in one or a series of related transactions, are replaced; or (e) the execution by Trupet or the Trupet Members constituting greater than 50% of Trupet’s voting power of an agreement providing for any of the events set forth above in (a), (b), (c) or (d).

“Closing” shall have the meaning contained in Section 2.2(a).

“Closing Date” shall have the meaning contained in Section 2.2(a).

“Closing Working Capital” means: (a) the Current Assets of Trupet, less (b) the Current Liabilities of Trupet excluding any liability with Comerica.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Code” means the Internal Revenue Code of 1986, as amended.

“Comerica Loan” shall mean certain Credit Agreement by and between Comerica Bank, Trupet LLC, John M. Word III and Lori R. Taylor, dated as of May 1, 2017, as amended.

“Contract” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral, but in each case solely to the extent legally binding.

“Current Assets” means the aggregate amount of all cash and cash equivalents, accounts receivable, inventory and prepaid expenses (but excluding (a) the portion of any prepaid expense of which BCC will not receive the benefit following the Closing, and (b) deferred Tax assets) that will be amortized or expensed or received in cash within one year from the date as of which such computation is being made, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Trupet Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“Current Liabilities” means the aggregate amount of all Liabilities except those having a maturity date which is more than one year from the date as of which such computation is being made, Trupet, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Trupet Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“Customizations” shall have the meaning contained in Section 3.1(j)(v)(B).

“Damages” means any loss, Liability, damage, penalty, fine, assessment, order, amount paid in settlement, Tax, fee, cost or expense (whether or not involving a third party Action) including reasonable legal and expert expenses.

“Deferred Compensation Plan” shall have the meaning contained in Section 3.1(k)(vi).

“Disclosure Schedules” means the Disclosure Schedules delivered with this Agreement.

“Disqualification Event” shall have the meaning contained in Section 3.2(g).

“Effective Date” shall initially mean February 2, 2019 and also mean each date upon which a Party delivers Disclosure Schedules, as amended, to another Party.

“EHSR” shall have the meaning contained in Section 3.1(m)(i).

“Employee Benefit Plan” shall mean any employee benefit plan (as defined in Section 3(3) of ERISA, as amended, whether or not subject to ERISA), bonus, profit sharing, compensation, pension, retirement, “401(k),” severance, savings, deferred compensation, fringe benefit, insurance, post-retirement health or welfare benefit, life, stock option, stock purchase, restricted stock, equity compensation, stock appreciation right, restricted stock unit, tuition refund, service award, company car or car allowance, scholarship, housing or living allowances, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, paid time off, holiday, termination, unemployment, individual employment, consulting, executive compensation, incentive, commission, payroll practices, retention, change in control, non-competition, other plan, agreement, policy, trust fund or arrangement (whether written or unwritten, insured or self-insured) or other agreement or arrangement (whether in writing or otherwise) for which a Party hereto has a liability to any employee(s).

“Employment Agreements” shall have the meaning contained in Section 5.9.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Equity Incentive Plan” shall have the meaning contained in Section 5.10.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“FCPA” means the Foreign Corrupt Practices Act, as amended.

“Financing” shall have the meaning contained in Section 6.4(i).

“GAAP” means generally accepted accounting principles.

“General Expiration Date” shall have the meaning contained in Section 5.7(c)(ii).

“Governmental Authority” or “Governmental Authorities” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Indebtedness” means, without duplication, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by or on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

“Intellectual Property” means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world, including all trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered or unregistered, and all registrations and applications for registration of such trademarks, including intent-to-use applications, all issuances, extensions and renewals of such registrations and applications and the goodwill connected with the use of and symbolized by any of the foregoing; Internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority; original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered or unregistered), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; and designs and inventions, design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

“Interim Period” shall have the meaning contained in Section 5.1(a).

“IRS” means the United States Internal Revenue Service.

“Knowledge” means, with respect to any fact, circumstance, event or other matter in question, (i) with respect to BCC, the actual knowledge of David Lelong or Mike Young; (b) with respect to Trupet, the actual knowledge of Lori Taylor, Anthony Santarsiero or Gustavo Gonzalez, and (c) with respect to a Trupet Member for purposes of Section 3.2, the actual knowledge of such Trupet Member, and, in each case, such knowledge that such person could obtain through reasonable inquiry.

“Law” or “Laws” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Government Authority.

“Lender” shall have the meaning contained in Section 5.4.

“Liability” or “Liabilities” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

“Lock-Up Agreement” shall have the meaning contained in Section 5.8.

“Lock-Up Securities” shall mean any shares of BCC Common Stock received by a Trupet Member on the Closing Date, and including any shares of BCC Common Stock issued to a Trupet Member pursuant to the Equity Incentive Plan.

“Material Adverse Effect” means, with respect to any Party, a material adverse effect on: (i) the financial condition, results of operations, prospects, assets or Liabilities of such Party and its Subsidiaries taken as a whole; or (ii) the ability of such Party to timely consummate the Agreement on or prior to the Outside Date.

“Membership Interests” shall mean each and every class of security (of any nature) authorized as of the Closing Date including, without limitation, common stock, preferred stock, options, warrants, and other convertible securities.

“November Investors” shall have the meaning contained in Section 5.12.

“OFAC” shall have the meaning contained in Section 3.1(z).

“OFAC Lists” shall have the meaning contained in Section 3.1(z).

“Outside Date” shall mean May 1, 2019.

“Party” or “Parties” shall have the meaning contained in the Preamble.

“PCAOB” means the Public Company Accounting Oversight Board, or any successor entity.

“Person” means any individual, group, organization, corporation, partnership, joint venture, limited liability company, trust or entity of any kind.

“Permitted Disposition” shall include the following: (i) transfers of Lock-Up Securities to a trust for the benefit of the undersigned or as a bona fide gift, by will or intestacy or to a family member or trust for the benefit of a family member of the undersigned (for purposes of this lock-up agreement, “family member” means any relationship by blood, marriage or adoption, not more remote than first cousin); or (ii) transfers of Lock-Up Securities to a charity or educational institution; provided that in the case of any transfer pursuant to the foregoing clauses (i) or (ii), (A) any such transfer shall not involve a disposition for value; and (B) no filing under Section 16(a) of the Exchange Act shall be required or shall be voluntarily made.

“Permitted Encumbrances” means: (i) Encumbrances securing Taxes, the payment of which (A) is not delinquent or (B) is actively being contested in good faith by appropriate proceedings diligently pursued and is appropriately reserved for; (ii) Encumbrances imposed by Laws, such as carriers’, warehousemen’s and mechanics’ liens, and other similar liens arising in the ordinary course of business which secure payment of obligations arising in the ordinary course of business (and constituting current liabilities) not more than 60 days past due or which are being contested in good faith by appropriate proceedings diligently pursued and is appropriately reserved for; and (iii) purchase money security interests in the ordinary course of business.

“Preferred Stock” shall have the meaning contained in Section 4.1(e).

“Pro Rata Share” shall mean the number of shares of BCC Common Stock received by a Trupet Member on the Closing Date divided by the total number of shares of BCC Common Stock received by all Trupet Members on the Closing Date.

“Products” means all proprietary products and services of Trupet that are currently being, or at any time in the past two years have been, created, manufactured, offered for sale, licensed, sold, supplied, distributed or otherwise made available in any manner by or on behalf of a Party.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“SEC” shall mean the Securities and Exchange Commission.

“SEC Documents” shall have the meaning contained in Section 4.1(r)(i).

“Secondary Shares” shall have the meaning contained in Section 5.1(a)(viii).

“Series A Preferred Stock” shall have the meaning contained in Section 4.1(e).

“Series B Preferred Stock” shall have the meaning contained in Section 4.1(e).

“Series E Preferred Stock” shall have the meaning contained in Section 4.1(e).

“Significant Trupet Member” shall mean J&L Holdings and Cambridge Capital.

“Subsidiary” when used with respect to any Person, means any corporation or other organization, whether incorporated or unincorporated, of which: (i) at least a majority of the capital stock or other equity interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person (through ownership of securities, by contract or otherwise); or (ii) such Person or any subsidiary of such Person is a general partner of any general limited partnership or a manager of any limited liability company.

“Tax” or “Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, value added or similar tax, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Authority” means the IRS or any other Governmental Authority responsible for the administration of any Tax.

“Tax Return” or “Tax Returns” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof to be filed on or before the Closing Date.

“Third Party Indemnified Party” shall have the meaning contained in Section 5.7(b)(i).

“Third Party Indemnifying Party” shall have the meaning contained in Section 5.7(b)(i).

“Transaction Documents” shall mean this Agreement and all other Contracts, agreements or other documents arising out of or relating to the transactions contemplated by this Agreement.

“Trupet” shall have the meaning contained in the Preamble.

“Trupet Data Room” shall mean that drop box established by Trupet into which information has been provided by Trupet to which BCC has been provided access.

“Trupet Exchange Consideration” shall have the meaning contained in Section 2.1(a).

“Trupet Executives” shall mean Lori Taylor, Anthony Santarsiero, Gustavo Gonzalez, Will Mullis and Michele Ruble.

“Trupet Financial Statements” shall have the meaning contained in Section 3.1(r).

“Trupet Fundamental Representations” shall mean those representations in Sections 3.1(c) and (e).

“Trupet Indemnified Party” shall have the meaning contained in Section 5.7(a)(ii).

“Trupet IP Agreements” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other contracts related to any Intellectual Property (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, to which Trupet is a party, beneficiary or otherwise bound.

“Trupet IP Registrations” means all Trupet Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“Trupet Managers” shall mean a majority of the Board of Managers of Trupet.

“Trupet Material Customers” shall have the meaning contained in Section 3.1(u)(i).

“Trupet Material Suppliers” shall have the meaning contained in Section 3.1(u)(ii).

“Trupet Member” or “Trupet Members” shall have the meaning contained in the Preamble.

“Trupet Member Representative” shall mean Lori Taylor.

“VWAP” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its “HP” function (set to weighted average) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported by OTC Markets Group Inc. If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by BCC and the Trupet Representative. If BCC and the Trupet Representative are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 20. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

“WARN Act” shall have the meaning contained in Section 3.1(v)(2).

## ARTICLE II

### SHARE EXCHANGE

Section 2.1 *Exchange of Securities.* Subject to the terms and conditions set forth in this Agreement, at the Closing:

(a) the Trupet Members will sell, convey, transfer and assign to BCC, free and clear of all Encumbrances or known claims of any kind, nature or description, 93.3% of the issued and outstanding Membership Interests of Trupet on a fully diluted basis (the “Trupet Exchange Consideration”), in the individual amounts as set forth opposite each respective Trupet Member’s name on Schedule 2.1(a) hereto; and

(b) BCC will sell, convey, transfer and assign to the Trupet Members, free and clear of all Encumbrances or known claims of any kind, nature or description, the BCC Equity Consideration, in the individual percentages as set forth opposite each respective Trupet Member’s name on Schedule 2.1(b); and

(c) In the event the Trupet Members receive shares of Series B Preferred Stock as the BCC Equity Consideration, such Series B Preferred Stock shall automatically convert into shares of BCC Common Stock on the date upon which BCC affects a reverse stock split or otherwise has sufficient authorized BCC Common Stock to issue to the Trupet Members the amounts of BCC Common Stock set forth on Schedule 2.1(b).

Section 2.2 *Closing.*

(a) The closing of the transactions contemplated hereby (the “Closing”) will take place on the first Business Day on or after which all of the conditions in Article VI have been satisfied, unless another time or date is agreed to by BCC and Trupet (the “Closing Date”). The Closing shall take place electronically or at such location as BCC and Trupet shall mutually agree.

(b) The Closing shall occur only if each condition set forth in Article VI hereof has either been satisfied or waived, in writing, by the Party for whose benefit such condition exists.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF TRUPET AND THE TRUPET MEMBERS

Section 3.1 *Representations and Warranties of Trupet.* Trupet represents and warrants to BCC that the statements contained in this Section 3.1 are true and correct as of the date hereof and will be true and correct as of the Closing Date, except as modified by the Disclosure Schedules of Trupet attached to this Agreement, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation made herein only to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules or to the extent that such qualification is reasonably apparent. Such representations and warranties are qualified by Knowledge where so specified and are qualified in all respects by what is known by BCC. Provided, however, what is in the Trupet Data Room shall not be construed to mean that it is known by BCC.

(a) Subsidiaries. Each of the Subsidiaries of Trupet as of the date of this Agreement and its place of organization is set forth on Schedule 3.1(a). All of the outstanding shares of capital stock of, or other equity or voting interests in, each Subsidiary of Trupet that is owned directly or indirectly by Trupet have been validly issued, were issued free of pre-emptive rights, are fully paid and non-assessable, and are free and clear of all Encumbrances, including any restriction on the right to vote, sell, or otherwise dispose of such capital stock or other equity or voting interests, except for Permitted Encumbrances or any Encumbrances: (i) imposed by applicable securities Laws; or (ii) arising pursuant to the organizational or charter documents of any non-wholly-owned Subsidiary of Trupet. Except for the capital stock of, or other equity or voting interests in, its Subsidiaries, Trupet does not own, directly or indirectly, any capital stock of, or other equity or voting interests in, any Person.

(b) Organization and Qualification. Trupet and each of its Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither Trupet nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of Trupet and its Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Action has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. Trupet has the requisite limited liability company power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by Trupet and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Trupet and each Trupet Member and no further action is required by Trupet, its managers or the Trupet Members in connection herewith or therewith, except for resignations of the Trupet Managers to be delivered at the Closing. This Agreement and each other Transaction Document to which Trupet is a party has been (or upon delivery will have been) duly executed by Trupet and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of Trupet enforceable against Trupet in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable Law.

(d) No Conflicts. The execution, delivery and performance by Trupet of this Agreement and the other Transaction Documents to which it is a party, the exchange of the Securities and the consummation by Trupet of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of Trupet's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Encumbrance upon any of the properties or assets of Trupet or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Trupet or Subsidiary debt or otherwise) or other understanding to which Trupet or any Subsidiary is a party or by which any property or asset of Trupet or any Subsidiary is bound or affected, or (iii) conflict with or result in a violation of any Law or other restriction of any court or Governmental Authority to which Trupet or a Subsidiary is subject (including federal and state securities Laws), or by which any property or asset of Trupet or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Ownership of Trupet Membership Interests. The Membership Interests of Trupet set forth on Schedule 3.1(e) constitute all of the issued and outstanding equity interests in Trupet as of the date hereof, and such Membership Interests are owned of record by the applicable Trupet Members listed on Schedule 3.1(e). The Membership Interests listed on Schedule 3.1(e) constitute all of the interests in and to Trupet that are held by each Trupet Member. There exist no rights to purchase, subscriptions, warrants, options, conversion rights, preemptive rights or similar rights, and there are no outstanding equity, appreciation, phantom interest, profits participation or other benefit plans relating to the Membership Interests of Trupet. All issued and outstanding Membership Interests of Trupet are: (i) duly authorized, validly issued, fully paid and non-assessable; (ii) not subject to any preemptive rights created by statute, the Trupet organizational documents, or any agreement to which Trupet is a party; and (iii) free of any Encumbrances created by Trupet in respect thereof or by any third party. All issued and outstanding Membership Interests of Trupet were issued in compliance with applicable Law.

(f) Certain Fees. Except as disclosed on Schedule 3.1(f), no brokerage, finder's fees, commissions or due diligence fees are or will be payable by Trupet to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to this Agreement or the transactions contemplated hereby other than fees to counsel and auditors. BCC shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.1(f) that may be due in connection with this Agreement or the transactions contemplated hereby.

(g) Litigation. Except as disclosed on Schedule 3.1(g), there are no Actions pending or, to the Knowledge of Trupet, threatened by or against Trupet involving more than, individually or in the aggregate, \$25,000. There is no Action pending or, to the Knowledge of Trupet, threatened against or affecting Trupet before or by any Governmental Authority which: (i) adversely affects or challenges the legality, validity or enforceability of any of this Agreement or the issuance of the Trupet Exchange Consideration or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither Trupet nor any officer, director or manager thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities Laws or a claim of breach of fiduciary duty. There has not been, and to the Knowledge of Trupet there is not pending or contemplated, any investigation by the SEC or any other Governmental Authority involving Trupet or any current or former officer, director manager of Trupet.

(h) Bad Actors. No “covered person” of Trupet (as such term is defined in Rule 506(d) of Regulation D of the Securities Act) is subject to any disqualification under Rule 506(d) of Regulation D of the Securities Act.

(i) Compliance with Laws.

(i) To its Knowledge, Trupet and its Subsidiaries are in material compliance with all applicable Laws, rules, regulations, and policies administered or enforced by the United States Food & Drug Administration (the “FDA”), the U.S. Drug Enforcement Administration, and any other Governmental Authority that regulates the development of Trupet’s Products, including, without limitation, relating to anti-kickback sales and marketing practices, off-label promotion, government health care program price reporting, good clinical practices, good manufacturing practices, good laboratory practices, advertising and promotion, pre- and post-marketing adverse drug experience and adverse drug reaction reporting, and all other pre- and post-marketing reporting requirements, as applicable. Trupet and its Subsidiaries have not received notice of any pending or threatened claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from the FDA or any other applicable Governmental Authority alleging that any operation or activity of the Company or any Subsidiary is, or has been, in violation of any applicable Law.

(ii) Subject to Section 3.1(i)(i), Trupet has complied and is currently in compliance with all applicable federal, state, local, foreign or other Laws, except for any instance of non-compliance that has not had, and would not reasonably be expected to have, a Material Adverse Effect. Trupet has all permits, licenses and franchises from governmental agencies required to conduct its businesses as now being conducted, except for those the absence of which has not had, or could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Trupet.

(iii) Neither Trupet nor any of its officers, directors, managers, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of the FCPA, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and Trupet has conducted its business in compliance with the FCPA.

(iv) Neither Trupet nor any of its officers, directors, managers, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of other United States Laws, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to (A) any official or any government of the United States or any state or local instrumentality or (B) any corporation, limited liability company or other entity.

(j) Intellectual Property.

(i) Schedule 3.1(j)(i) lists all: (A) Trupet IP Registrations; and (B) Trupet Intellectual Property that is not registered but that is material to Trupet's business or operations. All required filings and fees related to Trupet IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Trupet IP Registrations are otherwise in good standing. To the Knowledge of Trupet, there are no facts or circumstances that would render any Trupet IP Registrations invalid or unenforceable. To the Knowledge of Trupet, there has been no misrepresentation or failure to disclose, any fact or circumstances in any application for any Trupet IP Registrations that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the validity or enforceability of any Trupet IP Registrations.

(ii) Schedule 3.1(j)(ii) lists all Trupet IP Agreements that are material to Trupet's business as it presently is being conducted. Trupet has made available to BCC true and complete copies of all such Trupet IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Trupet IP Agreement is valid and binding on Trupet in accordance with its terms and is in full force and effect. Neither Trupet, nor, to its Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Trupet IP Agreement.

(iii) Except as disclosed on Schedule 3.1(j)(iii), Trupet is the sole and exclusive legal and beneficial, and with respect to Trupet's IP Registrations, record, owner of all right, title and interest in and to Trupet's Intellectual Property, or has the valid right to use all other Intellectual Property used in or necessary for the conduct of Trupet's current business or operations, in each case, free and clear of Encumbrances other than Permitted Encumbrances.

(iv) Since its inception, Trupet has entered into binding, written agreements with every current and former employee and with every current and former independent contractor, whereby such employees and independent contractors (A) assign to Trupet any ownership interest and right they may have in Trupet's Intellectual Property; and (B) acknowledge Trupet's exclusive ownership of Trupet's Intellectual Property. Trupet provided BCC with true and complete copies of all such agreements.

(v) Trupet Products. To its Knowledge,

(A) Schedule 3.1(j)(v)(A) identifies all Trupet's Intellectual Property and all Intellectual Property licensed to Trupet under a Trupet IP Agreement and that are: (1) used in the development, maintenance, use or support of such Trupet Product, (2) incorporated in or distributed or licensed with such Trupet Product in any manner for use in connection with such Trupet Product, or (3) used to deliver, host or otherwise provide services with respect to such Trupet Product, (except for non-customized, off-the-shelf software that is commercially available pursuant to shrink-wrap, click-through or other standard form agreements or with an annual license fee or replacement value of less than \$10,000).

(B) Except as set forth on Schedule 3.1(j)(v)(B), all Trupet Products are fully transferable, alienable or licensable by Trupet without restriction and without payment of any kind to any third party. Trupet has not transferred ownership of, or granted any exclusive license of (or exclusive right to use), or authorized the retention of any exclusive rights to use or joint ownership of, any Trupet Product or any related software or other Intellectual Property to any other Person. Except as set forth on Schedule 3.1(j)(v)(B), Trupet is not subject to any Trupet IP Agreement (other than with respect to current customers pursuant to Trupet's standard form of customer agreement entered into in the ordinary course of business) that includes any unperformed obligations that require Trupet to develop any Product or other Intellectual Property, including any enhancements or customizations that are part of or used in connection with existing Trupet Products (collectively, "Customizations"), and Trupet owns and will continue to own all right, title and interest in and to all such Customizations developed by Trupet.

(C) Except as set forth on Schedule 3.1(j)(v)(C), since January 1, 2017, there have been no Actions by any Governmental Authority instituted or, to the Knowledge of Trupet or any of its Subsidiaries threatened, that seek the recall of any Trupet Product or the revocation or suspension of any regulatory license or approval necessary to manufacture, supply, wholesale, sell or offer for sale any Trupet Product.

(k) Benefit Plans. Except as set forth on Schedule 3.1(k), Trupet has not adopted any Employee Benefit Plans.

(i) Each such benefit plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such benefit plan and the terms of any applicable collective bargaining agreement and complies in form and in operation in all respects with the applicable requirements of ERISA, the Code, and other applicable Laws.

(ii) All required reports and descriptions (including Form 5500 annual reports, summary annual reports, and summary plan descriptions) have been timely filed and/or distributed in accordance with the applicable requirements of ERISA and the Code with respect to each such benefit plan. The requirements of COBRA have been met with respect to each such benefit plan.

(iii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each such benefit plan that is an employee pension benefit plan under ERISA §3(2) and all contributions for any period ending on or before the Closing Date that are not yet due have been made to each such benefit plan or accrued in accordance with the past custom and practice of Trupet. All premiums or other payments for all periods ending on or before the Closing Date have been paid with respect to each such benefit plan that is an employee welfare benefit plan under ERISA §3(1).

(iv) Each such benefit plan that is intended to meet the requirements of a “qualified plan” under Code §401(a) has received a determination from the Internal Revenue Service that such benefit plan is so qualified, and nothing has occurred since the date of such determination that could adversely affect the qualified status of any such benefit plan. All such benefit plans have been timely amended for all such requirements and have been submitted to the Internal Revenue Service for a favorable determination letter within the latest applicable remedial amendment period.

(v) There have been no prohibited transactions with respect to any such benefit plan. To the Knowledge of Trupet, no fiduciary has any liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any such benefit plan. No Action with respect to the administration or the investment of the assets of any such benefit plan (other than routine claims for benefits) is pending or, to the Knowledge of Trupet, threatened.

(vi) To the Knowledge of Trupet (i) no Employee Benefit Plan is a nonqualified deferred compensation plan within the meaning of Section 409A(d)(1) of the Code (each such Employee Benefit Plan, a “Deferred Compensation Plan”); (ii) each Deferred Compensation Plan satisfies the requirements to avoid the consequences set forth in Section 409A(a)(1) of the Code; and (iii) Trupet has not (a) granted to any person an interest in any Deferred Compensation Plan which interest has been or, upon the lapse of a substantial risk of forfeiture with respect to such interest, will be subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(4)(A) of the Code, or (b) granted to any person an interest in any Deferred Compensation Plan which interest has or will be subject to the Tax imposed by Section 409A(a)(1)(B) or (b)(4)(A) of the Code, or (c) modified the terms of any Deferred Compensation Plan in a manner that could cause an interest previously granted under such plan to become subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(4) of the Code.

(l) Tax Matters. Except as set forth on Schedule 3.1(l), to Trupet’s Knowledge:

(i) Trupet and each of its Subsidiaries has timely filed all Tax Returns that it was required to file under applicable Laws and regulations (after giving effect to any filing extension properly granted by a Governmental Authority having the authority to do so). All such Tax Returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws and regulations. All Taxes due and owing by Trupet and each of its Subsidiaries have been paid, except for amounts that are being contested in good faith.

(ii) There are no Encumbrances for Taxes (other than Taxes not yet due and payable) on any of the assets of Trupet or its Subsidiaries.

(iii) Neither Trupet nor and any of its Subsidiaries has entered into any agreement with any Tax Authority to extend the period of limitations for any Taxes. No audit or other examination of the Company or any of its Subsidiaries is currently pending or has been threatened in writing, and no Tax deficiency has been asserted or threatened in writing against Trupet or any of its Subsidiaries.

(iv) Trupet is classified as a partnership for U.S. federal income tax purposes.

(m) Environmental, Health and Safety Matters.

(i) To its Knowledge, Trupet has been and is in compliance with all Environmental, Health and Safety Requirements pertaining to its business, properties and assets (the "EHSR"), other than such instances of non-compliance which, individually or in the aggregate, will not have a Material Adverse Effect.

(ii) To its Knowledge, without limiting the generality of the foregoing, Trupet has obtained and is in compliance with, all permits, licenses and other authorizations that are required pursuant to all EHSR for the occupation of its facilities and the operation of its business.

(iii) Trupet has not received any written or oral notice, report or other information regarding any actual or alleged violation of any EHSR, or any Liabilities, including any investigatory, remedial or corrective obligations, relating to any of its facilities arising under any EHSR.

(n) Contracts. Schedule 3.1(n) lists the following Contracts and other agreements to which Trupet is a party:

(i) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of \$25,000 per annum;

(ii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will: (A) extend over a period of more than one year; (B) result in a material loss to Trupet; or (C) involve consideration in excess of \$25,000;

(iii) any agreement concerning a partnership or joint venture;

(iv) any material agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any Indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$25,000 or under which it has imposed a security interest on any of its assets, tangible or intangible;

(v) any agreement concerning confidentiality or noncompetition other than with clients and vendors in the ordinary course of business;

(vi) any profit sharing, unit option, unit purchase, unit appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former managers, directors, officers, or employees;

(vii) any collective bargaining agreement;

(viii) any agreement other than on an employment-at-will basis for the employment of any individual on a full-time, part-time, consulting, or other basis or providing severance benefits, if the amount payable after January 1, 2019 exceeds \$50,000;

(ix) any agreement under which it has advanced or loaned any amount of money to any of its managers, directors, officers or employees outside the ordinary course of business;

(x) any agreement under which the consequences of a default or termination may have a Material Adverse Effect on Trupet; or

(xi) any other agreement (or group of related agreements) the performance of which involves consideration in excess of \$25,000.

(xii) Trupet has delivered to BCC a correct and complete copy of each written Contract listed on Schedule 3.1(n). With respect to each such Contract: (i) the Contract is legal, valid, binding, enforceable, and in full force and effect; (ii) Trupet has not received written notice from the counterparty that it is in breach or default; and (iii) no party has repudiated any provision of such agreement.

(o) Title to Assets; Real Property.

(i) Trupet has good and valid (and, in the case of owned real property, good and marketable fee simple) title to, or a valid leasehold interest in, all real property and personal property and other assets reflected in the Trupet Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for Permitted Encumbrances.

(ii) Schedule 3.1(o)(ii) lists: (A) the street address of each parcel of real property; (B) if such property is leased or subleased by Trupet, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (C) the current use of such property. With respect to leased real property, Trupet has delivered or made available to BCC true, complete and correct copies of any leases affecting the real property. Trupet is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased real property. The use and operation of the real property in the conduct of Trupet's business does not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. There are no Actions pending nor, to the Knowledge of Trupet, threatened against or affecting the real property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

(iii) Condition and Sufficiency of Assets. The assets of Trupet reflected in the Balance Sheet or acquired after the date thereof (but excluding inventory sold since the date thereof in the ordinary course of business) are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost, except for obsolete assets that are not material to the business of Trupet. The assets of Trupet owned, leased or licensed by Trupet comprise all of the assets, properties and rights of every type and description, whether real or personal, tangible or intangible, used in the conduct of the business of Trupet and are sufficient for the continued conduct of Trupet's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of Trupet as currently conducted.

(p) Guarantees. Trupet is not a guarantor or otherwise is liable for any liability or obligation (including Indebtedness) of any other Person.

(q) Insurance. With respect to each insurance policy of Trupet which is presently in effect: (i) the policy is legal, valid, binding, enforceable, and in full force and effect; (ii) to the Knowledge of Trupet, neither it nor any other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices); and (iii) no party to the policy has repudiated any provision thereof.

(r) Financial Statements. Trupet has delivered to BCC unaudited balance sheets, statements of profit and loss and cash flow statements for the periods from January 1 through December 31, 2017 and 2018 (the "Trupet Financial Statements"). To its Knowledge, the Trupet Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, subject to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes. The balance sheet of Trupet as of December 31, 2018 is referred to herein as the "Balance Sheet" and the date thereof as the "Balance Sheet Date". To its Knowledge, Trupet maintains a standard system of accounting established and administered in accordance with GAAP. To its Knowledge, the Trupet Financial Statements have been prepared based on information derived from the books and records of Trupet and present fairly the financial condition, results of operations, changes in financial position of Trupet, and member' equity at the dates and for the periods indicated, do not contain any untrue statements or omit to state any material fact necessary to make the Trupet Financial Statements not misleading, and have been prepared in conformity with GAAP consistently applied.

(s) Absence of Certain Changes, Events and Conditions. Except as set forth on Schedule 3.1(s), since the Balance Sheet Date: (i) Trupet and each Trupet Subsidiary has conducted its business in all material respects in the ordinary course consistent with past practice, (ii) there has not been any Material Adverse Effect, and (iii) no actions have been taken by Trupet or any Trupet Subsidiary which, if such actions were taken after the date hereof and prior to Closing, would be in violation of Section 5.2.

(t) Undisclosed Liabilities. Except as set forth in the Trupet Financial Statements or Schedule 3.1(t), to its Knowledge, Trupet has no Liabilities (absolute, accrued, contingent or otherwise) other than (i) Liabilities included in the Most Recent Financial Statements, (ii) Liabilities of a nature not required to be disclosed on a balance sheet or in the notes to financial statements prepared in accordance with GAAP, (iii) normal or recurring Liabilities in the ordinary course of business consistent with past practice which, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect on Trupet, and (iv) Liabilities under this Agreement.

(u) Customers and Suppliers.

(i) To its Knowledge, Schedule 3.1(u)(i) sets forth: (A) each customer who has paid aggregate consideration to Trupet for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two most recent fiscal years (collectively, the "Trupet Material Customers"); and (B) the amount of consideration paid by each Trupet Material Customer during such periods. Except as provided on Schedule 3.1(u)(i), Trupet has not received any notice, and to its Knowledge it has no reason to believe, that any Trupet Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with Trupet.

(ii) Schedule 3.1(u)(ii) sets forth (a) each supplier to whom Trupet has paid consideration for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two most recent fiscal years (collectively, the “Trupet Material Suppliers”); and (b) the amount of purchases from each Trupet Material Supplier during such periods. Trupet has not received any notice, and to its Knowledge has no reason to believe, that any Trupet Material Suppliers has ceased, or intends to cease, to supply goods or services to Trupet or to otherwise terminate or materially reduce its relationship with Trupet.

(v) Employees.

(i) With respect to the business of Trupet, except as set forth on Schedule 3.1(v)(i):

(A) there is no collective bargaining agreement or relationship with any labor organization;

recognition;

(B) no labor organization or group of employees has filed any representation petition or made any written or oral demand for

concerning representation exists;

(C) to the Knowledge of Trupet, no union organizing or decertification efforts are underway or threatened and no other question

Knowledge of Trupet, threatened;

(D) no labor strike, work stoppage, slowdown, or other material labor dispute has occurred, and none is underway or, to the

(E) there is no workmen’s compensation liability, experience or matter outside the Ordinary Course of Business;

(F) there is no employment-related charge, complaint, grievance, investigation, inquiry or obligation of any kind, pending or threatened in any forum, relating to an alleged violation or breach by Trupet (or its employees, officers or directors) of any law, regulation or contract; and

(G) there are no employment contracts or severance agreements with any employees of Trupet; and

(H) there are no written personnel policies, rules, or procedures applicable to employees of Trupet.

(ii) With respect to this transaction, any notice required under any Law or collective bargaining agreement has been given, and all bargaining obligations with any employee representative have been, as of the Closing Date, satisfied. Within the past five most recent fiscal years, Trupet not has not implemented any layoff of employees that could implicate the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar foreign, state, or local law, regulation, or ordinance (collectively, the “WARN Act”), and no such action will be implemented without advance notification to BCC.

(iii) No employment agreement of Trupet contains any severance, change of control or similar type of provision which would trigger a payment by BCC following consummation of the transactions contemplated by this Agreement.

(w) Notes and Accounts Receivable. All notes and accounts receivable of Trupet are reflected properly on the books and records of Trupet, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with its terms at its recorded amounts, subject only to the reserve for bad debts set forth on the face of the Most Recent Financial Statements (rather than in any notes thereto) as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of Trupet.

(x) Books and Records. The books and records including capital account books of TruPet, all of which have been made available to BCC, are complete and correct in all material respects and have been maintained in electronic form in accordance with sound business practices. The books and records of TruPet contain accurate records of all meetings, and actions taken by written consent of, the TruPet Members, the TruPet Manager(s) and any committees of the TruPet Manager(s), and for at least the past five years no meeting, or action taken by written consent, of any such TruPet Members, TruPet Manager(s) or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of TruPet.

(y) Disclosure. No statement, representation or warranty by Trupet in this Agreement, including the Disclosure Schedules hereto, contains any untrue statement of material fact, or omits to state a material fact, necessary to make such statements, representations and warranties not misleading. There is no fact known to the Knowledge of Trupet which has specific application to Trupet or, so far as can reasonably be foreseen, may in the future have a Materially Adverse Effect on Trupet or any Subsidiary which has not been set forth in this Agreement or the Disclosure Schedules hereto.

(z) OFAC. None of Trupet, any Trupet Subsidiary or, to the Knowledge of Trupet, any director, officer, member, manager agent, employee, or Affiliate of Trupet or any of its Subsidiaries or any Person acting on behalf of Trupet or any Trupet Subsidiary is named on any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America under the applicable economic sanctions and/or export control Laws (collectively, the "OFAC Lists"), or is owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in any OFAC Lists.

(aa) Survival. The foregoing representations and warranties shall survive the Closing Date through the General Expiration Date except as provided in Section 5.7(c)(ii).

(bb) Delivery of Disclosure Schedules and Updates to Trupet Disclosure Schedules. Each of BCC and Trupet shall deliver its Disclosure Schedules to the other Party (or Trupet Members, as the case may be) on or before February 16, 2019. At any time prior to the Closing, Trupet may, on behalf of itself and/or the Trupet Members, deliver to BCC updates to, or substitutions of, its Disclosure Schedules to reflect facts occurring after the Effective Date of this Agreement. Any update to, or substitution of, the Trupet Disclosure Schedules will modify the corresponding Trupet Disclosure Schedule, qualify the representations and warranties in this Agreement corresponding to such Trupet Disclosure Schedule, and cure any inaccuracy in or breach of representation or warranty that otherwise would have existed had such matter not been disclosed. With respect to any such update or substitution, BCC shall have the rights set forth in Section 7.1(e).

Section 3.2 *Representations and Warranties of the TruPet Members.* Each TruPet Member, singly and not jointly, represents and warrants to BCC that the statements contained in this Section 3.2 are true and correct as of the date hereof and will be true and correct as of the Closing Date, except as modified by the Disclosure Schedules attached to this Agreement.

(a) Authority. The TruPet Member has the requisite power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. If the TruPet Member is not a natural person, the execution and delivery of this Agreement by the TruPet Member and the consummation by it of the transactions contemplated hereby has been duly authorized by all necessary action on the part of the TruPet Member and no further action is required by it in connection herewith. This Agreement has been duly executed by the TruPet Member and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the TruPet Member enforceable against the TruPet Member in accordance with its terms.

(b) No Conflicts. The execution, delivery and performance by the TruPet Member of this Agreement will not conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under any agreement to which the TruPet Member is a party, or result in the creation of any Encumbrance upon the Membership Interests of TruPet held by such TruPet Member.

(c) Filings, Consents and Approvals. The TruPet Member is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local, foreign or other Governmental Authority or other Person in connection with the execution, delivery and performance by the TruPet Member of this Agreement.

(d) Equity Interests. Except for TruPet Membership Interests owned by BCC, the outstanding Membership Interests of TruPet owned of record and beneficially by the TruPet Member are as listed on Schedule 2.1(a). All of the TruPet Member's Membership Interests in TruPet set opposite such Person's name on Schedule 2.1(a) are owned free and clear of all Encumbrances.

(e) Certain Fees. No brokerage, finder's fees, commissions or due diligence fees are or will be payable by the TruPet Member to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to this Agreement or the transactions contemplated hereby other than fees to counsel and auditors. BCC shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.2(e) that may be due in connection with this Agreement or the transactions contemplated hereby.

(f) Restricted Securities. The TruPet Member understands that: (i) the BCC Common Stock to be issued pursuant to this Agreement is being acquired by such TruPet Member for its own account and not with a view to or for distribution or reselling such BCC Common Stock or any part thereof in violation of the Securities Act or any applicable state securities Laws; (ii) the BCC Common Stock will not be registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, which depends, in part, upon the accuracy of TruPet and each TruPet Member's representations as expressed in this Agreement; and (iii) the BCC Common Stock to be issued in connection with this Agreement will be "restricted securities" under applicable U.S. federal securities Laws and may be disposed of only pursuant to an effective registration statement under the Securities Act or an exemption from registration under the Securities Act. The TruPet Member acknowledges that BCC has no obligation to register for resale the BCC Common Stock to be issued pursuant to this Agreement. Each TruPet Member shall execute and deliver to BCC a customary investment letter and accredited investor questionnaire as a condition of receiving BCC Common Stock.

(g) Member Status. At the time each Trupet Member was offered the BCC Common Stock, it was, and as of the date hereof it is, an “accredited investor” within the meaning of Rule 501 under the Securities Act. Such Trupet Member is not subject to any of the “bad actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a “Disqualification Event”), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3).

(h) Disclosure. No statement, representation or warranty by the Trupet Member in this Agreement, including the Disclosure Schedules hereto, contains any untrue statement of material fact, or omits to state a material fact, necessary to make such statements, representations and warranties not misleading. There is no fact known to the Knowledge of the Trupet Member which has specific application to the Trupet Member or, so far as can reasonably be foreseen, may in the future have a Materially Adverse Effect on Trupet, the Trupet Member or any Subsidiary of Trupet which has not been set forth in this Agreement or the Disclosure Schedules hereto.

(i) Embargo Agreement. The Trupet Member has received and executed the embargo agreement attached hereto as Exhibit A prior to its receipt and execution of this Agreement.

(j) OFAC. None of the Trupet Member, any Subsidiary of the Trupet Member or, to the Knowledge of the Trupet Member, any director, officer, agent, employee, or Affiliate of the Trupet Member or any of its Subsidiaries or any Person acting on behalf of the Trupet Member or any Subsidiary of the Trupet Member is named on any OFAC Lists, or is owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in any OFAC Lists.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF BCC

Section 4.1 *Representations and Warranties of BCC*. BCC represents and warrants to Trupet that the statements contained in this Section 4.1 are true and correct as of the date hereof and will be true and correct as of the Closing Date, except as modified by the Disclosure Schedules of BCC attached to this Agreement, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation made herein only to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules or to the extent that such qualification is reasonably apparent:

(a) Subsidiaries. Each of the Subsidiaries of BCC as of the date of this Agreement and its place of organization is set forth on Schedule 4.1(a). All of the outstanding shares of capital stock of, or other equity or voting interests in, each Subsidiary of BCC that is owned directly or indirectly by BCC have been validly issued, were issued free of pre-emptive rights, are fully paid and non-assessable, and are free and clear of all Encumbrances, including any restriction on the right to vote, sell, or otherwise dispose of such capital stock or other equity or voting interests, except for Permitted Encumbrances or any Encumbrances: (i) imposed by applicable securities Laws; or (ii) arising pursuant to the organizational or charter documents of any non-wholly-owned Subsidiary of BCC. Except for the capital stock of, or other equity or voting interests in, its Subsidiaries, BCC does not own, directly or indirectly, any capital stock of, or other equity or voting interests in, any Person.

(b) Organization and Qualification. BCC and each of its Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither BCC nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of BCC and its Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Action has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. BCC has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by BCC and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of BCC and no further action is required by BCC, its officers, directors, or shareholders in connection herewith or therewith. This Agreement and each other Transaction Document to which BCC is a party has been (or upon delivery will have been) duly executed by BCC and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of BCC enforceable against BCC in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable Law.

(d) No Conflicts. The execution, delivery and performance by BCC of this Agreement and the other Transaction Documents to which it is a party, the exchange of the Securities and the consummation by BCC of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of BCC's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Encumbrance upon any of the properties or assets of BCC or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a BCC or Subsidiary debt or otherwise) or other understanding to which BCC or any Subsidiary is a party or by which any property or asset of BCC or any Subsidiary is bound or affected, or (iii) conflict with or result in a violation of any Law or other restriction of any court or Governmental Authority to which BCC or a Subsidiary is subject (including federal and state securities Laws), or by which any property or asset of BCC or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Capital Structure.

(i) The authorized capital stock of BCC consists of 580,000,000 shares of BCC Common Stock, \$0.001 par value, 20,000,000 shares of preferred stock, \$0.001 par value per share ("Preferred Stock"), of which 1,000 shares are designated as Series A preferred stock ("Series A Preferred Stock"), 1,000 shares are designated as Series B preferred stock ("Series B Preferred Stock") and 2,900,000 shares are designated as Series E preferred stock ("Series E Preferred Stock"). Schedule 4.1(e) sets forth, as of the Effective Date of this Agreement, (i) the number of shares of BCC Common Stock that were issued and outstanding, (ii) the number of shares of Series A Preferred Stock that were issued and outstanding, and (iii) the number of shares of Series E Preferred Stock that were issued and outstanding. All issued and outstanding shares of the capital stock of BCC are duly authorized, validly issued, fully paid and nonassessable, and no class of capital stock is entitled to preemptive rights. All shares of BCC Common Stock issued pursuant to the terms of this Agreement shall be duly authorized, validly issued, fully paid and non-assessable, and free of preemptive rights.

(ii) Except as set forth on Schedule 4.1(e) there are no securities, options, warrants, calls, rights, commitments, agreements, rights of first refusal, arrangements or undertakings of any kind to which BCC or any BCC Subsidiary is a party or by which any of them is bound, obligating BCC or any BCC Subsidiary to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional shares of BCC Common Stock, shares of Preferred Stock or other equity securities or phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any equity security of BCC or any of the BCC Subsidiaries or obligating BCC or any BCC Subsidiary to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, right of first refusal, arrangement or undertaking. There are no outstanding contractual obligations of BCC or any BCC Subsidiary to repurchase, redeem or otherwise acquire any shares of BCC Common Stock, shares of Preferred Stock, or other equity securities of BCC or any BCC Subsidiary. Neither BCC nor any BCC Subsidiary is a party to or, to the Knowledge of BCC, bound by any agreements or understandings concerning the voting (including voting trusts and proxies) of any capital stock of BCC or any of the BCC Subsidiaries.

(f) Certain Fees. Except as set forth on Schedule 4.1(f), no brokerage, finder's fees, commissions or due diligence fees are or will be payable by BCC to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to this Agreement or the transactions contemplated hereby other than fees to counsel and auditors. Trupet shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 4.1(f) that may be due in connection with this Agreement or the transactions contemplated hereby.

(g) Litigation. Except as disclosed on Schedule 4.1(g), there are no Actions pending or, to the Knowledge of BCC, threatened by or against BCC involving more than, individually or in the aggregate, \$25,000. There is no Action pending or, to the Knowledge of BCC, threatened against or affecting BCC before or by any Governmental Authority which: (i) adversely affects or challenges the legality, validity or enforceability of any of this Agreement or the issuance of the BCC Equity Consideration or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither BCC nor any officer or director thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities Laws or a claim of breach of fiduciary duty. There has not been, and, to the Knowledge of BCC, there is not pending or contemplated, any investigation by the SEC or any other Governmental Authority involving BCC or any current or former director or officer of BCC.

(h) Bad Actors. No “covered person” of BCC (as such term is defined in Rule 506(d) of Regulation D of the Securities Act) is subject to any disqualification under Rule 506(d) of Regulation D of the Securities Act.

(i) Compliance with Laws.

(i) BCC has complied and is currently in compliance with all applicable federal, state, local, foreign or other Laws having jurisdiction over or which affect its business and properties, except for any instance of non-compliance that has not had, and would not reasonably be expected to have, a Material Adverse Effect. BCC has all permits, licenses and franchises from governmental agencies required to conduct its businesses as now being conducted, except for those the absence of which has not had, or could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on BCC.

(ii) Neither BCC nor any of its officers, directors, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of the FCPA, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and BCC has conducted its business in compliance with the FCPA.

(iii) Neither BCC nor any of its officers, directors, employees or agents has taken any action, directly or indirectly, that would result in a violation by such Persons of other United States Laws, including, without limitation, offered, paid, promised to pay or authorized the payment of any money or offer, gift, promise to give, or authorized the giving of anything of value to (A) any official or any government of the United States or any state or local instrumentality or (B) any corporation, limited liability company or other entity.

(j) Intellectual Property.

(i) Schedule 4.1(j)(i) lists all: (A) BCC IP Registrations; and (B) BCC Intellectual Property that is not registered but that is material to BCC’s business or operations. To the Knowledge of BCC, there are no facts or circumstances that would render any BCC IP Registrations invalid or unenforceable. To the Knowledge of BCC, there has been no misrepresentation or failure to disclose, any fact or circumstances in any application for any BCC IP Registrations that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the validity or enforceability of any BCC IP Registrations. BCC has not claimed a particular status, including “small entity status,” in the application for any BCC IP Registrations, which claim of status was not at the time made, or which has since become, inaccurate or false or that will no longer be true and accurate as a result of the Closing.

(ii) Schedule 4.1(j)(ii) lists all BCC IP Agreements that are material to BCC's business as it presently is being conducted. BCC has made available to Trupet true and complete copies of all such BCC IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each BCC IP Agreement is valid and binding on BCC in accordance with its terms and is in full force and effect. Neither BCC, nor, to its Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any BCC IP Agreement.

(iii) Except as disclosed on Schedule 4.1(j)(iii), BCC is the sole and exclusive legal and beneficial, and with respect to BCC's IP Registrations, record, owner of all right, title and interest in and to BCC's Intellectual Property, or has the valid right to use all other Intellectual Property used in or necessary for the conduct of BCC's current business or operations, in each case, free and clear of Encumbrances other than Permitted Encumbrances.

(iv) Since its inception, BCC has entered into binding, written agreements with every current and former employee and with every current and former independent contractor, whereby such employees and independent contractors

(A) assign to BCC any ownership interest and right they may have in BCC's Intellectual Property; and (B) acknowledge BCC's exclusive ownership of BCC's Intellectual Property. BCC provided Trupet with true and complete copies of all such agreements.

(v) BCC Intellectual Property.

(A) Schedule 4.1(j)(v)(A) identifies all BCC's Intellectual Property and all Intellectual Property licensed to BCC under a BCC IP Agreement and that are: (1) used in the development, maintenance, use or support of any BCC product, (2) incorporated in or distributed or licensed with such BCC product in any manner for use in connection with such BCC product, or (3) used to deliver, host or otherwise provide services with respect to such BCC product, (except for non-customized, off-the-shelf software that is commercially available pursuant to shrink-wrap, click-through or other standard form agreements or with an annual license fee or replacement value of less than \$10,000).

(B) Except as set forth on Schedule 4.1(j)(v)(B), all BCC Intellectual Property is fully transferable, alienable or licensable by BCC without restriction and without payment of any kind to any third party. BCC has not transferred ownership of, or granted any exclusive license of (or exclusive right to use), or authorized the retention of any exclusive rights to use or joint ownership of, any BCC Intellectual Property or other Intellectual Property to any other Person. Except as set forth on Schedule 4.1(j)(v)(B), BCC is not subject to any BCC IP Agreement (other than with respect to current customers pursuant to BCC's standard form of customer agreement entered into in the ordinary course of business) that includes any unperformed obligations that require BCC to develop any product or other Intellectual Property, including any Customizations, and BCC owns and will continue to own all right, title and interest in and to all such Customizations developed by BCC.

(k) Benefit Plans. Except as set forth on Schedule 4.1(k), BCC has not adopted any Employee Benefit Plans.

(i) Each such benefit plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such benefit plan and the terms of any applicable collective bargaining agreement and complies in form and in operation in all respects with the applicable requirements of ERISA, the Code, and other applicable Laws.

(ii) All required reports and descriptions (including Form 5500 annual reports, summary annual reports, and summary plan descriptions) have been timely filed and/or distributed in accordance with the applicable requirements of ERISA and the Code with respect to each such benefit plan. The requirements of COBRA have been met with respect to each such benefit plan.

(iii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each such benefit plan that is an employee pension benefit plan under ERISA §3(2) and all contributions for any period ending on or before the Closing Date that are not yet due have been made to each such benefit plan or accrued in accordance with the past custom and practice of BCC. All premiums or other payments for all periods ending on or before the Closing Date have been paid with respect to each such benefit plan that is an employee welfare benefit plan under ERISA §3(1).

(iv) Each such benefit plan that is intended to meet the requirements of a “qualified plan” under Code §401(a) has received a determination from the Internal Revenue Service that such benefit plan is so qualified, and nothing has occurred since the date of such determination that could adversely affect the qualified status of any such benefit plan. All such benefit plans have been timely amended for all such requirements and have been submitted to the Internal Revenue Service for a favorable determination letter within the latest applicable remedial amendment period.

(v) There have been no prohibited transactions with respect to any such benefit plan. To the Knowledge of BCC, no fiduciary has any liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any such benefit plan. No Action with respect to the administration or the investment of the assets of any such benefit plan (other than routine claims for benefits) is pending or, to the Knowledge of BCC, threatened.

(vi) To the Knowledge of BCC (i) no Employee Benefit Plan is a Deferred Compensation Plan; (ii) each Deferred Compensation Plan satisfies the requirements to avoid the consequences set forth in Section 409A(a)(1) of the Code; and (iii) BCC has not (a) granted to any person an interest in any Deferred Compensation Plan which interest has been or, upon the lapse of a substantial risk of forfeiture with respect to such interest, will be subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(4)(A) of the Code, or (b) granted to any person an interest in any Deferred Compensation Plan which interest has or will be subject to the Tax imposed by Section 409A(a)(1)(B) or (b)(4)(A) of the Code, or (c) modified the terms of any Deferred Compensation Plan in a manner that could cause an interest previously granted under such plan to become subject to the additional tax (including interest) imposed by Section 409A(a)(1)(B) or (b)(4) of the Code.

(l) Tax Matters. Except as set forth on Schedule 4.1(l), to BCC's Knowledge:

(i) BCC and each of its Subsidiaries has timely filed all Tax Returns that it was required to file under applicable Laws and regulations (after giving effect to any filing extension properly granted by a Governmental Authority having the authority to do so). All such Tax Returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws and regulations. All Taxes due and owing by BCC and each of its Subsidiaries have been paid, except for amounts that are being contested in good faith.

(ii) There are no Encumbrances for Taxes (other than Taxes not yet due and payable) on any of the assets of BCC or its Subsidiaries.

(iii) Neither BCC nor any of its Subsidiaries has entered into any agreement with any Tax Authority to extend the period of limitations for any Taxes. No audit or other examination of the Company or any of its Subsidiaries is currently pending or has been threatened in writing, and no Tax deficiency has been asserted or threatened in writing against BCC or any of its Subsidiaries.

(m) Environmental, Health and Safety Matters.

(i) BCC has been and is in compliance with all EHSR, other than such instances of non-compliance which, individually or in the aggregate, will not have a Material Adverse Effect.

(ii) Without limiting the generality of the foregoing, BCC has obtained and is in compliance with, all permits, licenses and other authorizations that are required pursuant to all EHSR for the occupation of its facilities and the operation of its business.

(iii) BCC has not received any written or oral notice, report or other information regarding any actual or alleged violation of any EHSR, or any Liabilities, including any investigatory, remedial or corrective obligations, relating to any of its facilities arising under any EHSR.

(n) Contracts. Schedule 3.1(n) lists the following Contracts and other agreements to which BCC is a party:

(i) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of \$25,000 per annum;

(ii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will: (A) extend over a period of more than one year; (B) result in a material loss to BCC; or (C) involve consideration in excess of \$25,000;

- (iii) any agreement concerning a partnership or joint venture;
- (iv) any material agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any Indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$25,000 or under which it has imposed a security interest on any of its assets, tangible or intangible;
- (v) any agreement concerning confidentiality or noncompetition other than with clients and vendors in the ordinary course of business;
- (vi) any profit sharing, unit option, unit purchase, unit appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former directors, officers, or employees;
- (vii) any collective bargaining agreement;
- (viii) any agreement other than on an employment-at-will basis for the employment of any individual on a full-time, part-time, consulting, or other basis or providing severance benefits, if the amount payable after January 1, 2019 exceeds \$50,000;
- (ix) any agreement under which it has advanced or loaned any amount of money to any of its directors, officers or employees outside the ordinary course of business;
- (x) any agreement under which the consequences of a default or termination may have a Material Adverse Effect on BCC; or
- (xi) any other agreement (or group of related agreements) the performance of which involves consideration in excess of \$25,000.

BCC has delivered to Trupet a correct and complete copy of each written Contract listed on Schedule 4.1(n). With respect to each such Contract: (i) the Contract is legal, valid, binding, enforceable, and in full force and effect; (ii) BCC has not received written notice from the counterparty that it is in breach or default; and (iii) no party has repudiated any provision of such agreement.

(o) Title to Assets: Real Property.

(i) BCC has good and valid (and, in the case of owned real property, good and marketable fee simple) title to, or a valid leasehold interest in, all real property and personal property and other assets reflected in most recent audited BCC Financial Statements, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the filing of the most recent audited BCC Financial Statements. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for Permitted Encumbrances.

(ii) Schedule 4.1(o)(ii) lists: (A) the street address of each parcel of real property; (B) if such property is leased or subleased by BCC, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (C) the current use of such property. With respect to leased real property, BCC has delivered or made available to Trupet true, complete and correct copies of any leases affecting the real property. BCC is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased real property. The use and operation of the real property in the conduct of BCC's business does not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. There are no Actions pending nor, to the Knowledge of BCC, threatened against or affecting the real property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

(iii) Condition and Sufficiency of Assets. The assets of BCC reflected in the most recent BCC Financial Statements or acquired after the date thereof (but excluding inventory sold since the date thereof in the ordinary course of business) are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost, except for obsolete assets that are not material to the business of BCC. The assets of BCC owned, leased or licensed by BCC comprise all of the assets, properties and rights of every type and description, whether real or personal, tangible or intangible, used in the conduct of the business of BCC and are sufficient for the continued conduct of BCC's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of BCC as currently conducted.

(p) Guarantees. BCC is not a guarantor or otherwise is liable for any liability or obligation (including Indebtedness) of any other Person.

(q) Insurance. With respect to each insurance policy of BCC which is presently in effect: (i) the policy is legal, valid, binding, enforceable, and in full force and effect; (ii) to the Knowledge of BCC, neither it nor any other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices); and (iii) no party to the policy has repudiated any provision thereof.

(r) SEC Documents; Financial Statements.

(i) Since November 29, 2017, BCC has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act as if BCC has been required to file reports under Section 13(a) or 15(d) of the Exchange Act (all of the foregoing filed prior to the date this representation is made including all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein are referred to as the "SEC Documents"). BCC has made available to the Trupet Members or their respective representatives, or filed and made publicly available on EDGAR, true and complete copies of the SEC Documents. Except as set forth on Schedule 4.1(r), each of the SEC Documents was filed with the SEC within the time frames prescribed by the SEC for the filing of such SEC Documents (including any extensions of such time frames permitted by Rule 12b-25 under the Exchange Act pursuant to timely filed Forms 12b-25) such that each filing was timely filed (or deemed timely filed pursuant to Rule 12b-25 under the Exchange Act) with the SEC. Except as set forth in Schedule 4.1(r), as of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents. Except as set forth in Schedule 4.1(r), none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Since the filing of the SEC Documents, except as set forth on Schedule 4.1(r), no event has occurred that would require an amendment or supplement to any of the SEC Documents and as to which such an amendment has not been filed and made publicly available on the SEC's EDGAR system no less than five days prior to the date this representation is made. Except as set forth on Schedule 4.1(r), BCC has not received any written comments from the SEC staff that have not been resolved to the satisfaction of the SEC staff.

(ii) As of their respective dates, the consolidated financial statements of BCC (the “BCC Financial Statements”) and its Subsidiaries included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with GAAP, consistently applied, during the periods involved (except: (i) as may be otherwise indicated in such financial statements or the notes thereto; or (ii) in the case of unaudited interim statements, to the extent they may be subject to normal year-end adjustments, may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of BCC as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). The accounting firm that expressed its opinion with respect to the consolidated financial statements included in BCC’s most recently filed annual report on Form 10-K, and reviewed the consolidated financial statements included in BCC’s most recently filed quarterly report on Form 10-Q, was independent of BCC pursuant to the standards set forth in Rule 2-01 of Regulation S-X promulgated by the SEC and as required by the applicable rules and guidance from the PCAOB, and such firm was (or is, as applicable) otherwise qualified to render such opinion under applicable Law and the rules and regulations of the SEC and the PCAOB. There is no transaction, arrangement or other relationship between BCC and an unconsolidated or other off-balance-sheet entity that is required to be disclosed by BCC in its reports pursuant to the Exchange Act that has not been so disclosed in the SEC Documents prior to the date of this Agreement.

(s) Absence of Certain Changes, Events and Conditions. Except as set forth on Schedule 4.1(s), since the filing of the most recent audited BCC Financial Statements: (i) BCC and each BCC Subsidiary has conducted its business in all material respects in the ordinary course consistent with past practice, (ii) there has not been any Material Adverse Effect, and (iii) no actions have been taken by BCC which, if such actions were taken after the date hereof and prior to Closing, would be in violation of Section 5.1.

(t) Undisclosed Liabilities. Except as set forth in the BCC Financial Statements or Schedule 3.1(t), BCC has no Liabilities (absolute, accrued, contingent or otherwise) other than (i) Liabilities included in the most recently filed audited BCC Financial Statements, (ii) Liabilities of a nature not required to be disclosed on a balance sheet or in the notes to financial statements prepared in accordance with GAAP, (iii) normal or recurring Liabilities in the ordinary course of business consistent with past practice which, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect on BCC, and (iv) Liabilities under this Agreement.

(u) Customers and Suppliers.

(i) Schedule 3.1(u)(i) sets forth: (A) each customer who has paid aggregate consideration to BCC for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two most recent fiscal years (collectively, the “BCC Material Customers”); and (B) the amount of consideration paid by each BCC Material Customer during such periods. Except as provided on Schedule 3.1(u)(i), BCC has not received any notice, and to its Knowledge it has no reason to believe, that any BCC Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with BCC.

(ii) Schedule 3.1(u)(ii) sets forth (a) each supplier to whom BCC has paid consideration for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two most recent fiscal years (collectively, the "BCC Material Suppliers"); and (b) the amount of purchases from each BCC Material Supplier during such periods. BCC has not received any notice, and to its Knowledge has no reason to believe, that any BCC Material Suppliers has ceased, or intends to cease, to supply goods or services to BCC or to otherwise terminate or materially reduce its relationship with BCC.

(v) Employees.

(i) With respect to the business of BCC, except as set forth on Schedule 4.1(v)(i):

(A) there is no collective bargaining agreement or relationship with any labor organization;

recognition;

(B) no labor organization or group of employees has filed any representation petition or made any written or oral demand for

concerning representation exists;

(C) to the Knowledge of BCC, no union organizing or decertification efforts are underway or threatened and no other question

Knowledge of BCC, threatened;

(D) no labor strike, work stoppage, slowdown, or other material labor dispute has occurred, and none is underway or, to the

(E) there is no workmen's compensation liability, experience or matter outside the Ordinary Course of Business;

threatened in any forum, relating to an alleged violation or breach by BCC (or its employees, officers or directors) of any law, regulation or contract;

(G) there are no employment contracts or severance agreements with any employees of BCC; and

(H) there are no written personnel policies, rules, or procedures applicable to employees of BCC.

(ii) With respect to this transaction, any notice required under any Law or collective bargaining agreement has been given, and all bargaining obligations with any employee representative have been, as of the Closing Date, satisfied. Within the past five most recent fiscal years, BCC not has not implemented any layoff of employees that could implicate the WARN Act, and no such action will be implemented without advance notification to Trupet.

(iii) No employment agreement of BCC contains any severance, change of control or similar type of provision which would trigger a payment by Trupet following consummation of the transactions contemplated by this Agreement.

(w) Notes and Accounts Receivable. All notes and accounts receivable of BCC are reflected properly on the books and records of BCC, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with its terms at its recorded amounts, subject only to the reserve for bad debts set forth on the face of the most recently filed audited BCC Financial Statements (rather than in any notes thereto) as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of BCC.

(x) Books and Records. The minute books and shareholder books of Trupet, all of which have been made available to Trupet, are complete and correct in all material respects and have been maintained in electronic form in accordance with sound business practices. The minute books of BCC contain accurate records of all meetings, and actions taken by written consent of, the BCC Board, the BCC and any committees of the BCC Board, and for the fiscal years beginning with September 1, 2017, no meeting, or action taken by written consent, of any such BCC Board, BCC shareholders or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of BCC.

(y) Disclosure. No statement, representation or warranty by BCC in this Agreement, including the Disclosure Schedules hereto, contains any untrue statement of material fact, or omits to state a material fact, necessary to make such statements, representations and warranties not misleading. There is no fact known to the Knowledge of BCC which has specific application to BCC or, so far as can reasonably be foreseen, may in the future have a Materially Adverse Effect on BCC or any Subsidiary which has not been set forth in this Agreement or the Disclosure Schedules hereto.

(z) OFAC. None of BCC, any Subsidiary of BCC or, to the Knowledge of BCC, any director, officer, agent, employee, or Affiliate of BCC or any of its Subsidiaries or any Person acting on behalf of BCC or any Subsidiary of BCC is named on any OFAC Lists, or is owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in any OFAC Lists.

(aa) Survival. The foregoing representations and warranties shall survive the Closing Date through the General Expiration Date except as provided in Section 5.7(c)(ii).

(bb) Updates to BCC Disclosure Schedules. At any time prior to the Closing, BCC may deliver to Trupet updates to, or substitutions of, its Disclosure Schedules to reflect facts occurring after the Effective Date of this Agreement. Any update to, or substitution of, the BCC Disclosure Schedules will modify the corresponding BCC Disclosure Schedule, qualify the representations and warranties in this Agreement corresponding to such BCC Disclosure Schedule, and cure any inaccuracy in or breach of representation or warranty that otherwise would have existed had such matter not been disclosed. With respect to any such update or substitution, Trupet shall have the rights set forth in Section 7.1(f).

ARTICLE V

COVENANTS

Section 5.1 *Covenants of BCC.*

(a) Affirmative Pre-Closing Covenants. BCC covenants and agrees that, between the Effective Date of this Agreement and the earlier to occur of (i) the termination of this Agreement in accordance with Section 7.1, and (ii) the Closing (the "Interim Period"), except to the extent required by Law, as may be consented to by Trupet in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly required or permitted pursuant to this Agreement or as set forth on Schedule 5.1(a), BCC shall, and shall cause each of the BCC Subsidiaries to:

(i) preserve and maintain its existence, rights, franchises, licenses and privileges in the jurisdiction of its formation and qualify or remain qualified to do business in each jurisdiction where it is required to so qualify;

(ii) conduct its business in the ordinary course of business consistent with past practice;

(iii) maintain its books and records in the ordinary course of business;

(iv) pay its debts, Taxes and other obligations when due;

(v) file with the SEC in a timely manner all reports and other documents required to be filed by BCC under the Exchange Act;

(vi) take all actions necessary to satisfy the closing conditions in Section 6.4;

(vii) repay the Comerica Loan, or refinance or otherwise renegotiate the terms of the Comerica Loan in a manner approved by Trupet; and

(viii) use commercially reasonable efforts to include an additional number of shares of BCC Common Stock with an aggregate fair market value of \$10,000,000 in the Financing for the parties set forth on Schedule 5.1(a)(viii) (the "Secondary Shares"), subject in all events to the consent of any applicable underwriter or placement agent, and provided that if BCC's managing underwriter or placement agent shall advise BCC that the inclusion in any registration statement or private placement of some or all of the Secondary Shares creates a substantial risk that the proceeds or price per unit that will be derived from such offering will be reduced or that the number of securities to be offered is too large a number to be reasonably sold, (i) first, the number of shares of BCC Common Stock issued pursuant to the Financing shall be included in such offering, and (ii) next, the number of Secondary Shares shall be included in such offering to the extent permitted by the Company's managing underwriter or placement agent, with the number of Secondary Shares of each Trupet Member being offered determined on a pro-rata basis in accordance with such Trupet Member's Percentage as set forth on Schedule 5.1(a)(viii).

(b) Affirmative Post-Closing Covenants. BCC covenants and agrees that after the Closing BCC shall use commercially reasonable efforts to cause the BCC Common Stock (including the Secondary Shares) to be listed on the Nasdaq Capital Market.

(c) Negative Covenants. Without limiting the foregoing, BCC covenants and agrees that, during the Interim Period, except to the extent required by Law, as may be consented to by the Company in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly contemplated, required or permitted pursuant to this Agreement or as set forth on Schedule 5.1(c), BCC shall not, and shall not cause or permit any BCC Subsidiary to, do any of the following:

(i) amend or propose to amend the organizational or governing documents of BCC or any BCC Subsidiary if such amendment would impede completion of the transactions contemplated hereby or would otherwise be materially adverse to BCC or Trupet;

(ii) split, combine, reclassify or subdivide any shares of stock or other equity securities or ownership interests of BCC or any BCC Subsidiary (other than any wholly owned BCC Subsidiary);

(iii) declare, set aside or pay any dividend on or make any other distributions (whether in cash, stock, property or otherwise) with respect to shares of capital stock of BCC or any BCC Subsidiary or other equity securities or ownership interests in BCC or any BCC Subsidiary;

(iv) redeem, repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock or other equity interests of BCC or any BCC Subsidiary;

(v) issue, sell, pledge, dispose, encumber or grant, confer, award or modify any shares of BCC's or any of the BCC Subsidiaries' capital stock, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of BCC's or any of the BCC Subsidiaries' capital stock or other equity interests;

(vi) acquire or agree to acquire (including by merger, consolidation or acquisition of stock or assets) any real property, corporation, partnership, limited liability company, other business organization or any division or material amount of assets thereof;

(vii) sell, mortgage, pledge, transfer, dispose of or encumber, or effect a deed in lieu of foreclosure with respect to, any real property or any non-real property assets (including by merger, consolidation or acquisition of shares, membership interests or assets), except in the ordinary course of business consistent with past practice;

(viii) incur, create, assume, refinance, replace or prepay any Indebtedness for borrowed money or issue or amend the terms of any debt securities of BCC or any of the BCC Subsidiaries, or assume, guarantee or endorse, or otherwise become responsible for the Indebtedness of any other Person;

(ix) make any loans, advances or capital contributions to, or investments in, any other Person (including to any of its officers, trustees, Affiliates, agents or consultants), or make any change in any such arrangements, other than travel advances or other loans that do not violate the Sarbanes-Oxley Act of 2002 and any applicable rules and regulations thereunder;

(x) enter into, renew, modify, amend or terminate, or waive, release, compromise or assign any rights or claims under, any BCC Material Contract (or any Contract that, if existing as of the date hereof, would be a BCC Material Contract)

(xi) waive, release, assign, settle or compromise any Action;

(xii) (A) except in the ordinary course of business consistent with past practice, hire any employee of BCC or any BCC Subsidiary or promote or appoint any Person to a position of officer of BCC or any BCC Subsidiary, (B) increase the amount, rate or terms of compensation or benefits of any service provider or consultant, except (i) pursuant to the terms of an existing Contract existing prior to the date hereof, (ii) in the ordinary course of business consistent with past practice, (C) enter into, adopt, amend or terminate any Employee Benefit Plan, (D) accelerate the vesting, funding or payment of any compensation, benefit or award under any Employee Benefit Plan, other than in accordance with the existing terms of any Employee Benefit Plan, or (E) grant any awards under the any bonus, incentive, performance or other compensation plan or arrangement (whether cash or equity-based);

(xiii) fail to maintain all financial books and records in all material respects in accordance with GAAP (or any interpretation thereof) and consistent with past practices or make any material change to its methods of accounting in effect at August 31, 2018, except as required by a change in GAAP (or any interpretation thereof) or in applicable Law, or make any change, other than in the ordinary course of business consistent with past practice, with respect to accounting policies, principles or practices unless required by GAAP or the SEC;

(xiv) fail to duly and timely file all material reports and other material documents required to be filed with any Governmental Authority, subject to extensions permitted by Law or applicable rules and regulations;

(xv) (A) make, change or rescind any election relating to Taxes, (B) change a method of Tax accounting or change any Tax accounting period, (C) file any amendment to a Tax Return, (D) settle or compromise any Tax liability, audit, claim or assessment, (E) enter into any closing agreement related to Taxes or obtain any Tax ruling, (F) surrender any right to claim any Tax refund, (G) prepare or file any Tax Return (other than an amendment to a Tax Return) in a manner inconsistent with past practice, or (H) take any action similar to the foregoing that could have the effect of increasing the Tax liability or reducing any Tax asset of BCC;

(xvi) adopt a plan of merger, complete or partial liquidation or resolutions providing for or authorizing such merger, liquidation or a dissolution, consolidation, recapitalization or bankruptcy reorganization;

(xvii) form any new funds or joint ventures;

(xviii) engage any financial advisor in connection with the transactions contemplated hereby unless the directors of BCC have concluded in good faith (after consultation with outside legal counsel) that failure to engage another financial advisor would be inconsistent with their duties under applicable Law;

(xix) take any action that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby; or

- (xx) authorize, or enter into any Contract, agreement or binding commitment or arrangement to do any of the foregoing.

Section 5.2 *Covenants of Trupet and the Trupet Members.*

(a) Affirmative Covenants. Trupet and each Trupet Member (severally but not jointly) covenants and agrees that, during the Interim Period, except to the extent required by Law, as may be consented to by BCC in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly required or permitted pursuant to this Agreement or as set forth on Schedule 5.2(a), Trupet and each Trupet Member shall, and Trupet shall cause each of the Trupet Subsidiaries to:

- (i) preserve and maintain its existence, rights, franchises, licenses and privileges in the jurisdiction of its formation and qualify or remain qualified to do business in each jurisdiction where it is required to so qualify;

- (ii) conduct its business in the ordinary course of business consistent with past practice;

- (iii) maintain its books and records in the ordinary course of business;

- (iv) pay its debts, Taxes and other obligations when due; and

- (v) take all actions necessary to satisfy the closing conditions in Section 6.3.

(b) Negative Covenants. Without limiting the foregoing, Trupet and each Trupet Member (severally but not jointly) covenants and agrees that, during the Interim Period, except to the extent required by Law, as may be consented to by BCC in writing (which consent shall not be unreasonably withheld, delayed or conditioned), as may be expressly contemplated, required or permitted pursuant to this Agreement or as set forth on Schedule 5.2(b), Trupet and each Trupet Member shall not, and shall not cause or permit any Trupet Subsidiary to, do any of the following:

- (i) amend or propose to amend the organizational or governing documents of Trupet or any Trupet Subsidiary if such amendment would impede completion of the transactions contemplated hereby or would otherwise be materially adverse to BCC or Trupet;

- (ii) split, combine, reclassify or subdivide any Membership Interests, or other equity securities or ownership interests of Trupet or any Trupet Subsidiary (other than any wholly owned Trupet Subsidiary);

- (iii) declare, set aside or pay any dividend on or make any other distributions (whether in cash, stock, Membership Interests, property or otherwise) with respect to the Membership Interests of Trupet or any Trupet Subsidiary or other equity securities or ownership interests in Trupet or any Trupet Subsidiary;

- (iv) redeem, repurchase or otherwise acquire, directly or indirectly, any Membership Interests or other equity interests of Trupet or any Trupet Subsidiary;

(v) issue, sell, pledge, dispose, encumber or grant, confer, award or modify any Membership Interests or other equity interests of Trupet or any Trupet Subsidiary, or any options, warrants, convertible securities or other rights of any kind to acquire any Membership Interests or other equity interests of Trupet or any Trupet Subsidiary;

(vi) acquire or agree to acquire (including by merger, consolidation or acquisition of stock or assets) any real property, corporation, partnership, limited liability company, other business organization or any division or material amount of assets thereof;

(vii) sell, mortgage, pledge, transfer, dispose of or encumber, or effect a deed in lieu of foreclosure with respect to, any real property or any non-real property assets (including by merger, consolidation or acquisition of shares, membership interests or assets), except in the ordinary course of business consistent with past practice;

(viii) incur, create, assume, refinance, replace or prepay any Indebtedness for borrowed money or issue or amend the terms of any debt securities of Trupet or any of the Trupet Subsidiaries, or assume, guarantee or endorse, or otherwise become responsible for the Indebtedness of any other Person;

(ix) make any loans, advances or capital contributions to, or investments in, any other Person (including to any of its officers, trustees, Affiliates, agents or consultants), or make any change in any such arrangements, other than travel advances;

(x) enter into, renew, modify, amend or terminate, or waive, release, compromise or assign any rights or claims under, any Trupet Material Contract (or any Contract that, if existing as of the date hereof, would be a Trupet Material Contract)

(xi) waive, release, assign, settle or compromise any Action;

(xii) (A) except in the ordinary course of business consistent with past practice, hire any employee of Trupet or any Trupet Subsidiary or promote or appoint any Person to a position of officer of Trupet or any Trupet Subsidiary, (B) increase the amount, rate or terms of compensation or benefits of any service provider or consultant, except (i) pursuant to the terms of an existing Contract existing prior to the date hereof, (ii) in the ordinary course of business consistent with past practice, (C) enter into, adopt, amend or terminate any Employee Benefit Plan, (D) accelerate the vesting, funding or payment of any compensation, benefit or award under any Employee Benefit Plan, other than in accordance with the existing terms of any Employee Benefit Plan, or (E) grant any awards under the any bonus, incentive, performance or other compensation plan or arrangement (whether cash or equity-based);

(xiii) fail to maintain all financial books and records in all material respects in accordance with GAAP (or any interpretation thereof) and consistent with past practices or make any material change to its methods of accounting in effect on December 31, 2018 except as required by a change in GAAP (or any interpretation thereof) or in applicable Law, or make any change, other than in the ordinary course of business consistent with past practice, with respect to accounting policies, principles or practices unless required by GAAP;

(xiv) fail to duly and timely file all material reports and other material documents required to be filed with any Governmental Authority, subject to extensions permitted by Law or applicable rules and regulations;

(xv) (A) make, change or rescind any election relating to Taxes, (B) change a method of Tax accounting or change any Tax accounting period, (C) file any amendment to a Tax Return, (D) settle or compromise any Tax liability, audit, claim or assessment, (E) enter into any closing agreement related to Taxes or obtain any Tax ruling, (F) surrender any right to claim any Tax refund, (G) prepare or file any Tax Return (other than an amendment to a Tax Return) in a manner inconsistent with past practice, or (H) take any action similar to the foregoing that could have the effect of increasing the Tax liability or reducing any Tax asset of Trupet;

(xvi) adopt a plan of merger, complete or partial liquidation or resolutions providing for or authorizing such merger, liquidation or a dissolution, consolidation, recapitalization or bankruptcy reorganization;

(xvii) form any new funds or joint ventures;

(xviii) engage any financial advisor in connection with the transactions contemplated hereby unless the managers of Trupet have concluded in good faith (after consultation with outside legal counsel) that failure to engage another financial advisor would be inconsistent with their duties under applicable Law;

(xix) take any action that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby; or

(xx) authorize, or enter into any Contract, agreement or binding commitment or arrangement to do any of the foregoing.

Section 5.3 *Cooperation with Respect to Actions.* In the event of an Action by any Person, including any Governmental Authority, seeking to restrain, prevent, prohibit, materially delay or restructure the transactions contemplated hereby, the Parties shall cooperate and exercise commercially reasonable efforts to seek a resolution of such Action so as to eliminate any impediment to Closing.

Section 5.4 *Lender Approval.* Trupet acknowledges that, from the Effective Date of this Agreement, it shall use its commercially reasonable efforts to obtain the consent of each Lender to the transactions contemplated hereby or the refinancing or repayment of the Existing Trupet Indebtedness. BCC shall use its commercially reasonable efforts to assist and cooperate with Trupet in connection with the efforts of Trupet to obtain the consent of each Lender to the transactions contemplated hereby or the refinancing or repayment of the Existing Trupet Indebtedness.

Section 5.5 *Press Releases and Public Announcements.* The Parties agree that they shall not issue any press release, public statement or any other public disclosure concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other Party. Notwithstanding the foregoing, BCC may, without obtaining the consent of Trupet or any Trupet Member, issue a press release, public statement or other public disclosure concerning this Agreement and the transactions contemplated hereby as may be required by applicable Law; provided, that, prior to making such announcement, BCC shall have delivered a draft of such press release, public statement or disclosure to the Trupet and shall have given Trupet reasonable opportunity to comment thereon.

Section 5.6 *Governance.* Prior to the Closing, BCC shall have taken all corporate action necessary so that, effective immediately following the Closing or such later date as BCC shall have complied with Rule 14f-1 under the Exchange Act, (i) the number of directors that will comprise the full BCC Board shall be seven, and (ii) the Persons set forth on Schedule 5.6 shall be the directors of BCC, each of whom shall serve until their respective successors are duly elected or appointed and qualified.

Section 5.7 *Indemnification.*

(a) Indemnification for Breach of Agreement.

(i) Indemnification by TruPet Members. Subject to Section 5.7(c), in the event that TruPet or a TruPet Member breaches any of its representations, warranties, and covenants contained in the Agreement, and, provided that BCC or the BCC Representative makes a written claim for indemnification against TruPet or a TruPet Member prior to the applicable expiration date in Section 5.7(c)(ii) (pursuant to this Section 5.7(a)(i) in the case of a direct claim by BCC against TruPet or a TruPet Member or, pursuant to Section 5.7(b) below in the case of a third party claim), then the TruPet Members agree as a condition of receiving delivery of the BCC Equity Consideration to severally, and not jointly, indemnify BCC or any Affiliate (a "BCC Indemnified Party") from and against the entirety of any Damages BCC or any Affiliate may suffer through and after the date of the claim for indemnification resulting from, arising out of, relating to, or caused by such breach by TruPet or a TruPet Member. Notwithstanding anything in this Agreement to the contrary, no TruPet Member shall be liable for Damage for the breach by any other TruPet Member of such other TruPet Member's representations and warranties in Section 3.2.

(ii) Indemnification by BCC. Subject to Section 5.7(c), in the event BCC breaches any of its representations, warranties, and covenants contained in the Agreement, and, provided that any TruPet Member makes a written claim for indemnification against BCC prior to the applicable expiration date in Section 5.7(c)(ii) (pursuant to this Section 5.7(a)(ii) in the case of a direct claim by the TruPet Member against BCC or pursuant to Section 5.7(b) below in the case of a third party claim), then BCC agrees to indemnify the TruPet Members or any Affiliate (a "TruPet Indemnified Party") from and against the entirety of any Damages the TruPet Members may suffer through and after the date of the claim for indemnification resulting from, arising out of, relating to, or caused by such breach by BCC.

(iii) Mike Young shall be appointed as representative and attorney-in-fact to act on behalf of BCC (the "BCC Representative") with respect to any Action asserted by BCC arising out of or relating to this Agreement and the transactions contemplated thereby and shall be authorized to initiate an Action on behalf of BCC alleging a breach of this Agreement and seeking to reduce the BCC Adjusted Equity Consideration as a result of such breach, subject to the provisions of Section 5.7(c), and to take any and all actions and make any decisions required or permitted to be taken by the BCC Representative pursuant to this Agreement, including the exercise of the power to give and receive notices and communications; agree to, negotiate, enter into settlements and compromises of, and comply with orders with respect to claims for indemnification pursuant to this Agreement; litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to this Agreement; engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist the BCC Representative in complying with his or her duties and obligations; and take all actions necessary or appropriate in the good faith judgment of the BCC Representative for the accomplishment of the foregoing.

(iv) Lori Taylor shall be appointed as representative and attorney-in-fact to act on behalf of the Trupet Members (the "Trupet Member Representative") with respect to any Action asserted by Trupet Members arising out of or relating to this Agreement and the transactions contemplated thereby and shall be authorized to initiate an Action on behalf of Trupet Members relating to this Agreement and the transactions contemplated thereby, subject to the provisions of Section 5.7(c), and to take any and all actions and make any decisions required or permitted to be taken by the Trupet Member Representative pursuant to this Agreement, including the exercise of the power to give and receive notices and communications; agree to, negotiate, enter into settlements and compromises of, and comply with orders with respect to claims for indemnification pursuant to this Agreement; litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to this Agreement; engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist the Trupet Member Representative in complying with her duties and obligations; and take all actions necessary or appropriate in the good faith judgment of the Trupet Member Representative for the accomplishment of the foregoing.

(v) In the event BCC consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of BCC shall assume the obligations set forth in this Section 5.7.

(vi) This Section 5.7 is intended for the irrevocable benefit of, and to grant third party rights to, the Indemnified Parties and shall be binding on all successors and assigns of BCC, Trupet and the Trupet Members. This Section 5.7 shall not be amended in a manner that is adverse to the Indemnified Parties (including their successors) or terminated without the consent of each of the Indemnified Parties (including their successors) affected thereby. Each of the Indemnified Parties shall be entitled to enforce the covenants contained in this Section 5.7.

The provisions of this Section 5.7 shall survive the consummation of the transactions contemplated hereby.

(vii) In order to provide for just and equitable contribution, if a claim for indemnification pursuant to this Section 5.7 is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification in such case, then the Parties shall contribute to the losses to which any Indemnified Party may be subject (A) in accordance with the relative benefits received by BCC on the one hand, and Trupet and the Trupet Members on the other hand, and (B) if (and only if) the allocation provided in clause (A) of this Section 5.7(a)(vi) is not permitted by applicable Law, in such proportion as to reflect not only the relative benefits, but also the relative fault of BCC on the one hand, and Trupet and the Trupet Members on the other hand, in connection with the statements, acts or omissions which resulted in such losses as well as any relevant equitable considerations. No Person found liable for a fraudulent misrepresentation shall be entitled to contribution from any Person who is not also found liable for fraudulent misrepresentation.

(b) Third Party Claims; Procedure.

(i) Promptly (and in any event within five days after the service of any summons or other document) after acquiring knowledge of any third party Action for which one or more of either a BCC Indemnified Party or a Trupet Indemnified Party (the "Third Party Indemnified Party") may seek indemnification against other Parties (the "Third Party Indemnifying Party") pursuant to this Section 5.7, the Third Party Indemnified Party shall give written notice thereof to the Third Party Indemnifying Party. Failure to provide notice shall not relieve the Third Party Indemnifying Party of its obligations under this Section 5.7, except to the extent of any actual damage caused by that failure. The Third Party Indemnifying Party shall have the right to assume the defense of any Action with one law firm reasonably acceptable to the Third Party Indemnified Party upon delivery of notice to that effect to the Third Party Indemnified Party. If the Third Party Indemnifying Party, after written notice from the Third Party Indemnified Party, fails to take timely action to defend the action resulting from the Action or otherwise respond to the Action, or if the Third Party Indemnifying Party's counsel has reasonably determined that there may be a conflict between the Third Party Indemnified Party and the Third Party Indemnifying Party in the defense of such Action, the Third Party Indemnified Party shall have the right to defend the action resulting from the Action by counsel of its own choosing, but at the cost and expense of the Third Party Indemnifying Party. The Third Party Indemnified Party shall have the right to settle or compromise any Action against it, and recover from the Third Party Indemnifying Party any amount paid in settlement or compromise thereof, if it has given written notice thereof to the Third Party Indemnifying Party and the Third Party Indemnifying Party has failed to take timely action to defend the Action; otherwise, the Third Party Indemnified Party shall have no right to settle or compromise any Action. The Third Party Indemnifying Party shall have the right to settle or compromise any Action against the Third Party Indemnified Party without the consent of the Third Party Indemnified Party provided that the terms of the settlement or compromise provide for the unconditional release of the Third Party Indemnified Party, require the payment of monetary damages only, is not likely to result in criminal proceedings and is not likely to have a Material Adverse Effect on the Third Party Indemnified Party or its business.

(ii) Upon its receipt of any amount paid by the Third Party Indemnifying Party pursuant to this Section 5.7, the Third Party Indemnified Party shall deliver to the Third Party Indemnifying Party such documents as it may reasonably request assigning to the Third Party Indemnifying Party any and all rights, to the extent indemnified, that the Third Party Indemnified Party may have against third parties with respect to the Proceeding for which indemnification is being received.

(c) Limitations on Indemnification.

(i) Notwithstanding anything to the contrary contained herein, except as provided in this Section 5.7(c), no BCC Indemnified Party shall be entitled to receive an indemnification payment with respect to any Action specified in this Section 5.7 unless the Action, or the aggregate amount of all Actions made by the BCC Indemnified Party hereunder, equals or exceeds \$50,000 (in which case all of such Actions back to the first dollar will be recoverable).

(ii) (A) Subject to Section 5.7(c)(iii), the Parties agree that the right of any Party to undertake an Action pursuant to Sections 5.7(a) and (b) shall survive the Closing until 11:59 p.m. on the date that is one year following the Closing Date (the "General Expiration Date"); provided, however, that if, at any time prior to the General Expiration Date, any Party delivers to another Party a written notice asserting in good faith an Action for recovery under Section 5.7(a) or (b), then the Action asserted in such notice shall survive the General Expiration Date until such time as such Action is fully and finally resolved; (B) notwithstanding anything to the contrary in Section 5.7 (including 5.7(c)(ii)(A) hereof), the Parties agree that the right of any Party to undertake an Action pursuant to Sections 5.7(a) and (b) with respect to (1) common law fraud shall survive the Closing until the expiration of the statute of limitation applicable to the subject matter thereof, and (2) with respect to the Tax representations made by BCC and Trupet pursuant to the provisions of Sections 3.1(l) and 4.1(l) respectively, shall survive the Closing for a period of 90 days following the expiration of the applicable statute of limitations period, (3) with respect to the BCC Fundamental Representations and the Trupet Fundamental Representations, shall survive the Closing for a period of five years after the Closing.

(iii) Notwithstanding anything in this Agreement to the contrary, the maximum liability of any TruPet Member for Damages shall be 10% of the BCC Equity Consideration received by such TruPet Member.

(iv) The Parties agree that the indemnification right set forth in this Agreement shall be the Parties sole and exclusive remedy with respect to the transactions contemplated by this Agreement, except for specific performance or other equitable remedy.

(v) If any TruPet Member is liable for Damages hereunder, such TruPet Member shall have the option of discharging such liability in cash, BCC Common Stock at a value of \$0.1175 per share (subject to adjustment for stock splits, stock dividends, combinations or similar events), or a combination thereof. If TruPet is liable for Damages hereunder, the procedure in the prior sentence shall be utilized. If BCC is liable for Damages hereunder, BCC shall have the option of discharging such liability in cash, BCC Common Stock at a value of \$0.1175 per share subject to adjustment for stock splits, stock dividends, combinations or similar events), or a combination thereof.

(vi) In the event of any reclassification, recapitalization, stock split, stock dividend (including any dividend or distribution of securities convertible into BCC Common Stock) or subdivision with respect to BCC Common Stock, any change or conversion of BCC Common Stock into other securities, any other dividend or distribution with respect to the BCC Common Stock (or if a record date with respect to any of the foregoing should occur), after the date of this Agreement, appropriate and proportionate adjustments shall be made to the number of shares of BCC Common Stock and the price per share thereof that may be issuable for indemnification purposes pursuant to this Agreement.

Section 5.8 *Lock-Up*. On the Closing Date, each TruPet Member shall enter into a single lock-up agreement with BCC (the "Lock-Up Agreement") in a form substantially similar to Exhibit B hereto, for the period beginning on the Closing Date and expiring one year thereafter, pursuant to which each TruPet Member shall acknowledge and agree not to offer, sell, contract to sell, hypothecate or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the sale, hypothecation or disposition (whether by actual or effective economic sale, hypothecation or disposition due to cash settlement or otherwise) by the TruPet Member or any Affiliate of the TruPet Member or any Person in privity with the TruPet Member or any Affiliate of the TruPet Member), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the SEC in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, with respect to the any and all of the Lock-Up Securities unless such transaction is a Permitted Disposition. Notwithstanding the foregoing, and subject to all Permitted Dispositions, each TruPet Member shall be entitled to effect any of the transactions prohibited above as to: (i) on the six month anniversary of the Closing Date, 20% of such TruPet Member's BCC Common Stock; (ii) on the nine month anniversary of the Closing Date, an additional 40% of such TruPet Member's BCC Common Stock; and (iii) on the one year anniversary of the Closing Date, all of such TruPet Member's BCC Common Stock, provided, however, if any BCC Common Stock held by the TruPet Members is subject to an effective Registration Statement, the restrictions set forth in this Section 5.8 with respect to any registered BCC Common Stock shall be modified as follows: (a) on the three month anniversary of the Closing Date, up to 20% of such TruPet Member's registered BCC Common Stock; (b) on the six month anniversary of the Closing Date, up to an additional 40% of such TruPet Member's registered BCC Common Stock; and (c) on the one year anniversary of the Closing Date, all of such TruPet Member's registered BCC Common Stock. For the avoidance of doubt, the provisions of the immediately prior sentence shall only apply to registered BCC Common Stock and shall not expand the rights of holders of BCC Common Stock to the extent that such shares are not subject to an effective Registration statement or the Prospectus does not meet the requirements of Section 5(b) of the Securities Act. Furthermore, nothing contained in this Section 5.8 shall be deemed to conflict with Rule 144 under the Securities Act.

Section 5.9 *Mutual Pre-Closing Covenants.* After the execution of this Agreement the Parties covenant to work in good faith to prepare, negotiate and enter into, or cause to be prepared, negotiated and entered into, (i) Employment Agreements with the Trupet Executives and (ii) a Stockholder Agreement with the Trupet Members (excluding BCC) regarding protections of minority interests.

Section 5.10 *Equity Incentive Plan.* Upon execution of this Agreement BCC shall amend its current Equity Incentive Plan (the “Plan”) in the form of Exhibit C hereto by increasing the number of awards issuable under the Plan. Such Plan shall reserve a maximum of 15% of the issued and outstanding BCC Common Stock, on a fully diluted basis after issuance of the BCC Equity Consideration, as additional compensation which may be awarded to the officers, directors, employees, and consultants of BCC.

Section 5.11 *Further Assurances.* If any further action is necessary or desirable to carry out the purposes of this Agreement, the Parties agree to take such further action (including the execution and delivery of such further instruments and documents) as the other Party may request, all at the sole cost and expense of the requesting Party (unless the requesting party is entitled to indemnification therefore under Section 5.7 hereof).

Section 5.12 *Registration Rights.* Prior to the Closing the Parties shall enter into a Registration Rights Agreement (the “Registration Rights Agreement”), pursuant to which BCC shall use commercially reasonable efforts to register the shares of BCC Common Stock issuable to the Trupet Members as part of the BCC Equity Consideration, which registration rights shall be subordinate to the rights of investors in a proposed securities offering through a broker-dealer and pari passu with the rights of the investors who received registration rights under a Registration Rights Agreement entered into as of November 20, 2018 (the “November Investors”) and the shareholders of Bona Vida who receive BCC Common stock in connection with BCC’s potential acquisition of Bona Vida as contemplated herein (the “Bona Vida Shareholders”). The Trupet Members acknowledge that the Staff of the Securities and Exchange Commission (“SEC”) has a policy limiting the number of shares that can be registered in any one or related registration statements. While BCC anticipates that there may be some room to include some shares of BCC Common Stock issued to the Trupet Members as part of the BCC Equity Consideration, (the “Extra Shares”), the ultimate decision will be made by the Staff of the SEC. To the extent that any Extra Shares can be included in the registration statement, each of the November Investors, the Trupet Members and the Bona Vida Shareholders shall, as individual groups, be entitled to provide 1/3 of the Extra Shares. The number of Extra Shares that may be provided by each November Investor, each Trupet Member and each Bona Vida Shareholder shall be made on a pro rata basis based on the percentage of BCC Common Stock that such individual November Investor, Trupet Member or Bona Vida Shareholder owns compared to the total number of shares of BCC Common Stock issued to all investors in its investor group.

ARTICLE VI

CLOSING DELIVERABLES AND CONDITIONS TO CLOSING

Section 6.1 *Closing Deliverables of BCC.* The obligations of Trupet and each Trupet Member to consummate the transactions contemplated by this Agreement shall be subject to the delivery by Trupet (or the waiver by Lori Taylor), at or prior to the Closing, of each of the following by BCC:

- (a) This Agreement, duly executed;
- (b) The BCC Equity Consideration specified on Schedule 2.1(b);
- (c) An Employment Agreement for each of the Trupet Executives duly executed;
- (d) The Lock-Up Agreements, duly executed;
- (e) A Stockholder Agreement as provided for in Section 5.9;
- (f) A copy of resolutions of the BCC Board approving this Agreement, the Plan Amendment and all related matters contemplated by the Agreement;
- (g) The Registration Rights Agreement as provided for in Section 5.12; and

(h) An officer's certificate of BCC in a form reasonably acceptable to Trupet certifying that: (i) the representations and warranties of BCC are true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date); (ii) BCC has performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by BCC at or prior to the Closing Date; and (iii) there has been no Material Adverse Effect since the Effective Date.

Section 6.2 *Closing Deliverables of Trupet and the Trupet Members.* The obligations of BCC to consummate the transactions contemplated by this Agreement shall be subject to the delivery to the BCC (or BCC's waiver, at or prior to the Closing) of each of the following:

- (a) By each Trupet Member:
  - (i) This Agreement, duly executed;

Schedule 2.1(a);

- (ii) An instrument conveying the TruPet Exchange Consideration if not certificated or an executed stock power if certificated as reflected on
- (iii) If such TruPet Member is listed on Schedule 5.9 hereof, an Employment Agreement, duly executed for such TruPet Member;
- (iv) The Lock-Up Agreement, duly executed;
- (v) An investment letter and accredited investor questionnaire reasonably satisfactory to BCC, in the form attached hereto as Exhibit D;
- (vi) A certificate of such TruPet Member in a form reasonably acceptable to BCC certifying that: (i) the representations and warranties of the TruPet Member are true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date); (ii) the TruPet Member has performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the TruPet Member at or prior to the Closing Date; and (iii) there has been no Material Adverse Effect since the Effective Date;
- (vii) A Stockholder Agreement as provided for in Section 5.3; and
- (viii) The Registration Rights Agreement as provided for in Section 5.12.

(b) By TruPet:

- (i) This Agreement, duly executed;
- (ii) Resignations of each member of TruPet's Board of Managers; and

(iii) An officer's certificate of TruPet in a form reasonably acceptable to BCC certifying that: (i) the representations and warranties of TruPet are true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date); (ii) TruPet has performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by TruPet at or prior to the Closing Date; and (iii) there has been no Material Adverse Effect since the Effective Date.

Section 6.3 *Conditions to BCC's Obligation to Close.* The obligations of BCC to consummate the transactions contemplated hereby shall be subject to the satisfaction or (to the extent permitted by Law) waived by BCC, at or prior to the Closing, of the following conditions:

(a) Representations and Warranties of TruPet and the TruPet Members. (i) Other than the representations and warranties set forth in Section 3.1(b), Section 3.1(c) Section 3.1(e) and Section 3.2(a) each of the representations and warranties of the Company set forth in this Agreement shall be true and correct (without giving effect to any qualification as to materiality or Company Material Adverse Effect contained in Article 3) as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct as of such date), except where any failures of any such representations and warranties to be true and correct would not reasonably be expected to have a Material Adverse Effect, and (ii) the representations and warranties set forth in Section 3.1(b), Section 3.1(c), Section 3.1(e) and 3.2(a) shall be true and correct in all material respects as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct in all material respects as of such date).

(b) Performance of Covenants and Obligations of Trupet and the Trupet Members. Trupet and the Trupet Members shall have performed in all material respects all obligations, and complied in all material respects with all agreements and covenants, required to be performed by it under this Agreement on or prior to the Closing Date.

(c) Material Adverse Change. On the Closing Date, there shall not exist any event, circumstance, change or effect arising after the date of this Agreement that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on Trupet.

(d) Good Standing. Trupet and each Trupet Subsidiary shall be in good standing (or its equivalent) in the jurisdiction under the Laws in which the it is organized.

(e) Statutes; Court Orders. No Law shall have been enacted, entered, promulgated or enforced by any court of competent jurisdiction or other Governmental Authority that prohibits the consummation of the transactions contemplated hereby, and no Governmental Authority of competent jurisdiction shall have issued a final, non-appealable order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement.

(f) Exchange Consideration. Each Trupet Member shall have assigned, effective as of the Closing, its share of the Trupet Exchange Consideration to BCC, free and clear of all Encumbrances.

(g) Consents. Each of the consents identified on Schedule 6.3(g), and including, without limitation, the consent of the Lender, shall have been obtained and shall be in full force and effect.

(h) Unaudited Balance Sheet. On the Business Day immediately preceding the Closing Date, Trupet shall deliver to BCC an unaudited balance sheet of Trupet, which shall be current as of the date such unaudited balance sheet is delivered to BCC. To the extent such balance sheet indicates Trupet has a Closing Working Capital deficit, the BCC Equity Consideration shall be reduced by a number of shares of Common Stock calculated by dividing the amount of such Closing Working Capital deficit by the lesser of (i) \$0.1175 per share; or (ii) the average of the daily VWAP of BCC Common Stock for the prior 10 trading days.

(i) Deliverables. Trupet and each Trupet Member shall have delivered all agreements, documents certificates and other items set forth in Section 6.2.

Section 6.4 Conditions to Trupet and each Trupet Member's Obligation to Close. The obligations of Trupet and each Trupet Member to consummate the transactions contemplated hereby shall be subject to the satisfaction or (to the extent permitted by Law) waived by Trupet, at or prior to the Closing, of the following conditions:

(a) Representations and Warranties of BCC. (i) Other than the representations and warranties set forth in Section 4.1(b), Section 4.1(c) and Section 4.1(e), each of the representations and warranties of BCC set forth in this Agreement shall be true and correct (without giving effect to any qualification as to materiality or Material Adverse Effect contained in Article 2) as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct as of such date), except where any failures of any such representations and warranties to be true and correct would not reasonably be expected to have a Material Adverse Effect, and (ii) the representations and warranties set forth in Section 4.1(b), Section 4.1(c) and Section 4.1(e) shall be true and correct in all material respects as of the date of this Agreement and as of the Closing as though made on and as of the Closing (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct in all material respects as of such date).

(b) Performance of Covenants and Obligations of BCC. BCC shall have performed in all material respects all obligations, and complied in all material respects with all agreements and covenants, required to be performed by it under this Agreement on or prior to the Closing.

(c) Material Adverse Change. On the Closing Date, there shall not exist any event, circumstance, change or effect arising after the date of this Agreement that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on BCC.

(d) Good Standing. BCC and each BCC Subsidiary shall be in good standing (or its equivalent) in the jurisdiction under the Laws in which the it is organized.

(e) Statutes; Court Orders. No Law shall have been enacted, entered, promulgated or enforced by any court of competent jurisdiction or other Governmental Authority that prohibits the consummation of the transactions contemplated hereby, and no Governmental Authority of competent jurisdiction shall have issued a final, non-appealable order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement.

(f) Exchange Consideration. BCC shall have issued or paid, as applicable, to each Trupet Member, effective as of the Closing, the BCC Equity Compensation. In lieu of actual delivery of the BCC Equity Consideration, a written representation of BCC's stock transfer agent that it shall deliver the BCC Equity Consideration by overnight deliver following notice that the Closing has occurred shall comply with this Section 6.3(f).

(g) Consents. Each of the consents identified on Schedule 6.4(g) shall have been obtained and shall be in full force and effect.

(h) Deliverables. BCC shall have delivered all agreements, documents certificates and other items set forth in Section 6.1.

(i) Financing. BCC shall have completed a financing (the “Financing”) which has been approved, in writing, by BCC, Trupet (on behalf of itself and the Trupet Members) and Bona Vida, Inc., a Delaware corporation (“Bona Vida”), and shall have received written notice confirming same from BCC’s broker-dealer.

(j) Bona Vida. The Company’s acquisition of Bona Vida shall have been consummated, subject to the release of the proceeds received by BCC pursuant to the Financing.

(k) Trupet Percentage Interest. Immediately after the consummation of the transactions contemplated in this Agreement, the Trupet Members, in the aggregate, shall own 38.2% of the voting power and 38.2% of the economic interests in BCC, the calculation of which shall (i) be on a fully diluted basis and (ii) exclude the shares of BCC Common Stock issued in the Financing.

(l) Comerica. Lori Taylor and John Word shall have been removed from all obligations with respect to the Comerica Loan either prior to the Closing or, if not, BCC covenants that the Comerica Loan will be paid from the proceeds of the Financing immediately following the Closing.

## ARTICLE VII

### TERMINATION

Section 7.1 *Termination*. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written agreement of BCC and Trupet;

(b) by either BCC or Trupet, by prior written notice to the other Party or Parties, if the Closing shall not have occurred for any reason on or prior to the Outside Date; provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to any Party whose failure to perform any of its obligations under this Agreement required to be performed by it at or prior to the Closing has been the cause of, or resulted in, the failure of the Closing to occur;

(c) by BCC, upon written notice to Trupet and the Trupet Managers, if (i) any of the conditions set forth in Section 6.3 shall have become incapable of fulfillment and shall not have been waived by BCC, (ii) Trupet or any Significant Trupet Member fails to perform in any material respect any of its covenants or agreements contained in this Agreement required to be performed by it on or prior to the Closing, and, within ten (10) Business Days after written notice of such breach to Trupet or the applicable Significant Trupet Member, such breach shall not have been cured by Trupet or the applicable Significant Trupet Member or waived by BCC, or (iii) Trupet or a Significant Trupet Member shall breach any of its representations or warranties hereunder such that the conditions set forth in Section 6.3 would not be satisfied if such conditions were required to be satisfied on the date of the breach, and, within ten (10) Business Days after written notice of such breach to Trupet or such Significant Trupet Member, Trupet or such Significant Trupet Member shall continue to be in breach of such representation or warranty; provided, however, this Agreement may not be terminated by BCC pursuant to this Section 7.1(c) if BCC is then in breach of any representation, warranty, covenant or agreement set forth in this Agreement such that BCC is not then capable of satisfying the conditions set forth in Section 6.4;

(d) by Trupet, upon written notice to BCC, if (i) any of the conditions set forth in Section 6.4 shall have become incapable of fulfillment and shall not have been waived by Trupet, (ii) BCC fails to perform in any material respect any of the covenants or agreements contained in this Agreement required to be performed by it on or prior to the Closing, and, within ten (10) Business Days after written notice of such breach to BCC, such breach shall not have been cured or waived by Trupet, or (iii) BCC shall breach any of its representations or warranties hereunder such that the conditions set forth in Section 6.4 would not be satisfied if such conditions were required to be satisfied on the date of the breach, and, within 10 Business Days after written notice of such breach to BCC, BCC shall continue to be in breach of such representation or warranty; provided, however, this Agreement may not be terminated by Trupet pursuant to this Section 7.1(d) if Trupet or any Significant Trupet Member is then in breach of any representation, warranty, covenant or agreement set forth in this Agreement such that Trupet is not then capable of satisfying the conditions set forth in Section 6.3;

(e) by BCC upon written notice to Trupet if any update or substitution made or provided to Section 3.1(bb) would have a Material Adverse Effect on Trupet, provided such notice is received within 30 days after receipt thereof;

(f) by Trupet upon written notice to BCC if any update or substitution made or provided pursuant to Section 4.1(bb) would have a Material Adverse Effect on BCC, provided such notice is received within 30 days after receipt thereof;

(g) by Lori Taylor, at her sole discretion, notwithstanding anything in this Agreement to the contrary, upon written notice to BCC if (i) the Employment Agreements provided for in Section 5.3 are not entered into through no fault of the Trupet Executives; (ii) the Stockholder Agreement provided for in Section 5.3 is not entered into by the Parties through no fault of Trupet or the Trupet Members; or (iii) the Financing or terms thereof are not to her overall satisfaction; or

(h) by either BCC or Trupet, by prior written notice to the other Party or Parties, within 10 days after receipt of the other Party's Disclosure Schedules.

Section 7.2 *Procedure and Effect of Termination.* In the event of the termination of this Agreement and the abandonment of the transactions contemplated hereby pursuant to Section 7.1, written notice thereof shall be given by the Party so terminating to the other Parties to this Agreement, and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further action by the Parties. If this Agreement is terminated pursuant to Section 7.1 hereof:

(a) this Agreement shall become null and void and of no further force or effect, except that the obligations provided for in this Article VII, Article VIII and Article IX hereof shall survive any such termination of this Agreement; and

(b) except as otherwise set forth herein, such termination shall be without liability of any Party to any other Party; provided, however, that if the transactions contemplated hereby fail to close as a result of any breach or violation of any representations, warranties, covenants or agreements contained in this Agreement by any Party, such Party shall be fully liable for any and all Damages incurred or suffered by the other Parties as a result of any such breach or violation, including equitable remedies as provided in Section, 9.15, so long as such other Parties are not then themselves in breach in any material respect of their respective obligations under this Agreement.

Section 7.3 *Breakup Fee.* Provided BCC is not in breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, in the event: (i) this Agreement is terminated pursuant to Section 7.1(g); (ii) Trupet consummates a Change of Control Transaction within 12 months of the date this Agreement is terminated; and (iii) the value of such Change of Control Transaction shall be greater than or equal to the value of the BCC Equity Consideration or is otherwise a superior transaction for the Trupet Members from a financial point of view, then, upon written demand from BCC, Trupet shall, within seven days of Trupet's receipt of such written demand, pay to BCC an amount equal to \$400,000.

## ARTICLE VIII

### SURVIVAL

Section 8.1 *Survival.* The representations and warranties in this Agreement or in any certificate, schedule, instrument or other document delivered pursuant to this Agreement shall survive the Closing consistent with the indemnification provisions set forth in Section 5.7 hereof.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1 *Amendment and Modification.* This Agreement may be amended, modified or supplemented only by written agreement of each Party at any time prior to the Closing Date.

Section 9.2 *Waiver of Compliance; Consents.* Any failure of BCC, Trupet or a Trupet Member to comply with any obligation, covenant, agreement or condition herein may be waived only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.2.

Section 9.3 *Trupet Waiver, Consent, Approval.* Any time in this Agreement where reference is made to a Trupet waiver, consent, approval, agreement, notice of termination or similar action, only Lori Taylor may provide, or refuse to provide, in her sole discretion, such waiver, consent, approval, agreement, notice of termination or similar action, which shall be binding on Trupet and all Trupet Members.

Section 9.4 *Notices and Addresses.* All notices, offers, acceptance and any other acts under this Agreement shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by FedEx or similar receipted next business day delivery, or by email followed by overnight next business day delivery as follows:

to BCC: 81 Prospect Street  
Brooklyn, NY 11201  
Attention: David Lelong  
David@sportendurancehq.com

with a copy to: Nason, Yeager, Gerson, Harris & Fumero, P.A.  
3001 PGA Boulevard, Suite 305  
Palm Beach Gardens, Florida 33410  
Attention: Michael D. Harris, Esq.  
Email: mharris@nasonyeager.com

to Trupet: 4025 Tampa Rd  
Suite 1117  
Oldsmar, FL 34667  
Attention: Lori Taylor  
lori@revmediamarketing.com

with a copy to: Stradling  
660 Newport Center Drive  
Newport Beach, CA 92660  
Attention: C. Craig Carlson, Esq.  
ccarlson@sycr.com

to Trupet Members: As reflected on the signature pages.

or to such other address as any of them, by notice to the other may designate from time to time. Time shall be counted to, or from, as the case may be, the date of delivery.

Section 9.5 *Assignment; Third Party Beneficiaries.* Neither this Agreement nor any right, interest or obligation hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement is not intended to confer any rights or remedies upon any Person other than the Parties hereto.

Section 9.6 *Governing Law.* This Agreement and all Actions arising out of or in connection with this Agreement, including any Actions alleging any Party committed any tort, shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to the conflicts of law provisions of the State of Delaware or of any other jurisdiction.

Section 9.7 *Exclusive Jurisdiction.* Any action brought by either Party against the other concerning the transactions contemplated by this Agreement shall be brought only in the state or federal courts of New York and venue shall be in the County of New York. The Parties to this Agreement hereby irrevocably waive any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens.

Section 9.8 *Counterparts.* This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the Parties and delivered to each other Party (including by means of electronic delivery), it being understood that the Parties need not sign the same counterpart. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf"), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

Section 9.9 *Severability.* In case any one or more of the provisions contained in this Agreement should be finally determined to be invalid, illegal or unenforceable in any respect against a Party hereto, it shall be adjusted if possible to effect the intent of the Parties. In any event, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, and such invalidity, illegality or unenforceability shall only apply as to such Party in the specific jurisdiction where such final determination shall have been made.

Section 9.10 *Titles.* The Article and Section headings contained in this Agreement are solely for the purpose of reference and shall not in any way affect the meaning or interpretation of this Agreement.

Section 9.11 *Entire Agreement.* This Agreement and the Disclosure Schedules, embody the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein. There are no representations, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein and therein.

Section 9.12 *Rules of Construction.* Each Party to this Agreement has been represented by counsel during the preparation and execution of this Agreement, and therefore waives any rule of construction that would construe ambiguities against the Party drafting the Agreement.

Section 9.13 *Waiver of Jury Trial.* EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.14 *Expenses.* Except as otherwise provided in this Agreement, all Parties hereto shall pay their own expenses, including legal and accounting fees, in connection with the transactions contemplated herein.

Section 9.15 *Interpretation.* This Agreement shall be read and construed in the English language. As used in this Agreement, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and singular shall include the plural. References herein to a Party or other Person include their respective successors and permitted assigns. The words "include," "includes" and "including" when used herein shall be deemed to be followed by the phrase "without limitation" unless such phrase otherwise appears. Unless the context otherwise requires, references herein to articles, sections, schedules, and exhibits shall be deemed references to articles and sections of, and schedules and exhibits to, this Agreement. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular article, section or provision hereof. Except when used together with the word "either" or otherwise for the purpose of identifying mutually exclusive alternatives, the term "or" has the inclusive meaning represented by the phrase "and/or." Any deadline or time period set forth in this Agreement that by its terms ends on a day that is not a Business Day shall be automatically extended to the next succeeding Business Day. All references in this Agreement to "dollars" or "\$" shall mean United States Dollars. With regard to each and every term and condition of this Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and that if at any time the Parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject thereto, no consideration shall be given to the issue of which Party actually prepared, drafted or requested any term or condition of this Agreement.

Section 9.16 *Equitable 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 the specific terms hereof or were otherwise breached. It is accordingly agreed that, in addition to the other rights of the Parties under this Agreement, the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any federal or state court located in the State of Delaware (as to which the Parties agree to submit to jurisdiction for the purpose of such action), this being in addition to any other remedy to which the Parties are entitled under this Agreement.

Section 9.17 *Enforcement Costs*. Should any Party institute any Action to enforce the terms of this Agreement, the prevailing Party shall be entitled to receive all reasonable costs and expenses (including reasonable attorneys' fees) incurred by such prevailing Party in connection with such Proceeding. A Party entitled to recover costs and expenses under this Section 9.17 shall also be entitled to recover all costs and expenses (including reasonable attorneys' fees) incurred in the enforcement of any judgment or settlement obtained in such action or proceeding provision (and in any such judgment provision shall be made for the recovery of such post-judgment costs and expenses). For the purposes of determining who is a prevailing Party, if a plaintiff is awarded relief on any claim or cause of action, it shall be deemed to be a prevailing Party, except as provided in the next sentence. If a plaintiff is awarded relief on any claim or cause of action but a counterclaim plaintiff or crossclaim plaintiff is also awarded relief on a claim or cause of action, no Party shall be deemed to be a prevailing Party.

[Signature Page Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date set forth on page one.

**BCC:**

By: /s/ Mike Young

Name: Mike Young

Title: Chairman

**TRUPET:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: CEO

[Signature Page to Securities Exchange Agreement]

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**J&L HOLDINGS:**

By: /s/ John Word III

Name: John Word III

Title: Partner

**0828397 BC LTD.:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

**TP MEMBER, LLC (CARNIVORE):**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

**CAMBRIDGE SPG IRA FUND L.P.:**

By: /s/ Filipp Chebotarev

Name: Filipp Chebotarev

Title: Managing Member

**CSPG TP HOLDINGS LLC:**

By: /s/ Filipp Chebotarev

Name: Filipp Chebotarev

Title: Managing Member

**MICHELLE RUBLE:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

**DAVID VOZICK:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

**NATE BACHMAN:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

**ANTHONY SANTARSIERO:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

**EVERPLUS F&B FUND LLC:**

By: /s/ Xuesong Yu

Name: Xuesong Yu

Title: Manager

**GUSTAVO GONZALEZ:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

**WILL MULLIS:**

By: /s/ Lori Taylor

Name: Lori Taylor

Title: Attorney-in-Fact

[Signature Page to Securities Exchange Agreement]

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AMENDMENT TO SECURITIES EXCHANGE AGREEMENT

THIS AMENDMENT TO SECURITIES EXCHANGE AGREEMENT (this “**Amendment**”), dated as of May 6, 2019 (the “**Effective Date**”), is by and among Better Choice Company, Inc. a Delaware corporation (“**BCC**”) and Trupet LLC, a Delaware limited liability company (“**Trupet**”).

WHEREAS, BCC, Trupet and the holders of the Membership Interests of Trupet other than BCC (each, a “**Trupet Member**”, and collectively, the “**Trupet Members**”) are parties to that certain Securities Exchange Agreement, dated as of February 2, 2019 (the “**Exchange Agreement**”);

WHEREAS, the Exchange Agreement contemplated the issuance by BCC of a series of preferred stock designated “Series B” as consideration to the Trupet Members in the event BCC has not affected a reverse stock split or does not have sufficient authorized shares of BCC Common Stock at Closing;

WHEREAS, BCC has affected a stock split and has sufficient authorized shares of BCC Common Stock to pay the Trupet Members their due consideration at Closing in shares of BCC Common Stock;

WHEREAS, BCC has not authorize a class of preferred stock designated as “Series B”; and

WHEREAS, BCC and Trupet wish to amend certain terms of the Exchange Agreement in accordance with Section 9.1 of the Exchange Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), BCC and Trupet hereby agree as follows:

**ARTICLE I  
AMENDMENT**

1. Amendment of Definition. The definition of “BCC Equity Consideration” set forth in Section 1.1 of the Exchange Agreement shall be deleted in its entirety and restated as follows:

“BCC Equity Consideration” means a number of shares of BCC Common Stock as provided in Section 6.4(k), in each case subject to any adjustment pursuant to Section 6.3(h).”
2. Amendment of Definition. The definitions of “Series A Preferred Stock” and “Series B Preferred Stock” shall be deleted in their entirety.
3. Amendment of Section 2.1(c). Section 2.1(c) of the Exchange Agreement shall be deleted in its entirety.

4. Amendment of Section 4.1(e)(i). Section 4.1(e)(i) of the Exchange Agreement is hereby deleted and restated in its entirety as follows:

“(i) The authorized capital stock of BCC consists of 88,000,000 shares of BCC Common Stock, \$0.001 par value and 4,000,000 shares of preferred stock, \$0.001 par value per share (“Preferred Stock”), of which 2,900,000 shares are designated as Series E preferred stock (“Series E Preferred Stock”). Schedule 4.1(e) sets forth, as of the Effective Date of this Agreement, (i) the number of shares of BCC Common Stock that were issued and outstanding and (ii) the number of shares of Series E Preferred Stock that were issued and outstanding. All issued and outstanding shares of the capital stock of BCC are duly authorized, validly issued, fully paid and nonassessable, and no class of capital stock is entitled to preemptive rights. All shares of BCC Common Stock issued pursuant to the terms of this Agreement shall be duly authorized, validly issued, fully paid and non-assessable, and free of preemptive rights.”
5. The references to 3.1(n) on page 31 and 3.1(t), 3.1(u)(i) and 3.1(u)(ii) on page 34 of the Exchange Agreement are a scrivener’s error and are hereby amended to read 4.1(n), 4.1(t), 4.1(u)(i) and 4.1(u)(ii).
6. Amendment of Section 5.9 of the Exchange Agreement is hereby deleted and restated in its entirety as follows:

“**5.9 Mutual Pre-Closing Covenants.** After the execution of this Agreement the Parties covenant to work in good faith to prepare, negotiate and enter into, or cause to be prepared, negotiated and entered into, (i) Employment Agreements with Lori Taylor and Anthony Santarsiero and (ii) a Stockholder Agreement with the Trupet Members (excluding BCC) regarding protections of minority interests.”
7. Amendment of Section 6.4(i) of the Exchange Agreement is hereby deleted and restated in its entirety as follows:

“(i) Financing. BCC shall have completed a financing (the “Financing”) which has been approved, in writing, by BCC, Trupet (on behalf of itself and the Trupet Members) and Bona Vida, Inc., a Delaware corporation (“Bona Vida”), and shall have received written notice confirming same from BCC’s broker-dealer. The closing of the private placement of approximately \$14,800,000 of securities sold by Canaccord Genuity Group, Inc. is approved by Trupet.”
8. Amendment of Schedule 4.1(n) to the Exchange Agreement is hereby deleted and restated in its entirety as provided in Appendix 1 hereto.

9. The following shall be deleted in their entirety: 6.1(e), 6.2(a)(v) and 6.3(h).
10. The officer's certificate provided for in Section 6.2(b)(iii) shall be with respect to Trupet only, so "Trupet Member" is hereby deleted from this section.

**ARTICLE II  
MISCELLANEOUS**

1. Capitalized Terms. Capitalized terms used herein, but not otherwise defined herein, shall have the meanings ascribed to them in the Exchange Agreement.
2. Reference to and Effect on the Agreement.
  - (a) This Amendment is effective as of the Effective Date.
  - (b) Except as expressly amended by this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.
  - (c) Each reference in the Exchange Agreement to "this Agreement", "hereunder", "hereof", "herein", or words of like import shall mean and be a reference to the Exchange Agreement as amended hereby. No reference to this Amendment need be made in any instrument or document at any time referring to the Agreement, a reference to the Agreement in any of such instruments or documents to be deemed to be a reference to the Agreement as amended hereby.
3. Entire Agreement. This Amendment read in conjunction with the Exchange Agreement, the Transaction Documents and the Disclosure Schedules, embody the entire agreement and understanding of the parties hereto and thereto in respect of the subject matter contained herein and therein.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment as of the Effective Date.

**BETTER CHOICE COMPANY INC.**

By: /s/ Damian Dalla-Longa  
Name: Damian Dalla-Longa  
Title: Co-Chief Executive Officer

**TRUPET LLC**

By: /s/ Lori Taylor  
Name: Lori R. Taylor  
Title: CEO

**TRUPET MEMBER**

By: /s/ Lori Taylor  
Lori Taylor on behalf of all Trupet Members pursuant to Section 9.3 of the  
Exchange Agreement

*[Signature Page to the Amendment to Securities Exchange Agreement]*

**APPENDIX 1**

**Schedule 4.1(n)**

**BCC Contracts**

BCC has an employment agreement with its Chief Executive Officer. See Schedule 4.1(v)(i).

In December 2018 BCC acquired a minority interest in Trupet by investing \$2.2 million into Trupet and acquiring a Series A Membership Interest equal to approximately 6.7% of Trupet's Membership Interests. BCC's interest is evidenced by a limited liability company agreement with Trupet.

BCC has various contracts for routine business services including auditing and accounting services.

BCC has Contracts with Authentic Brands (Elvis Presley Hounddog) and Cannasoul (Israel IP development).

**CERTIFICATE OF INCORPORATION  
OF  
BETTER CHOICE COMPANIES INC.**

1. The name of the corporation is Better Choice Companies Inc. (the "Company").
2. The address of its registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building #104, Wilmington, DE 19810. The name of its registered agent at such address is Corporate Creations Network Inc.
3. The nature of the business or purposes to be conducted or promoted are to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.
4. The Company shall have authority to issue 580,000,000 shares of common stock, par value \$0.001 per share and 20,000,000 shares of preferred stock, par value \$0.001 per share with such rights, preferences and limitations as shall be established from time to time by the board of directors.
5. The name and mailing address of the incorporator is as follows:

Michael D. Harris  
3001 PGA Boulevard, Suite 305  
Palm Beach Gardens, FL 33410
6. The powers of the incorporator shall terminate upon the election of the Company's directors.
7. The Company is to have perpetual existence. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized to make, amend, alter or repeal the bylaws of the Company.
8. Elections of directors need not be by written ballot unless the bylaws of the Company shall so provide.

Meetings of stockholders may be held within or without the State of Delaware as the bylaws may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the bylaws of the Company.

9. The Company reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Any amendments may be passed by a majority of the outstanding voting power and not by a majority of each class or series of outstanding capital stock.

10. No director of this Company shall be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. Nothing in this paragraph shall serve to eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to this Company or its stockholders, (b) for acts or omissions not in good faith or which involves intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law, or (d) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Company shall not adversely affect any right or protection of a director of the Company existing at the time of such repeal or modification.

11. (a) Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding (except as provided in Section 11 (f)) whether civil, criminal or administrative, (a "Proceeding"), or is contacted by any governmental or regulatory body in connection with any investigation or inquiry (an "Investigation"), by reason of the fact that he or she is or was a director or executive officer (as such term is utilized pursuant to interpretations under Section 16 of the Securities Exchange Act of 1934) of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (an "Indemnitee"), whether the basis of such Proceeding or Investigation is alleged action in an official capacity or in any other capacity as set forth above shall be indemnified and held harmless by the Company to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith and such indemnification shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Company the expenses incurred in defending any such Proceeding in advance of its final disposition (an "Advancement of Expenses"); provided, however, that an Advancement of Expenses shall be made only upon delivery to the Company of an undertaking, by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise (an "Undertaking").

(b) If a claim under paragraph (a) of this Section is not paid in full by the Company within 60 days after a written claim has been received by the Company, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim. If successful in whole or in part in any such suit or in a suit brought by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In

(i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an Advancement of Expenses) it shall be a defense that, and

(ii) any suit by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking the Company shall be entitled to recover such expenses upon a final adjudication that,

the Indemnitee has not met the applicable standard of conduct set forth in the Delaware General Corporation Law. Neither the failure of the Company (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Company (including its board of directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right hereunder, or by the Company to recover an Advancement of Expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified or to such Advancement of Expenses under this Section or otherwise shall be on the Company.

(c) The rights to indemnification and to the Advancement of Expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this certificate of incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(d) The Company may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

(e) The Company may, to the extent authorized from time to time by the board of directors, grant rights to indemnification and to the Advancement of Expenses, to any employee or agent of the Company to the fullest extent of the provisions of this Section with respect to the indemnification and Advancement of Expenses of directors, and executive officers of the Company.

(f) Notwithstanding the indemnification provided for by this Section 11, the Company's bylaws, or any written agreement, such indemnity shall not include any expenses incurred by such Indemnitees relating to or arising from any Proceeding in which the Company asserts a direct claim against an Indemnitee, or an Indemnitee asserts a direct claim against the Company, whether such claim is termed a complaint, counterclaim, crossclaim, third-party complaint or otherwise.

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the Delaware General Corporation Law, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 4th day of January, 2019.

/s/ Michael D. Harris

Michael D. Harris, Incorporator

**CERTIFICATE OF DELAWARE  
CERTIFICATE OF AMENDMENT  
OF CERTIFICATE OF INCORPORATION**

The corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify:

**FIRST:** That at a meeting of the Board of Directors of Better Choice Companies Inc.

resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "one" so that, as amended, said Article shall be and read as follows:

**The name of the corporation is Better Choice Company Inc. (the "Company,")**

**SECOND:** That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

**THIRD:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

**IN WITNESS WHEREOF,** said corporation has caused this certificate to be signed this 1st day of February, 2019.

By: /s/ David Lelong  
Authorized Officer

Title: Chief Executive Officer

Name: David Lelong  
Print or Type

**STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT  
OF CERTIFICATE OF INCORPORATION**

The corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify:

**FIRST:** That at a meeting of the Board of Directors of

Better Choice Company Inc.

resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

**RESOLVED**, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "f o u r" so that, as amended, said Article shall be and read as follows:

As of the close of business on March 15, 2019 (4:01 p.m. Eastern Daylight Time) (the "Reverse Split Date"), each 26 shares of Common Stock issued and outstanding immediately prior to the Reverse Split Date (referred to [AMENDMENT CONTINUED ON NEXT PAGE])

**SECOND:** That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

**THIRD:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

**FOURTH:** That said amendment is effective as of March 15, 2019 at 4:01 pm.

**IN WITNESS WHEREOF**, said corporation has caused this certificate to be signed  
this 13<sup>th</sup> day of March, 2019.

By: /s/ Damian Dalla-Longa  
Authorized Officer

Title: Co-Chief Executive Officer

Name: Damian Dalla-Longa  
Print or Type

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 09:31 AM 03/14/2019  
FILED 09:31 AM 03/14/2019  
SR 20191965169 - File Number  
7223705

in this paragraph the “Old Common Stock”) automatically and without any action on the part of the holder thereof will be reclassified and changed into one share of new Common Stock, par value \$0.001 per share (referred to in this paragraph as the “New Common Stock”), subject to the treatment of fractional share interests as described below. Each holder of a certificate or certificates that immediately prior to the Reverse Split Date represented outstanding shares of Old Common Stock (the “Old Certificates”) will be entitled to receive, upon surrender of such Old Certificates to the Corporation for cancellation, a certificate or certificates (the “New Certificates”, whether one or more) representing the number of whole shares (rounded up to the nearest whole share) of the New Common Stock into which and for which the shares of the Old Common Stock formerly represented by such Old Certificates so surrendered are reclassified under the terms hereof. From and after the Reverse Split Date, Old Certificates shall represent only the right to receive New Certificates pursuant to the provisions hereof. No certificates or scrip representing fractional share interests in New Common Stock will be issued. In lieu of any such fractional shares of New Common Stock, each shareholder with a fractional share will be entitled to receive, upon surrender of Old Certificates to the Corporation for cancellation, a New Certificate representing the number of shares such shareholder would otherwise be entitled to rounded up to the next whole share. If more than one Old Certificates shall be surrendered at one time for the account of the same shareholder, the number of full shares of New Common Stock for which New Certificates shall be issued shall be computed on the basis of the aggregate number of shares represented by the Old Certificates so surrendered. In the event that the Corporation determines that a holder of Old Certificates has not tendered all his, her or its certificates for exchange, the Corporation shall carry forward any fractional shares until all certificates of that holder have been presented for exchange. The Old Certificates surrendered for exchange shall be properly endorsed and otherwise in proper form for transfer. From and after the Reverse Split Date, the amount of capital represented by the shares of the New Common Stock into which and for which the shares of the Old Common Stock are reclassified under the terms hereof shall be an amount equal to the product of the number of issued and outstanding shares of New Common Stock and the \$0.001 par value of each such share.

**AMENDED AND RESTATED CERTIFICATE OF DESIGNATIONS, PREFERENCES  
AND RIGHTS OF THE  
SERIES E CONVERTIBLE PREFERRED STOCK OF  
BETTER CHOICE COMPANY INC.**

The undersigned, Damian Dalla-Longa, Co-Chief Executive Officer of Better Choice Company Inc. (the “**Corporation**”), a corporation organized and existing under the Delaware General Corporation Law (the “**DGCL**”), hereby does certify:

That pursuant to the authority expressly conferred upon the Board of Directors of the Corporation by the Corporation’s Certificate of Incorporation, as amended, and Section 141(f) of the DGCL, the Board of Directors on February 4, 2019, adopted the following resolution determining it desirable and in the best interests of the Corporation and its shareholders for the Corporation to create a series of 2,900,000 shares of preferred stock designated as “Series E Convertible Preferred Stock”, 1,944,283.18 of which shares have been issued.

**RESOLVED**, that the Board of Directors designates the Series E Convertible Preferred Stock and the number of shares constituting such series, and fixes the rights, powers, preferences, privileges and restrictions relating to such series in addition to any set forth in the Certificate of Incorporation as follows:

**TERMS OF SERIES E CONVERTIBLE PREFERRED STOCK**

1. Certain Defined Terms. For purposes of this Certificate of Designations, the following terms shall have the following meanings:
    - (a) “**1934 Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.
    - (b) “**Additional Amount**” means, as of the applicable date of determination, with respect to each share of Series E, all dividends, whether declared or not, on such share of Series E.
    - (c) “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that “control” of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.
    - (d) “**Applicable Price**” shall have the meaning given to it in Section 8 hereto.
    - (e) “**Approved Stock Plan**” means any employee benefit plan or agreement which has been approved by the Board of Directors of the Corporation prior to or subsequent to the Initial Issuance Date pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer, consultant or director for services provided to the Corporation in their capacity as such.
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- (f) **“Authorized Failure Shares”** shall have the meaning given to it in Section 11 hereto.
- (g) **“Authorized Share Allocation”** shall have the meaning given to it in Section 11 hereto.
- (h) **“Authorized Share Failure”** shall have the meaning given to it in Section 11 hereto.
- (i) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.
- (j) **“Buy-In Price”** shall have the meaning given to it in Section 5 hereto.
- (k) **“Cavalry”** shall have the meaning given to it in Section 3 hereto.
- (l) **“Certificate of Designations”** means this Certificate Of Designations, Preferences and Rights of the Series E Convertible Preferred Stock of the Corporation.
- (m) **“Closing Date”** shall have the meaning set forth in the Exchange Agreement, which date is the date the Corporation’s predecessor, Sport Endurance Inc., initially issued the Series E pursuant to the terms of the Exchange Agreement.
- (n) **“Closing Sale Price”** means, for any security as of any date, (i) last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, (2) if the foregoing does not apply, the lowest reported sale price for such date on the Principal Market, or (3) fair market value as determined by the Board of Directors of the Corporation.
- (o) **“Common Stock”** means (i) the Corporation’s shares of common stock, \$0.001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.
- (p) **“Consideration Value”** means the value of the applicable Option, Convertible Security as of the date of issuance thereof (as determined by the Board of Directors in good faith).
- (q) **“Conversion Amount”** shall have the meaning given to it in Section 5 hereto.
- (r) **“Conversion Date”** shall have the meaning given to it in Section 5 hereto.
- (s) **“Conversion Failure”** shall have the meaning given to it in Section 5 hereto.
- (t) **“Conversion Notice”** shall have the meaning given to it in Section 5 hereto.

- (u) **“Conversion Price”** shall have the meaning given to it in Section 5 hereto.
- (v) **“Conversion Rate”** shall have the meaning given to it in Section 5 hereto.
- (w) **“Convertible Securities”** means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock
- (x) **“Corporate Event”** shall have the meaning given to it in Section 7 hereto.
- (y) **“Corporation”** shall have the meaning given to it in the preamble hereto.
- (z) **“Dilutive Issuance”** shall have the meaning given to it in Section 8 hereto.
- (aa) **“Dispute Submission Deadline”** shall have the meaning given to it in Section 22 hereto.
- (bb) **“Distributions”** shall have the meaning given to it in Section 14 hereto.
- (cc) **“DTC”** shall have the meaning given to it in Section 5 hereto.
- (dd) **“Excess Shares”** shall have the meaning given to it in Section 5 hereto.
- (ee) **“Exchange Agreement”** means that certain exchange agreement by and among the Corporation and the initial holders of Series E, dated as of the Subscription Date, as may be amended from time in accordance with the terms thereof.

(ff) **“Excluded Securities”** means (i) shares of Common Stock, restricted stock units or standard options to purchase Common Stock issued to directors, officers or employees of the Corporation for services rendered to the Corporation in their capacity as such pursuant to an Approved Stock Plan, provided that the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Investors; (ii) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Closing Date, provided that the conversion price of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered (other than in accordance with the terms thereof in effect as of the Closing Date) from the conversion price in effect as of the Closing Date (whether pursuant to the terms of such Convertible Securities or otherwise), none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Investors; (iii) the shares of Common Stock issuable upon conversion of the Series E or otherwise pursuant to the terms of the Certificate of Designations; provided, that the terms of the Certificate of Designations are not amended, modified or changed on or after the Closing Date (other than anti-dilution adjustments pursuant to the terms thereof in effect as of the Closing Date), (iv) reserved (v) securities issued to any placement agent or other registered broker-dealers as reasonable commissions or fees in connection with any financing transactions or securities issued to service providers including investor and public relations firms, (vi) securities issued pursuant to a merger, acquisition or similar transaction; provided that (A) the primary purpose of such issuance is not to raise capital, (B) the purchaser or acquirer of such securities in such issuance solely consists of either (1) the actual participants in such transactions, (2) the actual owners of such assets or securities acquired in such merger, acquisition or similar transaction, (3) the shareholders, partners or members of the foregoing Persons and (4) Persons whose primary business does not consist of investing in securities, and (C) the number or amount (as the case may be) of such shares of Common Stock issued to such Person by the Corporation shall not be disproportionate to such Person’s actual ownership of such assets or securities to be acquired by the Corporation (as applicable), or (vii) a strategic transaction approved by a majority of the disinterested directors of the Corporation, provided that (A) any such issuance shall only be to a person which is, itself or through its subsidiaries, an operating company in a business synergistic with the business of the Corporation and in which the Corporation receives benefits in addition to the investment of funds, (B) the primary purpose of such issuance is not to raise capital, (C) the purchaser or acquirer of such securities in such issuance solely consists of either (1) the actual participants in such strategic transactions, (2) the actual owners of such strategic assets or securities acquired, (3) the shareholders, partners or members of the foregoing Persons and (4) Persons whose primary business does not consist of investing in securities, and (D) the number or amount (as the case may be) of such shares of Common Stock issued to such Person by the Corporation shall not be disproportionate to such Person’s actual participation in such strategic licensing or development transactions or ownership of such strategic assets or securities to be acquired by the Corporation (as applicable). Provided, however, that securities issued to a registered broker-dealer as compensation for the services rendered in connection for services for transactions described in clauses (vi) and (vii) shall be Excluded Securities.

(gg) **“Fundamental Transaction”** shall have the meaning given to it in Section 7.

(hh) **“Group”** means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(ii) **“Holder”** or **“Holders”** means a holder of Series E.

(jj) **“Initial Issuance Date”** means, with respect to each Holder, the date such Holder initially acquired shares of Series E.

(kk) **“Junior Stock”** shall have the meaning given to it in Section 3 hereto.

(ll) “**Late Charge**” shall have the meaning any amount due under the Transaction Documents which is not paid when due which shall result in a late charge being incurred and payable by the Corporation in an amount equal to interest on such amount at the rate of eight percent (8%) per annum from the date such amount was due until the same is paid in full.

(mm) “**Liquidation Event**” means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Corporation and its Subsidiaries, taken as a whole.

(nn) “**Liquidation Funds**” shall have the meaning given to it in Section 13 hereto.

(oo) “**Material Adverse Effect**” means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of the Corporation and its Subsidiaries, if any, individually or taken as a whole, or on the transactions contemplated hereby or on the other Transaction Documents (as defined below), or by the agreements and instruments to be entered into in connection therewith or on the authority or ability of the Corporation to perform its obligations under the Transaction Documents.

(pp) “**Maximum Percentage**” shall have the meaning given to it in Section 5 hereto.

(qq) “**New Issuance Price**” shall have the meaning given to it in Section 8 hereto.

(rr) “**DGCL**” shall have the meaning given to it in the preamble hereto.

(ss) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(tt) “**OTC Markets**” means OTC Markets Group.

(uu) “**Parity Stock**” shall have the meaning given to it in Section 3 hereto.

(vv) “**Person**” means an individual, a limited liability Corporation, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(ww) “**Primary Security**” shall have the meaning given to it in Section 8 hereto.

(xx) “**Principal Market**” means The New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, OTCPink, OTCQB, or OTCQX and any successor markets thereto.

(yy) “**Purchase Rights**” shall have the meaning given to it in Section 7 hereto.

- (zz) “**Redemption Premium**” means 125%.
- (aaa) “**Register**” shall have the meaning given to it in Section 5 hereto.
- (bbb) “**Registered Series E**” shall have the meaning given to it in Section 5 hereto.
- (ccc) “**Required Dispute Documentation**” shall have the meaning given to it in Section 22 hereto.
- (ddd) “**Required Holders**” shall have the meaning given to it in Section 3 hereto.
- (eee) “**Required Reserve Amount**” shall have the meaning given to it in Section 11 hereto.
- (fff) “**Reported Outstanding Share Number**” shall have the meaning given to it in Section 5 hereto.
- (ggg) “**SEC**” means the Securities and Exchange Commission or the successor thereto.
- (hhh) “**Secondary Security**” shall have the meaning given to it in Section 8 hereto.
- (iii) “**Senior Preferred Stock**” shall have the meaning given to it in Section 3 hereto.
- (jjj) “**Series E**” shall have the meaning given to it in Section 2 hereto.
- (kkk) “**Series E Certificates**” shall have the meaning given to it in Section 5 hereto.
- (lll) “**Share Delivery Deadline**” shall have the meaning given to it in Section 5 hereto.
- (mmm) “**Stated Value**” shall mean \$0.99 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Subscription Date with respect to the Common Stock.
- (nnn) “**Subscription Date**” with respect to any Holder means the date as of which both the Holder and the Corporation have executed the Exchange Agreement.
- (ooo) “**Subsidiary**” when used with respect to any Person, means any corporation or other organization, whether incorporated or unincorporated, of which (A) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person (through ownership of securities, by contract or otherwise) or (B) such Person or any subsidiary of such Person is a general partner of any general partnership or a manager of any limited liability company.

(ppp) “**Trading Day**” means any day on which the Common Stock is eligible to be traded on the Principal Market or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder.

(qqq) “**Transaction Documents**” means the Exchange Agreement, this Certificate of Designations, and each of the other agreements and instruments entered into or delivered by the Corporation or any of the Holders in connection with the transactions contemplated by the Exchange Agreement, all as may be amended from time to time in accordance with the terms thereof.

(rrr) “**Transfer Agent**” shall have the meaning given to it in Section 5 hereto.

(sss) “**Triggering Event**” shall have the meaning given to it in Section 6 hereto.

(ttt) “**Triggering Event Conversion**” shall have the meaning given to it in Section 5 hereto.

(uuu) “**Trigger Event Conversion Amount**” shall have the meaning given to it in Section 5 hereto.

(vvv) “**Triggering Event Conversion Date**” shall have the meaning given to it in Section 5 hereto.

(www) “**Triggering Event Conversion Price**” means, with respect to any Triggering Event Conversion that price which shall be the lower of (i) the applicable Conversion Price as in effect on the Trading Day immediately preceding the time of the delivery or deemed delivery of the applicable Conversion Notice, and (ii) 75% of the lowest VWAP of the Common Stock on any Trading Day during the five (5) consecutive Trading Day period ending and including the Trading Day immediately preceding the delivery or deemed delivery of the applicable Conversion Notice (as adjusted for any share dividend, share split, share combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such period).

(xxx) “**Triggering Event Notice**” shall have the meaning given to it in Section 6 hereto.

(yyy) “**Triggering Event Right Commencement Date**” shall have the meaning given to it in Section 6 hereto.

- (zzz) “**Triggering Event Right Expiration Date**” shall have the meaning given to it in Section 6 hereto.
- (aaaa) “**Triggering Event Redemption Notice**” shall have the meaning given to it in Section 6 hereto.
- (bbbb) “**Triggering Event Redemption Price**” shall have the meaning given to it in Section 6 hereto.
- (cccc) “**Triggering Event Redemption Right Period**” shall have the meaning given to it in Section 6 hereto.
- (dddd) “**Valuation Event**” shall have the meaning given to it in Section 8 hereto.
- (eeee) “**Variable Price**” shall have the meaning given to it in Section 8 hereto.
- (ffff) “**Variable Price Securities**” shall have the meaning given to it in Section 8 hereto.

(gggg) “**VWAP**” 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, the daily 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)) (or a similar organization or agency succeeding to its functions of reporting prices, (b) if no volume weighted average price of the Common Stock is reported for the Trading Market, the highest reported price of the Common Stock on the Trading Day during the ten (10) Trading Days preceding such date, or (c) in all other cases, the fair market value of a share of Common Stock as determined by the Board of Directors of the Corporation.

2. Designation and Number of Shares. There shall hereby be created and established a series of preferred stock of the Corporation designated as “Series E Convertible Preferred Stock” (the “**Series E**”). The authorized number of Series E shall be 2,900,000 shares. Each share of Series E shall have a par value of \$0.001. Capitalized terms not defined herein shall have the meaning as set forth in Section 1 above.

3. Ranking. Except to the extent that the holders of at least a majority of the outstanding Series E which shall include Cavalry Fund I LP (“**Cavalry**”) as long as it owns at least five percent (5%) of the Series E (the “**Required Holders**”) expressly consent to the creation of Parity Stock (as defined below) or Senior Preferred Stock (as defined below) in accordance with Section 15, all shares of capital stock of the Corporation shall be junior in rank to all Series E with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (such junior stock is referred to herein collectively as “**Junior Stock**”). The rights of all such shares of capital stock of the Corporation shall be subject to the rights, powers, preferences and privileges of the Series E. Without limiting any other provision of this Certificate of Designations, without the prior express consent of the Required Holders, voting separate as a single class, the Corporation shall not hereafter authorize or issue any additional or other shares of capital stock that is (i) of senior rank to the Series E in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the “**Senior Preferred Stock**”), (ii) of pari passu rank to the Series E in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the “**Parity Stock**”) or (iii) any Junior Stock having a maturity date (or any other date requiring redemption or repayment of such shares of Junior Stock) that is prior to the date no Series E remain outstanding. Except as provided for herein, in the event of the merger or consolidation of the Corporation into another corporation, the Series E shall maintain their relative rights, powers, designations, privileges and preferences provided for herein for a period of at least two years following such merger or consolidation and no such merger or consolidation shall cause result inconsistent therewith.

4. Dividends and Distributions.

(a) Accrual and Payment of Dividends. From and after the Closing Date, cumulative dividends on each share of Series E shall accrue, on a quarterly basis in arrears, at the rate of 10% per annum on the Stated Value, plus the Additional Amount thereon. All accrued dividends on each share of Series E shall be paid upon conversion of the Series E for which the applicable dividend is due. At the option of the Corporation dividends may be paid in cash or stock.

(b) Participating Dividends. Each Holder of Series E shall be entitled to receive dividends or distributions on each share of Series E on an "as converted" into Common Stock basis as provided in Section 4 hereof when and if dividends are declared on the Common Stock by the Board of Directors. Dividends shall be paid in cash or property, as determined by the Board of Directors.

5. Conversion. At any time after the Closing Date, each share of Series E shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock, on the terms and conditions set forth in this Section 5.

(a) Holder's Conversion Right. Subject to the provisions of Section 5(d), at any time or times on or after the Closing Date, each Holder shall be entitled to convert any portion of the outstanding Series E held by such Holder into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 5(c) at the Conversion Rate (as defined below). The Corporation shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Corporation shall round such fraction of a share of Common Stock up to the nearest whole share. The Corporation shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including fees and expenses of the Transfer Agent (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount (as defined below).

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any share of Series E pursuant to Section 5(a) shall be determined by dividing (x) the Conversion Amount of such share of Series E by (y) the Conversion Price (the "**Conversion Rate**"):

(i) “**Conversion Amount**” means, with respect to each share of Series E, as of the applicable date of determination, the sum of (1) the Stated Value thereof plus (2) the Additional Amount thereon and any accrued and unpaid Late Charges with respect to such Stated Value and Additional Amount as of such date of determination.

(ii) “**Conversion Price**” means, with respect to each share of Series E, as of any Conversion Date or other date of determination, \$0.03, subject to adjustment as provided herein.

(c) Mechanics of Conversion. The conversion of each share of Series E shall be conducted in the following manner:

(i) Optional Conversion. To convert a share of Series E into shares of Common Stock on any date after the Closing Date (a “**Conversion Date**”), a Holder shall deliver (via, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion of the share(s) of Series E subject to such conversion in the form attached hereto as **Exhibit I** (the “**Conversion Notice**”) to the Corporation. If required by Section 5(c)(iii), within three (3) Trading Days following a conversion of any such Series E as aforesaid, such Holder shall surrender to a nationally recognized overnight delivery service for delivery to the Corporation the original certificates representing the Series E (the “**Series E Certificates**”) so converted as aforesaid (or an indemnification undertaking with respect to the Series E in the case of its loss, theft or destruction as contemplated by Section 17). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Corporation shall transmit by electronic mail an acknowledgment of confirmation, in the form attached hereto as **Exhibit II**, of receipt of such Conversion Notice to such Holder and the Corporation’s transfer agent (the “**Transfer Agent**”), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the third (3rd) Trading Day following the date of receipt of a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Conversion Notice) (the “**Share Delivery Deadline**”), the Corporation shall (1) provided that the Transfer Agent is participating in The Depository Trust Corporation’s (“**DTC**”) Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which such Holder shall be entitled to such Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such Holder or its designee, for the number of shares of Common Stock to which such Holder shall be entitled. If the number of Series E represented by the Series E Certificate(s) submitted for conversion pursuant to Section 5(c)(iii) is greater than the number of Series E being converted, then the Corporation shall, as soon as practicable and in no event later than three (3) Trading Days after receipt of the Series E Certificate(s) and at its own expense, issue and deliver to such Holder (or its designee) a new Series E Certificate (in accordance with Section 17(d)) representing the number of Series E not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series E shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(ii) Corporation's Failure to Timely Convert. If the Corporation shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to issue to such Holder a certificate for the number of shares of Common Stock to which such Holder is entitled and register such shares of Common Stock on the Corporation's share register or to credit such Holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of any Conversion Amount (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to such Holder, (X) the Corporation shall pay in cash to such Holder on each day after the Share Delivery Deadline and during such Conversion Failure an amount equal to 2% of the product of (A) the sum of the number of shares of Common Stock not issued to such Holder on or prior to the Share Delivery Deadline and to which such Holder is entitled, multiplied by (B) the closing price of the Common Stock on the applicable Conversion Date and ending on the applicable Share Delivery Deadline, and (Y) such Holder, upon written notice to the Corporation, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Series E that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Corporation's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 5(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Corporation shall fail to issue and deliver to such Holder (or its designee) a certificate and register such shares of Common Stock on the Corporation's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's exercise hereunder or pursuant to the Corporation's obligation pursuant to clause (II) below and if on or after such Share Delivery Deadline such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that such Holder so is entitled to receive from the Corporation, then, in addition to all other remedies available to such Holder, the Corporation shall, within three (3) Business Days after receipt of such Holder's request and in such Holder's discretion, either: (I) pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Corporation's obligation to so issue and deliver such certificate or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such Holder a certificate or certificates representing such shares of Common Stock or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (ii).

(iii) Registration; Book-Entry. The Corporation shall maintain a register (the “**Register**”) for the recordation of the names and addresses of the Holders of each share of Series E and the Stated Value of the Series E (the “**Registered Series E**”). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Corporation and each Holder of the Series E shall treat each Person whose name is recorded in the Register as the owner of a share of Series E for all purposes (including the right to receive payments and dividends hereunder) notwithstanding notice to the contrary. A Registered share of Series E may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Series E by such Holder thereof, the Corporation shall record the information contained therein in the Register and issue one or more new Registered Series E in the same aggregate Stated Value as the Stated Value of the surrendered Registered Series E to the designated assignee or transferee pursuant to Section 17, provided that if the Corporation does not so record an assignment, transfer or sale (as the case may be) of such Registered Series E within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 5, following conversion of any Series E in accordance with the terms hereof, the applicable Holder shall not be required to physically surrender such Series E to the Corporation unless (A) the full or remaining number of Series E represented by the applicable Series E Certificate are being converted (in which event such certificate(s) shall be delivered to the Corporation as contemplated by this Section 5(c)(iii)) or (B) such Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series E upon physical surrender of the applicable Series E Certificate. Each Holder and the Corporation shall maintain records showing the Stated Value, dividends and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to such Holder and the Corporation, so as not to require physical surrender of a Series E Certificate upon conversion. If the Corporation does not update the Register to record such Stated Value, dividends and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, such records of such Holder establishing the number of Series E to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series E, the number of Series E represented by such certificate may be less than the number of Series E stated on the face thereof. Each Series E Certificate shall bear the following legend:

ANY TRANSFEREE OR ASSIGNEE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES E CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 5(c)(iii) THEREOF. THE NUMBER OF SHARES OF SERIES E CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES E CONVERTIBLE PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 5(c)(iii) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES E CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

(iv) Pro Rata Conversion; Disputes. In the event that the Corporation receives a Conversion Notice from more than one Holder for the same Conversion Date and the Corporation can convert some, but not all, of such Series E submitted for conversion, the Corporation shall convert from each Holder electing to have Series E converted on such date a pro rata amount of such Holder's Series E submitted for conversion on such date based on the number of Series E submitted for conversion on such date by such Holder relative to the aggregate number of Series E submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Series E, the Corporation shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22.

(d) Limitation on Beneficial Ownership. The Corporation shall not effect the conversion of any of the Series E held by a Holder, and such Holder shall not have the right to convert any of the Series E held by such Holder pursuant to the terms and conditions of this Certificate of Designations and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder would beneficially own in excess of 4.99% (the “**Maximum Percentage**”) of the shares of Common Stock outstanding immediately after giving effect to such conversion (which provision may be waived by such Holder by written notice from such Holder to the Corporation, which notice shall be effective 61 calendar days after the date of such notice). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder shall include the number of shares of Common Stock held by such Holder plus the number of shares of Common Stock issuable upon conversion of the Series E with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Series E beneficially owned by such Holder and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Corporation (including any convertible notes, convertible preferred stock or warrants) beneficially owned by such Holder subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 5(d). For purposes of this Section 5(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Series E without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Corporation’s most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Corporation or (z) any other written notice by the Corporation or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the “**Reported Outstanding Share Number**”). If the Corporation receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Corporation shall notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder’s beneficial ownership, as determined pursuant to this Section 5(d), to exceed the Maximum Percentage, such Holder must notify the Corporation of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Corporation shall within one (1) Business Day confirm orally and in writing or by electronic mail to such 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 Corporation, including such Series E, by such Holder since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Series E results in such Holder being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which such Holder’s beneficial ownership exceeds the Maximum Percentage (the “**Excess Shares**”) shall be deemed null and void and shall be cancelled ab initio, and such Holder shall not have the power to vote or to transfer the Excess Shares. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Certificate of Designations in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert such Series E pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5(d) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 5(d) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The provisions of this Section 5(d) shall be of no further force or effect if the Holder participates in a subsequent transaction with the Corporation which results in the Holder beneficially owning in excess of 4.99% of the number of shares of the Common Stock outstanding which shall include securities convertible into Common Stock which do not contain a beneficial ownership limitation.

(e) Triggering Event Conversion.

(i) General. Subject to Section 5(d), at any time during the period commencing on the date of the occurrence of a Triggering Event (defined below in Section 6 (a)) and ending on the earlier to occur of (x) the date of the cure of such Triggering Event and (y) twenty (20) Trading Days after the date the Corporation delivers written notice to the Holder of such Triggering Event, a Holder may, at such Holder's option, by delivery of a Conversion Notice to the Corporation (the date of any such Conversion Notice, each an "**Triggering Event Conversion Date**"), convert all, or any number of Series E (such Conversion Amount of the Series E to be converted pursuant to this Section 5(e), the "**Triggering Event Conversion Amount**") into shares of Common Stock at the Triggering Event Conversion Price (each, a "**Triggering Event Conversion**").

(ii) Mechanics of Triggering Event Conversion. On any Triggering Event Conversion Date, a Holder may voluntarily convert any Triggering Event Conversion Amount pursuant to Section 5(b)(ii) (with "Triggering Event Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Triggering Event Conversion and "Redemption Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate above with respect to such Triggering Event Conversion) by designating in the Conversion Notice delivered pursuant to this Section 5(e) of this Certificate of Designations that such Holder is electing to use the Triggering Event Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 5(e), but subject to Section 5(d) until the Corporation delivers shares of Common Stock representing the applicable Triggering Event Conversion Amount to such Holder, such Triggering Event Conversion Amount may be converted by such Holder into shares of Common Stock pursuant to Section 5(c) without regard to this Section 5(e).

6. Triggering Event Redemptions.

(a) Triggering Event. Each of the following events shall constitute a “**Triggering Event**”:

(i) the Corporation does not meet the current public information requirements under Rule 144 in respect of the shares of Common Stock issuable upon conversion of the Series E;

(ii) the suspension from trading or failure of the Common Stock to be trading or listed (as applicable) on an Principal Market for a period of five (5) consecutive Trading Days;

(iii) the Corporation’s notice, written or oral, to any holder of Series E, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Series E into shares of Common Stock that is requested in accordance with the provisions of this Certificate of Designations, other than pursuant to Section 5(d) hereof;

(iv) at any time following the tenth consecutive day that a Holder’s Authorized Share Allocation (as defined in Section 11 below) is less than 125% of the number of shares of Common Stock that such Holder would be entitled to receive upon a conversion, in full, of all of the Series E then held by such Holder (without regard to any limitations on conversion set forth in this Certificate of Designations);

(v) the Board of Directors fails to declare any dividend to be paid on the applicable dividend date in accordance with Section 4;

(vi) the Corporation’s failure to pay to any Holder any dividend on any dividend date (whether or not declared by the Board) or any other amount when and as due under this Certificate of Designations (including, without limitation, the Corporation’s failure to pay any redemption payments or amounts hereunder), the Exchange Agreement or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby (in each case, whether or not permitted pursuant to the DGCL), except, in the case of a failure to pay dividends and Late Charges when and as due, in each such case only if such failure remains uncured for a period of at least two (2) Trading Days;

(vii) the Corporation, on two or more occasions, either (A) fails to cure a Conversion Failure by delivery of the required number of shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or (B) fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to such Holder upon conversion of any Series E or as and when required by this Certificate of Designations unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(viii) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of \$100,000 of indebtedness of the Corporation or any of its Subsidiaries;

(ix) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Corporation or any Subsidiary and, if instituted against the Corporation or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(x) the commencement by the Corporation or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Corporation or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Corporation or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(xi) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Corporation or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Corporation or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Corporation or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(xii) a final judgment or judgments for the payment of money aggregating in excess of \$100,000 are rendered against the Corporation and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the \$100,000 amount set forth above so long as the Corporation provides each Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to each Holder) to the effect that such judgment is covered by insurance or an indemnity and the Corporation or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(xiii) the Corporation and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$100,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Corporation and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of \$100,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Corporation or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Corporation or any of its Subsidiaries, individually or in the aggregate;

(xiv) other than as specifically set forth in another clause of this Section 6(a), the Corporation or any Subsidiary breaches any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

(xv) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Corporation as to whether any Triggering Event has occurred;

(xvi) any Material Adverse Effect occurs; or

(xvii) any provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested, directly or indirectly, by the Corporation or any Subsidiary, or a proceeding shall be commenced by the Corporation or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof or the Corporation or any of its Subsidiaries shall deny in writing that it has any liability or obligation purported to be created under one or more Transaction Documents.

(b) **Notice of a Triggering Event; Redemption Right.** Upon the occurrence of a Triggering Event with respect to the Series E, the Corporation shall within one (1) Business Day deliver written notice thereof via facsimile or electronic mail and overnight courier (with next day delivery specified) (an “**Triggering Event Notice**”) to each Holder. At any time after the earlier of a Holder’s receipt of a Triggering Event Notice and such Holder becoming aware of a Triggering Event (such earlier date, the “**Triggering Event Right Commencement Date**”) and ending (such ending date, the “**Triggering Event Right Expiration Date**”, and each such period, an “**Triggering Event Redemption Right Period**”) on the twentieth (20th) Trading Day after the later of (x) the date such Triggering Event is cured and (y) such Holder’s receipt of a Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the opinion of the Corporation, such Triggering Event is capable of being cured and, if applicable, a reasonable description of any existing plans of the Corporation to cure such Triggering Event and (III) a certification as to the date the Triggering Event occurred and, if cured on or prior to the date of such Triggering Event Notice, the applicable Triggering Event Right Expiration Date, such Holder may require the Corporation to redeem (regardless of whether such Triggering Event has been cured on or prior to the Triggering Event Right Expiration Date) all or any of the Series E by delivering written notice thereof (the “**Triggering Event Redemption Notice**”) to the Corporation, which Triggering Event Redemption Notice shall indicate the number of the Series E such Holder is electing to redeem. Each of the Series E subject to redemption by the Corporation pursuant to this Section 6(b) shall be redeemed by the Corporation at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate with respect to the Conversion Amount in effect at such time as such Holder delivers a Triggering Event Redemption Notice multiplied by (Y) the product of (1) the Redemption Premium multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Triggering Event and ending on the date the Corporation makes the entire payment required to be made under this Section 6(b) (the “**Triggering Event Redemption Price**”). To the extent redemptions required by this Section 6(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Series E by the Corporation, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 6(b), but subject to Section 5(d), until the Triggering Event Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 6(b) (together with any Late Charges thereon) may be converted, in whole or in part, by such Holder into Common Stock pursuant to the terms of this Certificate of Designations. In the event of the Corporation’s redemption of any of the Series E under this Section 6(b), a Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for such Holder. Accordingly, any redemption premium due under this Section 6(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of such Holder’s actual loss of its investment opportunity and not as a penalty. Any redemption upon a Triggering Event shall not constitute an election of remedies by the applicable Holder or any other Holder, and all other rights and remedies of each Holder shall be preserved.

(c) General Redemption Provisions. If a Holder has submitted a Triggering Event Redemption Notice in accordance with Section 6(b) the Corporation shall deliver the applicable Triggering Event Redemption Price to such Holder in cash within five (5) Business Days after the Corporation's receipt of such Holder's Triggering Event Redemption Notice. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time a Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of such Holder delivered in writing to the Corporation, the Triggering Event Redemption Price hereunder shall be increased by the amount of such cash payment owed to such Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Corporation's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Series E, the Corporation shall promptly cause to be issued and delivered to such Holder a new Series E Certificate (in accordance with Section 5 (or evidence of the creation of a new Book-Entry) representing the number of Series E which have not been redeemed. In the event that the Corporation does not pay the applicable Triggering Event Redemption Price to a Holder within the time period required for any reason (including, without limitation, to the extent such payment is prohibited pursuant to the DGCL), at any time thereafter and until the Corporation pays such unpaid Triggering Event Redemption Price in full, such Holder shall have the option, in lieu of redemption, to require the Corporation to promptly return to such Holder all or any of the Series E that were submitted for redemption and for which the applicable Triggering Event Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Corporation's receipt of such notice, (x) the applicable Triggering Event Redemption Notice shall be null and void with respect to such Series E, (y) the Corporation shall immediately return the applicable Series E Certificate, or issue a new Series E Certificate (in accordance with Section 5), to such Holder (unless the Series E are held in Book-Entry form, in which case the Corporation shall deliver evidence to such Holder that a Book-Entry for such Series E then exists), and in each case the Additional Amount of such Series E shall be increased by an amount equal to the difference between (1) the applicable Triggering Event Redemption Price (as the case may be, and as adjusted pursuant to this Section 6(c), if applicable) minus (2) the Stated Value portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of such Series E shall be automatically adjusted with respect to each conversion effected thereafter by such Holder to the lowest of (A) the Conversion Price as in effect on the date on which the Triggering Event Redemption Notice is voided, (B) 75% of the lowest Closing Bid Price of the Common Stock during the period beginning on and including the date on which the Triggering Event Redemption Notice is delivered to the Corporation and ending on and including the date on which the Triggering Event Redemption Notice is voided and (C) 75% of the quotient of (I) the sum of the five (5) lowest VWAPs of the Common Stock during the twenty (20) consecutive Trading Day period ending and including the Trading Day immediately preceding the Conversion Date divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). A Holder's delivery of a notice voiding a Triggering Event Redemption Notice and exercise of its rights following such notice shall not affect the Corporation's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Series E subject to such notice.

(d) Redemption by Multiple Holders. Upon the Corporation's receipt of a Triggering Event Redemption Notice from any Holder for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 5 or Section 6, the Corporation shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to each other Holder by facsimile or electronic mail a copy of such notice. If the Corporation receives one or more Triggering Event Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Corporation's receipt of the initial Triggering Event Redemption Notice and ending on and including the date which is two (2) Business Days after the Corporation's receipt of the initial Triggering Event Redemption Notice and the Corporation is unable to redeem all principal, interest and other amounts designated in such initial Triggering Event Redemption Notice and such other Triggering Event Redemption Notices received during such seven (7) Business Day period, then the Corporation shall redeem a pro rata amount from each Holder based on the principal amount of the Series E submitted for redemption pursuant to such Triggering Event Redemption Notices received by the Corporation during such seven (7) Business Day period.

7. Rights Upon Issuance of Purchase Rights and Other Corporate Events.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 8 and 9 below, if at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Series E (without taking into account any limitations or restrictions on the convertibility of the Series E) held by such Holder immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance for such Holder until such time or times, if ever, as its right thereto would not result in such Holder exceeding the Maximum Percentage), at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation.

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “**Corporate Event**”), the Corporation shall make appropriate provision to insure that each Holder will thereafter have the right to receive upon a conversion of all the Series E held by such Holder (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which such Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by such Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of the Series E contained in this Certificate of Designations) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as such Holder would have been entitled to receive had the Series E held by such Holder initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. The provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 7 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion of the Series E contained in this Certificate of Designations. “**Fundamental Transaction**” means the occurrence of the Corporation (i) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (A) consolidating or merging with or into (whether or not the Corporation is the surviving corporation) another Person, (B) selling, assigning, transferring, conveying or otherwise disposing of all or substantially all of the properties or assets of the Corporation or any of its “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X) to one or more Persons, (C) making, or allowing one or more Persons to make, or allowing the Corporation to be subject to or have its Common Stock be subject to or party to one or more Persons making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Persons making or party to, or Affiliated with any Persons making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Persons making or party to, or Affiliated with any Person making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, (D) consummating a stock or share purchase agreement or other business combination (including a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Persons whereby all such Persons, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Persons making or party to, or Affiliated with any Persons making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Persons become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (E) reorganize, recapitalize or reclassify its Common Stock.

8. Rights Upon Issuance of Other Securities.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. If on or after the Subscription Date the Corporation issues or sells, or in accordance with this Section 8(a) is deemed to have issued or sold, any shares of Common Stock, including the issuance or sale of shares of Common Stock owned or held by or for the account of the Corporation, but excluding any Excluded Securities (issued or sold or deemed to have been issued or sold) for a consideration per share (the “**New Issuance Price**”) less than a price equal to the Conversion Price in effect immediately prior to such issue or sale or deemed issuance or sale (such Conversion Price then in effect is referred to herein as the “**Applicable Price**”) (the foregoing a “**Dilutive Issuance**”), then, immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to the New Issuance Price. For all purposes of the foregoing (including determining the adjusted Conversion Price and the New Issuance Price under this Section 8(a), the following shall be applicable:

(i) Issuance of Options. If the Corporation in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(a)(i), the “lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such share of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For purposes of this Section 8(a)(ii), the “lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 8(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time, the Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 8(a)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Subscription Date are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 8(a)(iii) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Corporation (as determined by the Required Holders, the “**Primary Security**”, and such Option and/or Convertible Security, the “**Secondary Securities**”), together comprising one integrated transaction (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Corporation either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing), the consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of Common Stock was issued in such integrated transaction (or was deemed to be issued pursuant to Section 8(a)(i) or 8(a)(ii) above, as applicable) solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (A) the Consideration Value of each such Option, if any, (B) the fair market value (as determined by the Required Holders in good faith) or the Consideration Value, as applicable, and (C) the fair market value (as determined by the Required Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 8(a)(iv). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security) will be deemed to be the net amount of consideration received by the Corporation therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security), the amount of such consideration received by the Corporation will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Corporation for such securities will be the average VWAP of such security for the five (5) Trading Day period immediately preceding the date of receipt. The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Corporation and the Required Holders. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the “**Valuation Event**”), the fair value of such consideration will be determined within five (5) Trading Days after the tenth day following such Valuation Event by an independent, reputable appraiser jointly selected by the Corporation and the Required Holders. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Holders.

(v) Record Date. If the Corporation takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(b) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 8(b) or the Exchange Agreement, if the Corporation in any manner issues or sells or enters into any agreement to issue or sell, any Common Stock, Options or Convertible Securities (any such securities, "**Variable Price Securities**") that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock pursuant to such Options or Convertible Securities, as applicable, at a price which varies with the market price of the shares of Common Stock (the "**Variable Price**"), the Corporation shall provide written notice thereof via (i) electronic mail or (ii) overnight courier to each Holder on the date of such agreement and/or the issuance of such shares of Common Stock, Convertible Securities or Options, as applicable. From and after the date the Corporation enters into such agreement or issues any such Variable Price Securities, each Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of the Series E by designating in the Conversion Notice delivered upon any conversion of Series E that solely for purposes of such conversion such Holder is relying on the Variable Price rather than the Conversion Price then in effect. A Holder's election to rely on a Variable Price for a particular conversion of Series E shall not obligate such Holder to rely on a Variable Price for any future conversions of Series E; provided; further, that the provisions of this Section 8(b) shall not apply to any Excluded Securities.

(c) Calculations. All calculations under this Section 8 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(d) Voluntary Adjustment by Corporation. The Corporation may at any time while any Series E remain outstanding, with the prior consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors.

(e) Excluded Securities. No adjustments contained in this Section 8 shall be made upon the sale or issuance of any Excluded Securities sold or deemed to have been sold.

(f) Termination. The provisions of this Section 8 shall terminate and be of no further force or effect on the earlier of: (A) the two (2) year anniversary of the Closing Date and (B) ninety (90) days following the effective date of any transaction resulting in a merger or consolidation of the Corporation with or into another corporation that is not an Affiliate.

9. Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 8(a), if the Corporation at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 8(a), if the Corporation at any time on or after the Subscription Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 9 shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 9 occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

10. Noncircumvention. The Corporation hereby covenants and agrees that the Corporation will not, by amendment of its Certificate of Incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, 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 Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations or the other Transaction Documents, the Corporation (a) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Series E above the Conversion Price then in effect, (b) shall take all such actions as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Series E and (c) shall, so long as any Series E are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Series E, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Series E then outstanding (without regard to any limitations on conversion contained herein).

11. Authorized Shares.

(a) Reservation. So long as any Series E remain outstanding, the Corporation shall at all times reserve at least 125% times the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Series E then outstanding (without regard to any limitations on conversions) (the “**Required Reserve Amount**”). The Required Reserve Amount (including each increase in the number of shares so reserved) shall be allocated pro rata among the Holders based on the number of the Series E held by each Holder on the Subscription Date or increase in the number of reserved shares, as the case may be (the “**Authorized Share Allocation**”). In the event that a Holder shall sell or otherwise transfer any of such Holder’s Series E, each transferee shall be allocated a pro rata portion of such Holder’s Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Series E shall be allocated to the remaining Holders of Series E, pro rata based on the number of the Series E then held by the Holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 11(a) and not in limitation thereof, while any of the Series E remain outstanding the Corporation does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Series E at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Corporation shall immediately take all action necessary to increase the Corporation’s authorized shares of Common Stock to an amount sufficient to allow the Corporation to reserve the Required Reserve Amount for the Series E then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than ninety (90) days after the occurrence of such Authorized Share Failure, the Corporation shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Corporation shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the stockholders that they approve such proposal. In lieu of a meeting of stockholders, the Corporation may effect such action by written consent in accordance with Section 14(c) of the 1934 Act. Except as provided in the first sentence of Section 11(a), in the event that the Corporation is prohibited from issuing shares of Common Stock to a Holder upon any conversion due to the failure by the Corporation to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the “**Authorized Failure Shares**”), in lieu of delivering such Authorized Failure Shares to such Holder, the Corporation shall pay cash in exchange for the redemption of such portion of the Conversion Amount convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorized Failure Shares and (y) the average Closing Sale Prices of the Common Stock on the Trading Days during the period commencing on the date such Holder delivers the applicable Conversion Notice with respect to such Authorized Failure Shares to the Corporation and ending on the date of such issuance under this Section 11(b). Nothing contained in this Section shall limit any obligations of the Corporation under any provision of the Exchange Agreement.

12. Voting Rights. Subject to Section 5(d) and the Maximum Percentage, each Holder shall be entitled to the whole number of votes equal to the number of shares of Common Stock into which such holder's Series E would be convertible on the record date for the vote or consent of stockholders, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. To the extent that under the DGCL the vote of the holders of the Series E, voting separately as a class or series as applicable, is required to authorize a given action of the Corporation, the affirmative vote or consent of the holders of all of the shares of the Series E, voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, shall constitute the approval of such action by both the class or the series, as applicable. Subject to Section 5(d), to the extent that under the DGCL holders of the Series E are entitled to vote on a matter with holders of shares of Common Stock, voting together as one class, each share of Series E shall entitle the holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in Section 5(d) hereof and the Maximum Percentage) using the record date for determining the stockholders of the Corporation eligible to vote on such matters as the date as of which the Conversion Price is calculated. Holders of the Series E shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled by vote, which notice would be provided pursuant to the Corporation's bylaws and the DGCL.

13. Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Corporation, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), before any amount shall be paid to the holders of any of shares of Junior Stock, but pari passu with any Parity Stock then outstanding, an amount per share of Series E equal to the greater of (A) the Conversion Amount thereof on the date of such payment and (B) the amount per share such Holder would receive if such Holder converted such Series E into Common Stock immediately prior to the date of such payment, provided that if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of Parity Stock, then each Holder and each holder of Parity Stock shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder and such holder of Parity Stock as a liquidation preference, in accordance with their respective certificate of designations (or equivalent), as a percentage of the full amount of Liquidation Funds payable to all holders of Series E and all holders of shares of Parity Stock. To the extent necessary, the Corporation shall cause such actions to be taken by each of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section. All the preferential amounts to be paid to the Holders under this Section shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Corporation to the holders of shares of Junior Stock in connection with a Liquidation Event as to which this Section applies.

14. Distribution of Assets. In addition to any adjustments pursuant to Section 8 and 9, if the Corporation shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, by way of return of capital or otherwise (including any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the “**Distributions**”), then each Holder, as holders of Series E, will be entitled to such Distributions as if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series E (without taking into account any limitations or restrictions on the convertibility of the Series E) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that such Holder’s right to participate in any such Distribution would result in such Holder exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for such Holder until such time or times as its right thereto would not result in such Holder exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such rights (and any rights under this Section 14 on such initial rights or on any subsequent such rights to be held similarly in abeyance) to the same extent as if there had been no such limitation).

15. Vote to Change the Terms of or Issue Series E. Except as may be provided for in the Exchange Agreement, and in addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, the Corporation shall not: (a) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation or bylaws, or file any certificate of designations or certificate of amendment of any series of shares of preferred stock, if such action would adversely alter or change in any respect the preferences, rights, privileges or powers, or restrictions provided for the benefit, of the Series E, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of Series E; (c) without limiting any provision of Section 2, create or authorize (by reclassification or otherwise) any new class or series of shares that has a preference over or is on a parity with the Series E with respect to dividends or the distribution of assets on the liquidation, dissolution or winding up of the Corporation; (d) purchase, repurchase or redeem any shares of capital stock of the Corporation junior in rank to the Series E (other than pursuant to equity incentive agreements (that have in good faith been approved by the Board of Directors) with employees giving the Corporation the right to repurchase shares upon the termination of services); (e) without limiting any provision of Section 2, pay dividends or make any other distribution on any shares of any capital stock of the Corporation junior in rank to the Series E; (f) issue any Series E or preferred stock other than as provided in Section 2; (g) until the one year anniversary of the Closing Date, enter into (i) any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument, under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due that involves, either individually or in aggregate with other such agreements, obligations greater than \$25,000.00, and (ii) any equipment lease, agreement evidencing purchase money security interests, or other similar transaction in the ordinary course of business that involves, either individually or in aggregate with other such agreements, obligations greater than \$25,000.00 or (h) without limiting any provision of Section 8 and 9, whether or not prohibited by the terms of the Series E, circumvent a right of the Series E.

16. Transfer of Series E. A Holder may transfer some or all of its Series E without the consent of the Corporation, subject to compliance with Section 5 of the Securities Act of 1933.

17. Reissuance of Preferred Certificates.

(a) Transfer. If any Series E are to be transferred, the applicable Holder shall surrender the applicable Series E Certificate to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new Series E Certificate (in accordance with Section 17(d)), registered as such Holder may request, representing the outstanding number of Series E being transferred by such Holder and, if less than the entire outstanding number of Series E is being transferred, a new Series E Certificate (in accordance with Section 17(d)) to such Holder representing the outstanding number of Series E not being transferred. Such Holder and any assignee, by acceptance of the Series E Certificate, acknowledge and agree that, by reason of the provisions of Section 5(c)(i) following conversion of any of the Series E, the outstanding number of Series E represented by the Series E may be less than the number of Series E stated on the face of the Series E.

(b) Lost, Stolen or Mutilated Series E Certificate. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of a Series E Certificate (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the applicable Holder to the Corporation in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of such Series E Certificate, the Corporation shall execute and deliver to such Holder a new Series E Certificate (in accordance with Section 17(d)) representing the applicable outstanding number of Series E.

(c) Series E Certificate Exchangeable for Different Denominations. Each Series E Certificate is exchangeable, upon the surrender hereof by the applicable Holder at the principal office of the Corporation, for a new Series E Certificate or Series E Certificate(s) (in accordance with Section 17(d)) representing in the aggregate the outstanding number of the Series E in the original Series E Certificate, and each such new certificate will represent such portion of such outstanding number of Series E from the original Series E Certificate as is designated by such Holder at the time of such surrender.

(d) Issuance of New Series E Certificate. Whenever the Corporation is required to issue a new Series E Certificate pursuant to the terms of this Certificate of Designations, such new Series E Certificate (i) shall represent, as indicated on the face of such Series E Certificate, the number of Series E remaining outstanding (or in the case of a new Series E Certificate being issued pursuant to Section 17(a) or Section 17(c), the number of Series E designated by such Holder which, when added to the number of Series E represented by the other new Series E Certificates issued in connection with such issuance, does not exceed the number of Series E remaining outstanding under the original Series E Certificate immediately prior to such issuance of new Series E Certificate), and (ii) shall have an issuance date, as indicated on the face of such new Series E Certificate, which is the same as the issuance date of the original Series E Certificate.

18. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Corporation to comply with the terms of this Certificate of Designations. The Corporation covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Corporation shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Corporation's compliance with the terms and conditions of this Certificate of Designations.

19. Payment of Collection, Enforcement and Other Costs. If (a) any Series E are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of Designations with respect to the Series E or to enforce the provisions of this Certificate of Designations or (b) there occurs any bankruptcy, reorganization, receivership of the Corporation or other proceedings affecting Corporation creditors' rights and involving a claim under this Certificate of Designations, then the Corporation shall pay the costs incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including attorneys' fees and disbursements.

20. Construction; Headings. This Certificate of Designations shall be deemed to be jointly drafted by the Corporation and the Holders and shall not be construed against any such Person as the drafter hereof. The headings of this Certificate of Designations are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designations. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Certificate of Designations instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Certificate of Designations. Terms used in this Certificate of Designations and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Required Holders.

21. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designations shall be deemed to be jointly drafted by the Corporation and all Holders and shall not be construed against any Person as the drafter hereof. Notwithstanding the foregoing, nothing contained in this Section 21 shall permit any waiver of any provision of Section 19.

22. Dispute Resolution.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to the Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate, (including a dispute relating to the determination of any of the foregoing), the Corporation or the applicable Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Corporation, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such Holder at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Corporation are unable to promptly resolve such dispute relating to such closing bid price, such Closing Sale Price, such Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate, at any time after the second (2nd) Business Day following such initial notice by the Corporation or such Holder (as the case may be) of such dispute to the Corporation or such Holder (as the case may be), then such Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) Such Holder and the Corporation shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 22(a) and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such investment bank (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either such Holder or the Corporation fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Corporation and such Holder or otherwise requested by such investment bank, neither the Corporation nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Corporation and such Holder shall cause such investment bank to determine the resolution of such dispute and notify the Corporation and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Corporation, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Arbitration. Except for a claim for equitable relief, any controversy, dispute or claim arising out of or relating to this Agreement, or its interpretation, application, implementation, breach or enforcement which the parties are unable to resolve by mutual agreement, shall be settled by submission by either party of the controversy, claim or dispute to binding arbitration in New York County, New York (unless the parties agree in writing to a different location), before one arbitrator in accordance with the rules of the American Arbitration Association then in effect. In any such arbitration proceeding, the parties agree to provide all discovery deemed necessary by the arbitrator. The decision and award made by the arbitrator shall be final, binding and conclusive on all parties hereto for all purposes, and judgment may be entered thereon in any court having jurisdiction thereof. Any arbitration proceeding brought under this Agreement shall be subject to all statutes of limitation in the same manner as if an action were filed in a court.

23. Notices. The Corporation shall provide each Holder of Series E with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Whenever notice is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice must be in writing and shall be given in accordance with Section 9(f) of the Exchange Agreement. The Corporation shall provide each Holder with prompt written notice of all actions taken pursuant to this Certificate of Designations, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Corporation shall give written notice to each Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

24. Reserved.

25. Governing Law; Exclusive Jurisdiction. This Certificate of Designations shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by this Certificate of Designations, the Corporation hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York County, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Corporation in any other jurisdiction to collect on the Corporation's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **The Corporation hereby irrevocably waives any right it may have to, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection with or arising out of this Certificate of Designations or any transaction contemplated hereby.**

26. Reserved.

27. Severability. If any provision of this Certificate of Designations is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Certificate of Designations so long as this Certificate of Designations as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

28. Reserved.

29. Stockholder Matters; Amendment.

(a) Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, the Certificate of Incorporation, this Certificate of Designations or otherwise with respect to the issuance of Series E may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

(b) Amendment. This Certificate of Designations or any provision hereof (other than Section 5(d)) may be modified or amended or the provisions hereof waived with the written consent of the Corporation and either (i) the Holders of a majority of the Series E currently outstanding, which must include Cavalry as long as Cavalry (or any of its Affiliates) owns at least five percent (5%) of the Series E issued pursuant to the Exchange Agreement, or (ii) Cavalry as long as Cavalry (or any of its Affiliates) owns at least five percent (5%) of the Series E issued pursuant to the Exchange Agreement. No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Exchange Agreement unless the same consideration also is offered to all of the parties to the Transaction Documents. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

30. Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Certificate of Designations, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Corporation or any of its Subsidiaries, the Corporation shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, non-public information relating to the Corporation or any of its Subsidiaries, the Corporation so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, such Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Corporation or any of its Subsidiaries. If the Corporation or any of its Subsidiaries provides material non-public information to a Holder that is not simultaneously filed in a Current Report on Form 8-K and such Holder has not agreed to receive such material non-public information, the Corporation hereby covenants and agrees that such Holder shall not have any duty of confidentiality to the Corporation, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. Nothing contained in this Section 30 shall limit any obligations of the Corporation, or any rights of any Holder, under the Exchange Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations of Series E Convertible Preferred Stock of Better Choice Company Inc. to be signed by its Co-Chief Executive Officer on this 16th day of May 2019.

**BETTER CHOICE COMPANY INC.**

By: /s/ Damian Dalla-Longa  
Damian Dalla-Longa, Co-Chief Executive Officer

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**BETTER CHOICE COMPANY INC.  
CONVERSION NOTICE**

Reference is made to the Certificate of Designations, Preferences and Rights of the Series E Convertible Preferred Stock of Better Choice Company Inc. (the "**Certificate of Designations**"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series E Convertible Preferred Stock, \$0.001 par value per share (the "**Series E**"), of Better Choice Company Inc., a Delaware corporation (the "**Corporation**"), indicated below into shares of common stock, \$0.001 par value per share (the "**Common Stock**"), of the Corporation, as of the date specified below.

Date of Conversion: \_\_\_\_\_

Aggregate number of Series E to be converted \_\_\_\_\_

Aggregate Stated Value of such Series E to be converted: \_\_\_\_\_

Aggregate accrued and unpaid dividends and accrued and unpaid  
Late Charges with respect to such Series E and such aggregate  
dividends to be converted: \_\_\_\_\_

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: \_\_\_\_\_

Please confirm the following information:

Conversion Price: \_\_\_\_\_

Number of shares of Common Stock to be issued: \_\_\_\_\_

Please issue the Common Stock into which the applicable Series E are being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: \_\_\_\_\_

DTC Number: \_\_\_\_\_

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

Date: \_\_\_\_\_,

Name of  
Registered  
Holder

By:

Name:  
Title:

Tax ID: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail Address:

**ACKNOWLEDGMENT**

The Corporation hereby acknowledges this Conversion Notice and hereby directs to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated, 20 from the Corporation and acknowledged and agreed to by.

**BETTER CHOICE COMPANY INC.**

By:

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

Title:

**BYLAWS  
OF  
SPORT ENDURANCE, INC.**

**(A Nevada corporation)**

The following Amended and Restated Bylaws of Sport Endurance, Inc.  
(the "Company") were adopted by the shareholders as of April 25, 2016.

**ARTICLE I  
SHAREHOLDERS**

Section 1.1 *Annual Meetings.* If required by applicable law, an annual meeting of the shareholders shall be held each year during the month of January or such other month as may be designated by the board of directors (the "Board of Directors") on such date and at such time and place, if any, either within or outside the State of Nevada, as may be designated by the Board of Directors from time to time. At such meeting, the holders of the voting capital stock shall elect the Board of Directors and shall transact such other business as may be brought properly before the meeting. Holders of non-voting stock may be invited, and to the extent there is a matter on which such holders are entitled to vote, such holders shall be invited to attend the annual meeting, but shall not vote except with respect to matters on which their vote is required by the Nevada Revised Statutes as it may be amended (the "NRS") or the Articles of Incorporation of the Company, as it may be amended (the "Articles of Incorporation").

Section 1.2 *Special Meetings.*

(a) Special meetings of shareholders entitled to vote at such meeting may be called at any time by the Chairman of the Board of Directors, the President (if he is also a member of the Board of Directors) or the Board of Directors, to be held at such date, time and place, if any, either within or outside the State of Nevada as may be determined by such person or persons calling the meeting and stated in the notice of the meeting. A special meeting shall be called by the President or the Secretary upon one or more written demands (which shall state the purpose or purposes therefore) signed and dated by the holders of shares representing not less than ten percent of all votes entitled to be cast on any issue(s) that may be properly proposed to be considered at the special meeting. If no place is designated in the notice, the place of the meeting shall be the principal office of the Company.

(b) Business transacted at any special meeting of shareholders shall be limited to the purpose or purposes stated in the notice of such meeting.

Section 1.3 *Notice of Meetings.* Whenever shareholders are required or permitted to take any action at a meeting, a notice of the meeting stating the place, if any, date and hour of the meeting, and the means of remote communications, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each shareholder entitled to vote at such meeting. Unless otherwise provided by law, the Articles of Incorporation or these Bylaws, the notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each shareholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the shareholder at such shareholder's address as it appears on the records of the Company. Notice may be given by Internet in accordance with the Rules of the Securities and Exchange Commission even if the provisions of such Rules do not apply to the Company.

Section 1.4 *Adjournments.* Any meeting of shareholders, annual or special, may be adjourned from time to time, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time, place thereof, if any, and the means of remote communications, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

Section 1.5 *Quorum.* At each meeting of shareholders, except where otherwise provided by law or the Articles of Incorporation or these Bylaws, the holders of a majority in voting power of the outstanding shares of stock entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum. Shares entitled to vote as a separate class or series may take action on a matter at a meeting only if a quorum of those shares is present. For purposes of the foregoing, where a separate vote by class or classes or a series or multiple series is required for any matter, the holders of a majority in voting power of the outstanding shares of such class or classes or a series or multiple series, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. In the absence of a quorum of the holders of any class or series of stock entitled to vote on a matter, the holders of such class or series so present or represented may, by majority vote, adjourn the meeting of such class or series with respect to that matter from time to time in the manner provided by Section 1.4 of these Bylaws until a quorum of such class or series shall be so present or represented. Shares of its own capital stock belonging on the record date for the meeting to the Company or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Company, shall neither be entitled to vote nor be counted for quorum purposes; *provided, however*, that the foregoing shall not limit the right of the Company or any subsidiary of the Company to vote capital stock, including but not limited to its own capital stock, held by it in a fiduciary capacity.

Section 1.6 *Organization.*

(a) The chairman of the annual or any special meeting of the shareholders shall be the Chairman of the Board of Directors, or in the absence of the Chairman, any person designated by the Board of Directors. The Secretary, or in the absence of the Secretary, an Assistant Secretary, shall act as the secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the adjournment of any meeting, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Company, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls. The chairman of the meeting shall have absolute authority over matters of procedure and there shall be no appeal from the ruling of the chairman.

(c) If disorder shall arise that prevents continuation of the legitimate business of the meeting, the chairman may announce the adjournment of the meeting and quit the chair and upon the chairman so doing the meeting is immediately adjourned.

(d) The chairman may ask or require that anyone who is not a bona fide shareholder or proxyholder leave the meeting.

Section 1.7 *Inspectors.* Prior to any meeting of shareholders, the Board of Directors may, and shall if required by law, appoint one or more inspectors to act at such meeting and make a written report thereof and may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at the meeting of shareholders, the person presiding at the meeting may, and shall if required by law, appoint one or more inspectors to act at the meeting. The inspectors need not be shareholders of the Company, and any director or officer of the Company may be an inspector on any matter other than a vote for or against such director's or officer's election to any position with the Company or on any other matter in which such officer or director may be directly interested. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons to assist them in the performance of their duties. The date and time of the opening and closing of the polls for each matter upon which the shareholders will vote at a meeting shall be announced at the meeting. No ballot, proxy or vote, nor any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls. In determining the validity and counting of proxies and ballots cast at any meeting of shareholders of the Company, the inspectors may consider such information as is permitted by applicable law.

Section 1.8 *Voting; Proxies; Nominations; Shareholder Proposals.*

(a) Unless otherwise provided in the Articles of Incorporation, each shareholder entitled to vote at any meeting of shareholders shall be entitled to one vote for each share of stock held by such shareholder which has voting power upon the matter in question. Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such shareholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Company generally. A shareholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Company. Voting at meetings of shareholders need not be by written ballot unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or represented by proxy at such meeting shall so determine. Except where applicable law, the Articles of Incorporation or these Bylaws require a different vote, if a quorum exists, action on a matter other than the election of directors is approved if the votes cast favoring the action exceed the votes cast opposing the action. In an election of directors, a plurality of the votes of the shares present in person or represented by proxy at a meeting and entitled to vote for directors is required in order to elect a director.

(b) Each share of Common Stock shall be entitled to one vote, except as required by applicable law or the Articles of Incorporation.

(c) Nomination of persons to stand for election to the Board of Directors at any annual or special shareholders meeting may be made by the holders of the Company's Common Stock only if written notice of such shareholder's intent to make such nomination has been given to the Secretary of the Company not later than 30 days prior to the meeting.

(d) At any meeting of shareholders, a resolution or motion shall be considered for vote only if the proposal is brought properly before the meeting, which shall be determined by the chairman of the meeting in accordance with the following provisions:

(i) Notice required by these Bylaws and by all applicable federal or state statutes or regulations shall have been given to, or waived by, all shareholders entitled to vote on such proposal. In the event notice periods of different lengths apply to the same proposed action under different laws or regulations, appropriate notice shall be deemed given if there is compliance with the greater of all applicable notice requirements.

(ii) Proposals may be made by the Board of Directors as to matters affecting holders of any class of stock issued by the Company. Proposals may also be made by the holders of shares of Common Stock, although such authority shall not be construed to require the Company to include any shareholder proposal in its Proxy Statements sent to shareholders, except as may be required by the proxy rules promulgated by the Securities and Exchange Commission.

(iii) Any proposal made by the Board of Directors or the holders of shares of Common Stock may be made at any time prior to or at the meeting if only the holders of Common Stock are entitled to vote thereon.

(iv) Holders of Common Stock may only make a proposal with respect to which such holders are entitled to vote. Any proposal on which holders of Common Stock are entitled to vote and concerning which proxies may be solicited by the proponent or by management must be delivered to, or mailed and received by, the Secretary of the Company not less than 90 days prior to the meeting; *provided, however*, that in the event that less than 100 days' notice of prior public disclosure of the date of the meeting is given or made to shareholders, to be timely, notice by the shareholder must be so received not later than the close of business on the 10<sup>th</sup> day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made.

(v) Any shareholder who gives notice of any shareholder proposal shall deliver therewith the text of the proposal to be presented and a brief written statement of the reasons why such shareholder favors the proposal and setting forth such shareholder's name and address, the number and class of all shares of each class of stock of the Company beneficially owned by such shareholder and any financial interest of such shareholder in the proposal (other than as a shareholder).

(a) In order that the Company may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Company may determine the shareholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede nor be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office in the State of Nevada, its principal place of business, or an officer or agent of the Company having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to the Company's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Company may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 1.10 *List of Shareholders Entitled to Vote.* The officer who has charge of the stock ledger shall have cause to be prepared, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Company. The list of shareholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law (a) the stock ledger shall be the only evidence as to who are the shareholders entitled by this Section 1.10 to examine the list of shareholders required by this Section 1.10 or to vote in person or by proxy at any meeting of shareholders and (b) failure to prepare or make available the list of shareholders shall not affect the validity of actions taken at the meeting.

Section 1.11 *Consent of Shareholders in Lieu of Meeting.* Unless otherwise restricted by the Articles of Incorporation, any action required or permitted to be taken at any annual or special meeting of the shareholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Company by delivery to its registered office in the State of Nevada, its principal place of business, or an officer or agent of the Company having custody of the books in which minutes of proceedings of shareholders are recorded. Delivery made to the Company's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each shareholder who signs the consent and no written consent shall be effective unless, within 60 days of the earliest dated consent delivered to the Company in the manner provided by the previous sentence, written consents signed by a sufficient number of holders to take action are delivered to the Company in the manner provided by the previous sentence. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those shareholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Company.

Section 1.12 *Meeting by Remote Communication.* If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication: (a) participate in a meeting of shareholders; and (b) be deemed present in person and vote at a meeting of shareholders whether such meeting is to be held at a designated place or solely by means of remote communication, *provided* that (i) the Company shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder, (ii) the Company shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Company.

ARTICLE II  
BOARD OF DIRECTORS

Section 2.1 *Powers; Number; Qualifications.* The business and affairs of the Company shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by law or in the Articles of Incorporation. The Board of Directors shall consist of not less than one member, the number thereof to be determined from time to time by resolution of the Board of Directors. Directors must be natural persons at least 18 years of age but need not be shareholders of the Company.

Section 2.2 *Election; Term of Office; Resignation; Removal; Newly Created Directorships; Vacancies; Director Emeritus.*

(a) *Election; Term of Office.* The Board of Directors shall be elected at each annual meeting of shareholders by the holders of the outstanding capital stock as provided in the Articles of Incorporation, or if there is no provision, by the holders of common stock. Each director shall hold office until his or her successor is elected and qualified or until his or her death, earlier resignation, removal or disqualification.

(b) *Resignation.* Any director may resign at any time upon notice to the Board of Directors or to the President or the Secretary of the Company. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective.

(c) *Removal.* Any director or the entire Board of Directors may be removed, with or without cause, by holders of not less than two-thirds of the voting power of the outstanding shares of the outstanding capital stock. A vacancy on the Board of Directors caused by any such removal may be filled by a majority of the remaining directors at any time before the end of the unexpired term.

(d) *Newly Created Directorships; Vacancies.* Unless otherwise provided in the Articles of Incorporation or these Bylaws, newly created directorships resulting from any increase in the authorized number of directors between annual meetings shall be filled by the affirmative vote of a majority of the remaining members of the Board of Directors even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office.

Section 2.3 *Annual and Regular Meetings.* The Board of Directors shall hold its annual meeting without notice on the same day and the same place as, but just following, the annual meeting of the shareholders, or at such other date, time and place as may be determined by the Board of Directors. Regular meetings of the Board of Directors shall be held without notice at such dates, times and places as may be determined by the Board of Directors by resolution.

Section 2.4 *Special Meetings; Notice.*

(a) Special meetings of the Board of Directors may be held, with proper notice, upon the call of the Chairman of the Board of Directors or by at least two members of the Board of Directors at such time and place as specified in the notice.

(b) Written notice of the date, time and place of each special meeting of the Board of Directors shall be given to each director at least 24 hours prior to such meeting. The notice of a special meeting of the Board of Directors need not state the purposes of the meeting. Notice to each director of any special meeting may be given in person; by email or electronically transmitted facsimile. Written notice to a director of any special meeting is effective upon the giving of notice.

Section 2.5 *Participation in Meetings by Conference Telephone Permitted.* Unless otherwise restricted by the Articles of Incorporation or these Bylaws, directors or members of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or of such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Bylaw shall constitute presence in person at such meeting.

Section 2.6 *Quorum; Vote Required for Action.* At all meetings of the Board of Directors a majority of the directors then in office shall constitute a quorum for the transaction of business at such meeting. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. In case at any meeting of the Board of Directors a quorum shall not be present, a majority of the directors present may, without notice other than announcement at the meeting, adjourn the meeting from time to time until a quorum can be obtained.

Section 2.7 *Organization.* The Board of Directors shall elect a Chairman of the Board of Directors from among its members. If the Board of Directors deems it necessary, it may elect a Vice-Chairman of the Board of Directors from among its members to perform the duties of the Chairman of the Board of Directors in such chairman's absence and such other duties as the Board of Directors may assign. The Chairman of the Board of Directors or, in his absence, the Vice-Chairman of the Board of Directors, or in his absence, any director chosen by a majority of the directors present, shall act as chairperson of the meetings of the Board of Directors. The Secretary, any Assistant Secretary, or any other person appointed by the chairperson shall act as secretary of each meeting of the Board of Directors.

Section 2.8 *Action by Directors Without a Meeting.* Unless otherwise restricted by the Articles of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission are filed with the minutes of proceedings of the Board of Directors or committee. Such filings shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

(a) Any written consent is not required to be signed by:

( i ) A common or interested director who abstains in writing from providing consent to the action, *provided* that: (A) the fact of the common directorship, office or financial interest must be known to the Board of Directors or committee before a written consent is signed by all the members of the Board or the committee, (B) such fact must be described in the written consent, and the (C) Board of Directors or committee must approve, authorize or ratify the action in good faith by unanimous consent without counting the abstention of the common or interested director.

(ii) A director who is a party to an action, suit or proceeding who abstains in writing from providing consent to the action of the Board of Directors or committee, *provided* that the Board of Directors or committee must (A) make a determination pursuant to NRS 78.751 that indemnification of the director is proper under the circumstances, and (B) approve, authorize or ratify the action in good faith by unanimous consent without counting the abstention of the director who is a party to an action, suit or proceeding.

Section 2.9 *Compensation of Directors.* Unless otherwise restricted by the Articles of Incorporation or these Bylaws, the Board of Directors shall determine and fix the compensation, if any, and the reimbursement of expenses which shall be allowed and paid to the directors. Nothing herein contained shall be construed to preclude any director from serving the Company in any other capacity or any of its subsidiaries in any other capacity and receiving proper compensation therefore.

### ARTICLE III COMMITTEES

Section 3.1 *Committees.* The Board of Directors may, by a vote of the majority of the directors then in office, designate one or more committees, each committee to consist of one or more of the directors of the Company. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent permitted by law and provided in the resolution of the Board of Directors or in these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers which may require it.

Section 3.2 *Committee Rules.* Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board of Directors or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws. Each committee shall prepare minutes of its meetings which shall be delivered to the Secretary of the Company for inclusion in the Company's records.

ARTICLE IV  
OFFICERS

Section 4.1 *Officers; Election.* The Board of Directors shall, annually or at such times as the Board of Directors may designate, appoint a President, a Chief Financial Officer, a Secretary and a Treasurer. The Board of Directors may also appoint one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, and one or more Assistant Treasurers and such other officers as the Board of Directors may deem desirable or appropriate and may give any of them such further designations or alternate titles as it considers desirable. The Board of Directors may delegate, by specific resolution, to an officer the power to appoint other specified officers or assistant officers. Any number of offices may be held by the same person unless the Articles of Incorporation or these Bylaws provide otherwise. Each officer shall be a natural person who is 18 years of age or older.

Section 4.2 *Term of Office; Resignation; Removal; Vacancies.* Unless otherwise provided in the resolution of the Board of Directors appointing any officer, each officer shall hold office until the next annual meeting of the Board of Directors at which his or her successor is appointed and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Company. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board of Directors may remove any officer with or without cause at any time. Any such removal shall be without prejudice to the contractual rights of such officer, if any, with the Company, but the appointment of an officer shall not of itself create contractual rights. Any vacancy occurring in any office of the Company by death, resignation, removal or otherwise may be filled by the Board of Directors. An officer appointed to fill a vacancy shall serve for the unexpired term of such officer's predecessor, or until such officer's earlier death, resignation or removal.

Section 4.3 *Temporary Delegation of Duties.* In the case of the absence of any officer, or his inability to perform his duties, or for any other reason deemed sufficient by the Board of Directors, the Board of Directors may delegate the powers and duties of such officer to any other officer or to any director temporarily, *provided* that a majority of the directors then in office concur and that no such delegation shall result in giving to the same person conflicting duties.

Section 4.4 *Chairman.* The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors and of the shareholders at which he or she shall be present and shall have and may exercise such powers as may, from time to time, be assigned to him or her by the Board of Directors or as may be provided by law.

Section 4.5 *Chief Executive Officer.* The Chief Executive Officer (the "CEO"), if one is appointed by the Board of Directors, shall perform all duties customarily delegated to the chief executive officer of a corporation and such other duties as may from time to time be assigned to the CEO by the Board of Directors and these Bylaws.

Section 4.6 *President.* If there is no separate CEO, the President shall be the CEO of the Company; otherwise, the President shall be responsible to the CEO for the day-to-day operations of the Company. The President shall have general and active management of the business of the Company; shall see that all orders and resolutions of the Board of Directors are carried into effect; and shall perform all duties as may from time to time be assigned by the Board of Directors or the CEO.

Section 4.7 *Chief Financial Officer.* The Chief Financial Officer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Company and be primarily responsible for all filings with the Securities and Exchange Commission. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Company and shall perform such other duties as may be prescribed by the Board of Directors. In the absence of a resolution of the Board of Directors appointing a different officer, the chief financial officer shall act when the chief executive officer is unavailable.

Section 4.8 *Vice Presidents.* The Vice President or Vice Presidents shall have such powers and shall perform such duties as may, from time to time, be assigned to him or her or them by the Board of Directors, the CEO or the President or as may be provided by law.

Section 4.9 *Secretary.* The Secretary shall have the duty to record the proceedings of the meetings of the shareholders, the Board of Directors and any committees thereof in a book to be kept for that purpose, shall authenticate records of the Company, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, shall be custodian of the records of the Company, may affix the corporate seal to any document the execution of which, on behalf of the Company, is duly authorized, and when so affixed may attest the same, and, in general, shall perform all duties incident to the office of secretary of a corporation and such other duties as may, from time to time, be assigned to him or her by the Board of Directors, the CEO or the President or as may be provided by law.

Section 4.10 *Treasurer.* The treasurer shall be the legal custodian of all monies, notes, securities and other valuables that may from time to time come into the possession of the Company. He shall immediately deposit all funds of the Company coming into his hands in some reliable bank or other depository to be designated by the Board of Directors and shall keep this bank account in the name of the Company.

Section 4.11 *Assistant Secretaries and Assistant Treasurers.* The Assistant Secretaries and Assistant Treasurers, if any, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President, the CEO or the Board of Directors. In the absence or at the request of the Secretary or the Treasurer, the Assistant Secretaries or Assistant Treasurers, respectively, shall perform the duties and exercise the powers of the Secretary or Treasurer, as the case may be.

Section 4.12 *Other Officers.* The other officers, if any, of the Company shall have such powers and duties in the management of the Company as shall be stated in a resolution of the Board of Directors which is not inconsistent with these Bylaws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board of Directors.

Section 4.13 *Compensation.* The salaries and other compensation of the officers shall be fixed or authorized from time to time by the Board of Directors. No officer shall be prevented from receiving such salary or other compensation by reason of the fact that he is also a director of the Company.

Section 4.14 *Limits on Authority of the Officers.* In addition to limitations on the authority of the Company or the officers as may be imposed by written agreements, the Board of Directors shall have the authority to limit the authority, including spending authority, of the officer.

## ARTICLE V STOCK

Section 5.1 *Stock Certificates and Uncertificated Shares.* The shares of stock in the Company shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Company's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate theretofore issued until such certificate is surrendered to the Company. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates, and upon request every holder of uncertificated shares, shall be entitled to have a certificate signed by or in the name of the Company by the Chairman of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Company, representing the number of shares of stock registered in certificate form owned by such holder. Any and all the signatures on the certificate may be by a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 5.2 *Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates.* The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond in such form and amount (not exceeding twice the value of the stock represented by such certificate) and with such surety and sureties as the secretary may require in order to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.3 *Transfer of Stock.* Subject to any transfer restrictions set forth or referred to on the stock certificate or of which the Company otherwise has notice, shares of the Company shall be transferable on the books of the Company upon presentation to the Company or to the Company's transfer agent of a stock certificate signed by, or accompanied by an executed assignment form, the holder of record thereof, his duly authorized legal representative, or other appropriate person as permitted by the NRS. The Company may require that any transfer of shares be accompanied by proper evidence reasonably satisfactory to the Company or to the Company's transfer agent that such endorsement is genuine and effective. Upon presentation of shares for transfer as provided above, the payment of all taxes, if any, therefor, and the satisfaction of any other requirement of law, including inquiry into and discharge of any adverse claims of which the Company has notice, the Company shall issue a new certificate to the person entitled thereto and cancel the old certificate. Every transfer of stock shall be entered on the stock books of the Company to accurately reflect the record ownership of each share. The Board of Directors also may make such additional rules and regulations as it may deem expedient concerning the issue, transfer, and registration of certificates for shares of the capital stock of the Company.

Section 5.4 *Preferred Stock.* Shares of preferred stock shall be issued by the Company only after the authorization of the same and filing a Certificate of Designation (or Amendment to the Articles of Incorporation) with the Nevada Secretary of State and satisfying all other requirements of the Articles of Incorporation and the NRS with respect thereto.

Section 5.5 *Holders of Record.* The Company shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as may be allowed by these Bylaws or required by the laws of Nevada.

ARTICLE VI  
EXECUTION OF INSTRUMENTS; CHECKS AND ENDORSEMENTS; DEPOSITS; ETC.

Section 6.1 *Execution of Instruments.* Except as otherwise provided by the Board of Directors, the Chairman, the CEO, the President, any Vice President, the Treasurer or the Secretary shall have the power to execute and deliver on behalf of and in the name of the Company any instrument requiring the signature of an officer of the Company. Unless authorized to do so by these Bylaws or by the Board of Directors, no assistant officer, agent or employee shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose or in any amount.

Section 6.2 *Checks and Endorsements.* All checks, drafts or other orders for the payment of money, obligations, notes or other evidences of indebtedness issued in the name of the Company and other such instruments shall be signed or endorsed for the Company by such officers or agents of the Company as shall from time to time be determined by resolution of the Board of Directors, which resolution may provide for the use of facsimile signatures.

Section 6.3 *Deposits.* All funds of the Company not otherwise employed shall be deposited from time to time to the Company's credit in such banks or other depositories as shall from time to time be determined by resolution of the Board of Directors, which resolution may specify the officers or agents of the Company who shall have the power, and the manner in which such power shall be exercised, to make such deposits and to endorse, assign and deliver for collection and deposit checks, drafts and other orders for the payment of money payable to the Company or its order.

Section 6.4 *Voting of Securities and Other Entities.* Unless otherwise provided by resolution of the Board of Directors, the Chairman, Chief Executive Officer, or the President, or any officer designated in writing by any of them, is authorized to attend in person, or may execute written instruments appointing a proxy or proxies to represent the Company, at all meetings of any corporation, partnership, limited liability company, association, joint venture, or other entity in which the Company holds any securities or other interests and may execute written waivers of notice with respect to any such meetings. At all such meetings, any of the foregoing officers, in person or by proxy as aforesaid and subject to the instructions, if any, of the Board of Directors, may vote the securities or interests so held by the Company, may execute any other instruments with respect to such securities or interests, and may exercise any and all rights and powers incident to the ownership of said securities or interests. Any of the foregoing officers may execute one or more written consents to action taken in lieu of a formal meeting of such corporation, partnership, limited liability company, association, joint venture, or other entity.

ARTICLE VII  
DIVIDENDS AND OTHER DISTRIBUTIONS

Section 7.1 *Dividends and Other Distributions.* Subject to the provisions of the NRS, dividends and other distributions may be declared by the Board of Directors in such form, frequency and amounts as the condition of the affairs of the Company shall render advisable.

ARTICLE VIII  
MISCELLANEOUS

Section 8.1 *Fiscal Year.* The fiscal year of the Company shall be determined by the Board of Directors.

Section 8.2 *Seal.* The Company may have a corporate seal and shall be in such form as may be approved from time to time by the Board of Directors. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced. The impression of the seal may be made and attested by either the Secretary or any Assistant Secretary for the authentication of contracts or other papers requiring the seal.

Section 8.3 *Waiver of Notice of Meetings of Shareholders, Directors and Committees.* Whenever notice is required to be given by law or under any provision of the Articles of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except (i) in the case when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and (ii) in the case when the person attends the meeting for the purpose of objecting to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the notice of the meeting, the person objects to considering the matter when it is presented. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders, directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Articles of Incorporation or these Bylaws.

(a) *Directors and Officers.* The Company shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Company or, while a director or officer of the Company, is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans (a "Covered Person"), against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, the Company shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors. Further, notwithstanding the indemnification provided for by this Section 8.4 or any written agreement, such indemnity shall not include any expenses incurred by a Covered Person relating to or arising from any Proceeding in which the Company asserts a direct claim against a Covered Person, or a Covered Person asserts a direct claim against the Company, whether such claim is termed a complaint, counterclaim, crossclaim, third-party complaint or otherwise.

(b) *Prepayment of Expenses.* The Company shall to the fullest extent not prohibited by applicable law promptly pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition, *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by such Covered Person to repay all amounts advanced if it should be ultimately determined that such Covered Person is not entitled to be indemnified under this Section 8.4 or otherwise.

(c) *Nonexclusivity of Rights.* The rights conferred on any Covered Person by this Section 8.4 shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, these Bylaws, agreement, insurance, vote of shareholders or disinterested directors or otherwise.

(d) *Other Sources.* The Company's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

(e) *Amendment or Repeal.* Any repeal or modification of the foregoing provisions of this Section 8.4 shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

(f) *Other Indemnification and Prepayment of Expenses.* This Section 8.4 shall not limit the right of the Company, to the extent and in the manner permitted by law, to indemnify persons other than Covered Persons and to advance expenses to such other persons when and as authorized by appropriate corporate action.

(g) *Insurance.* The Company may purchase and maintain insurance on behalf of any person that the Company is permitted to indemnify in accordance with these Bylaws against any liability asserted against any such person and incurred by such person whether or not the Company would have the power to indemnify such person against such liability under the NRS. Any such insurance may be procured from any insurance company designated by the Board of Directors, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the Company has an equity interest through stock ownership or otherwise.

(h) *Selection of Counsel.* Notwithstanding any other provision of this Section 8.4, the Company may condition the right to indemnification of, and the advancement of expenses to, a Covered Person on its right to select legal counsel representing such Covered Person on the terms of this Subsection (h). The Company shall have the right to select counsel for any Covered Person in any legal action that may give rise to indemnification under this Section 8.4 provided that: (a) the Company consults with the Covered Person seeking indemnification with respect to the selection of competent legal counsel; and (b) the Company pays all reasonable fees and costs incurred by the attorney in defending the Covered Person (subject to the Company's right to recover such fees and costs if it is determined at the conclusion of the action, suit or proceeding that there is no right of indemnification). Notwithstanding any other provision of this Section 8.4, the Company shall not be responsible for indemnification of, or the advancement of expenses to, any Covered Person who declines to use counsel reasonably selected by the Company as provided in this Subsection (h). Counsel shall be deemed to be reasonably selected by the Company if such counsel is a competent attorney who can independently represent the Covered Person consistent with the applicable ethical standards of the Code of Professional Responsibility.

Section 8.5 *Interested Directors; Quorum.* No contract or transaction between the Company and one or more of its directors or officers, or between the Company and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's votes are counted for such purpose, if: (1) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or (3) the contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the shareholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 8.6 *Form of Records.* Any records maintained by the Company in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, *provided* that the records so kept can be converted into clearly legible paper form within a reasonable time.

Section 8.7 *Record of Shareholders.* The Secretary shall maintain, or shall cause to be maintained, a record of the names and addresses of the Company's shareholders, in a form that permits preparation of a list of shareholders that is arranged by class of stock entitled to vote and, within each such class, by series of shares, that is alphabetical within each class or series, and that shows the address of, and the number of shares of each class or series held by, each shareholder.

Section 8.8 *Addresses of Shareholders.* Each shareholder shall furnish to the Secretary of the Company or the Company's transfer agent an address to which notices from the Company, including notices of meetings, may be directed and if any shareholder shall fail so to designate such an address, it shall be sufficient for any such notice to be directed to such shareholder at such shareholder's address last known to the Secretary or transfer agent.

Section 8.9 *Amendment of Bylaws.* The Board of Directors is authorized to adopt, amend or repeal these Bylaws. The holders of shares of capital stock entitled to vote also may adopt additional Bylaws and may amend or repeal any Bylaw, whether or not adopted by them. The power of the Board of Directors to adopt, amend or repeal Bylaws may be limited by an amendment to the Articles of Incorporation or an amendment to the Bylaws adopted by the holders of capital stock that provides that a particular Bylaw or Bylaws may only be adopted, amended or repealed by the holders of capital stock.

**REGISTRATION RIGHTS AGREEMENT**

THIS REGISTRATION RIGHTS AGREEMENT (“Agreement”) is entered into as of December 12, 2018 by and among Sport Endurance, Inc., a Nevada corporation (the “Company”), and \_\_\_\_\_ (the “Investor”).

WHEREAS, the Company issued shares of its common stock and warrants to the Investor pursuant to a Securities Purchase Agreement of even date (the “Purchase Agreement”); and

WHEREAS, the Company has agreed to provide certain registration rights to the Investor.

NOW, THEREFORE, in consideration of the mutual promises and the covenants as set forth herein, the parties hereto hereby agree as follows:

1. **Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms herein defined.

“Agreement” means this Registration Rights Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

“Common Stock” means the Company’s authorized common stock, as constituted on the date of this Agreement, any stock into which such Common Stock may thereafter be changed and any stock of the Company of any other class, which is not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption, issued to the holders of shares of such Common Stock upon any re-classification thereof.

“Commission” means the Securities and Exchange Commission or any other governmental body at the time administering the Securities Act.

“Company” has the meaning assigned to it in the introductory paragraph of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934 (or successor statute).

“Excluded Forms” means registration statements under the Securities Act, on Forms S-4 and S-8, or any successors thereto and any form used in connection with an initial public offering of securities.

“Investor” has the meaning assigned to it in the introductory paragraph of this Agreement.

“Other Shares” has the meaning assigned to it in Section 4(f) of this Agreement.

“Person” includes any natural person, corporation, trust, association, company, partnership, joint venture, limited liability company and other entity and any government, governmental agency, instrumentality or political subdivision.

“Purchase Agreement” has the meaning assigned to it in the first WHEREAS clause.

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The terms “register,” “registered” and “registration” refer to a registration effected by preparing and filing a registration statement on other than any of the Excluded Forms in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“Registrable Securities” means the Common Stock acquired by the Investor pursuant to the Purchase Agreement, the Common Stock issuable upon the exercise of Warrants, dated the same date as this Agreement, and any securities of the Company issued with respect to such Common Stock by way of a stock dividend or stock split or in connection with a combination, recapitalization, share exchange, consolidation or other reorganization of the Company.

“Selling Expenses” means all selling commissions, finder’s fees and stock transfer taxes applicable to the Registrable Securities registered by the Investor and all fees and disbursements of counsel for the Investor.

“Securities Act” means the Securities Act of 1933 (or successor statute).

“Warrants” means the warrants to purchase Common Stock acquired by the Investor pursuant to the Purchase Agreement.

2. **Required Registration.** As soon as practicable following the date of this Agreement, but in any event not later than sixty (60) days from the date hereof, the Company shall use commercially reasonable efforts to file a registration statement on Form S-1 (or other applicable form) with the Commission in order to permit the Investor to publicly sell the Registrable Securities.

3. **Obligations of the Company.** If and whenever the Company is required by the provisions hereof to effect or cause the registration of any Registrable Securities under the Securities Act as provided herein, the Company shall:

(a) use commercially reasonable efforts to prepare and file with the Commission a registration statement with respect to such Registrable Securities and use commercially reasonable efforts to cause such registration statement to become and remain effective;

(b) use commercially reasonable efforts to prepare and file with the Commission such amendments to such registration statement (including post-effective amendments) and supplements to the prospectus included therein as may be necessary to keep such registration statement effective, subject to the qualifications in Section 4(a), and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such registration statement during such period in accordance with the intended methods of disposition by the Investor set forth in such registration statement;

(c) furnish to the Investor such number of copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus), in conformity with the requirements of the Securities Act, and such other documents, as each Investor may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Securities owned by the Investor;

(d) use all commercially reasonable efforts to make such filings under the securities or blue sky laws of the State of New York to enable the Investor to consummate the sale in such jurisdiction of the Registrable Securities owned by the Investor;

(e) notify the Investor at any time when a prospectus relating to their Registrable Securities is required to be delivered under the Securities Act, of the Company's becoming aware that the prospectus included in the related registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare and furnish to the Investor a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include 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 not misleading in the light of the circumstances then existing;

(f) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission;

(g) to use commercially reasonable efforts to cause Registrable Securities to be quoted on each trading market and/or in each quotation service on which the Common Stock of the Company is then quoted; and

(h) notify the Investor of any stop order threatened or issued by the Commission and take all actions reasonably necessary to prevent the entry of such stop order or to remove it if entered.

4. **Other Procedures.**

(a) Subject to the Company's general obligation to use commercially reasonable efforts under Section 3, the Company shall be required to maintain the effectiveness of a registration statement (on Form S-1 or other applicable form) until the earlier of (i) the sale of all Registrable Securities or (ii) two years from the effective date of the registration statement. The Company shall have no liability to the Investor for delays in the Investor being able to sell the Registrable Securities (i) as long as the Company uses commercially reasonable efforts to file a registration statement, amendments to the registration statement or supplements to a prospectus contained in a registration statement (including any amendment or post effective amendments), (ii) where the required financial statements or auditor's consents are unavailable or (iii) where the Company would be required to disclose information at a time when it has no duty to disclose such information under the Securities Act, the Exchange Act, or the rules and regulations of the Commission.

(b) In consideration of the Company's obligations under this Agreement, the Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e) herein, the Investor shall forthwith discontinue his sale of Registrable Securities pursuant to the registration statement covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended prospectus contemplated by said Section 3(e) and, if so directed by the Company, shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in the Investor's possession of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

(c) The Company's obligation to file any registration statement or amendment including a post-effective amendment, shall be subject to each Investor, as applicable, furnishing to the Company in writing such information and documents regarding such Investor and the distribution of such Investor's Registrable Securities as may reasonably be required to be disclosed in the registration statement in question by the rules and regulations under the Securities Act or under any other applicable securities or blue sky laws of the jurisdiction referred to in Section 3(d) herein. The Company's obligations are also subject to each Investor promptly executing any representation letter concerning compliance with Regulation M under the Exchange Act (or any successor rule or regulation).

(d) If any such registration or comparable statement refers to the Investor by name or otherwise as a stockholder of the Company, but such reference to the Investor by name or otherwise is not required by the Securities Act or the rules thereunder, then each Investor shall have the right to require the deletion of the reference to the Investor, as may be applicable.

(e) In connection with the sale of Registrable Securities, the Investor shall deliver to each purchaser a copy of the necessary prospectus and, if applicable, prospectus supplement, within the time required by Section 5(b) of the Securities Act.

5. **Registration Expenses.** In connection with any registration of Registrable Securities pursuant to Section 2, the Company shall, whether or not any such registration shall become effective, from time to time, pay all expenses (other than Selling Expenses) incident to its performance of or compliance, including, without limitation, all registration, and filing fees, fees and expenses of compliance with securities or blue sky laws, word processing, printing and copying expenses, messenger and delivery expenses, fees and disbursements of counsel for the Company and all independent public accountants and other Persons retained by the Company.

6. **Indemnification.**

(a) In the event of any registration of any shares of Common Stock under the Securities Act pursuant to this Agreement, the Company shall indemnify and hold harmless each Investor, from and against any losses, claims, damages or liabilities, joint or several, to which each Investor may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any registration statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, or any document incident to registration or qualification of any Registrable Securities pursuant to Section 3(d) herein, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or, with respect to any prospectus, necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or any violation by the Company of the Securities Act, the Exchange Act, or state securities or blue sky laws applicable to the Company and relating to action or inaction required of the Company in connection with such registration or qualification under the Securities Act or such state securities or blue sky laws. If the Company fails to defend the Investor as required by Section 6(c) herein, it shall reimburse (after receipt of appropriate documentation) each Investor for any legal or any other out-of-pocket expenses reasonably incurred by any of them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company shall not be liable to an Investor in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon (i) an untrue statement or alleged untrue statement or omission or alleged omission made in said registration statement, said preliminary prospectus, said prospectus, or said amendment or supplement or any document incident to registration or qualification of any Registrable Securities pursuant to Section 3(d) hereof in reliance upon and in conformity with written information furnished to the Company by such Investor specifically for use in the preparation thereof or information omitted to be furnished by such Investor or (ii) any act or failure to act of such Investor including the failure of any Investor to deliver a prospectus as required by Section 5(b) of the Securities Act.

(b) In the event of any registration of any Registrable Securities under the Securities Act pursuant to this Agreement, each Investor shall indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 6(a)) the Company, each director of the Company, each officer of the Company who signs such registration statement, the Company's attorneys and auditors and any Person who controls the Company within the meaning of the Securities Act, with respect to (i) any untrue statement or omission from such registration statement, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, if such untrue statement or omission was made in reliance upon and in conformity with written information furnished to the Company by such Investor specifically for use in the preparation of such registration statement, preliminary prospectus, final prospectus or amendment or supplement or (ii) from any other act or failure to act of the Investor.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action involving a claim referred to in Section 6(a) or (b), such indemnified party shall, if a claim in respect thereof is made against an indemnifying party, give written notice to the Indemnifying Party of the commencement of such action. The indemnifying party shall be relieved of its obligations under this Section 6(c) to the extent that the indemnified party delays in giving notice and the indemnifying party is damaged or prejudiced by the delay. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so as to assume the defense thereof, the indemnifying party shall be responsible for any legal or other expenses subsequently incurred by the indemnifying party in connection with the defense thereof, provided, however, that, if counsel for an indemnified party shall have reasonably concluded that there is an actual or potential conflict of interest between the indemnified and the indemnifying party the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party, and such indemnifying party shall reimburse such indemnified party and any Person controlling such indemnified party for the fees and expenses of counsel retained by the indemnified party which are reasonably related to the matters covered by the indemnity agreement provided in this Section 6; provided, however, that in no event shall any indemnification by an Investor under this Section 6 exceed the net proceeds from the sale of Registered Securities received by the Investor. No indemnified party shall make any settlement of any claims indemnified against hereunder without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. In the event that any indemnifying party enters into any settlement without the written consent of the indemnified party the indemnifying party shall not, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff of a release of such indemnified party from all liability in respect to such claim or litigation.

(d) In order to provide for just and equitable contribution to joint liability under the Securities Act in any case in which under any indemnified party makes a claim for indemnification pursuant to this Section 6, but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 6 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required in circumstances for which indemnification is provided under this Section 6; then, in each such case, the Company and such Investor shall contribute to the aggregate losses, claims, damages or liabilities to which they may be subject as is appropriate to reflect the relative fault of the Company and such Investor in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, it being understood that the parties acknowledge that the overriding equitable consideration to be given effect in connection with this provision is the ability of one party or the other to correct the statement or omission (or avoid the conduct or take an act) which resulted in such losses, claims, damages or liabilities, and that it would not be just and equitable if contribution pursuant hereto were to be determined by pro-rata allocation or by any other method of allocation which does not take into consideration the foregoing equitable considerations. Notwithstanding the foregoing, (i) no such Investor shall be required to contribute any amount in excess of the net proceeds to him of all Registrable Securities sold by him pursuant to such registration statement, and (ii) no Person who is guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act shall be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

(e) Notwithstanding any of the foregoing, if, in connection with an underwritten public offering of the Registrable Securities, the Company, any of the Investor and the underwriters enter into an underwriting agreement relating to such offering which contains provisions covering indemnification among the parties, then the indemnification provision of this Section 6 shall be deemed inoperative for purposes of such offering.

7. **Certain Limitations on Registration Rights.** At any time prior to the effectiveness of any registration statement filed pursuant to this Agreement, if the Company determines to file a registration statement with the Commission for the public sale of its securities and the managing underwriter of such offering offers to purchase the Registrable Securities for its own account at the same price including underwriting discounts and applicable expenses as paid to the Company, the Investor shall either (i) elect to include their Registrable Securities being registered pursuant to this Agreement in the registration statement covering the sale of the Company's securities, or (ii) immediately cease their public sales for a period of 90 days following the effective date of the registration statement covering the sale by the Company. Additionally, no Investor may participate in the registration statement relating to the sale by the Company of its Common Stock as provided above unless such Investor enters into an underwriting agreement with the managing underwriter and completes and/or executes all questionnaires, indemnities and other reasonable documents requested by the managing underwriter. Each Investor shall be deemed to have agreed by acquisition of its Registrable Securities not to effect any public sale or distribution, including any sale pursuant to Rule 144 under the Securities Act, of any Registrable Securities and to use its best efforts not to effect any such public sale or distribution of any other equity security of the Company (including any short sale) or of any security convertible into or exchangeable or exercisable for any equity security of the Company (other than as part of such underwritten public offering) within 10 days before or 90 days after the effective date of such registration statement. In such event, the Investor shall, if requested, sign a customary market stand-off letter with the Company's managing underwriter, and to comply with applicable rules and regulations of the Commission.

8. **Allocation of Securities Included in Registration Statement.** In the case of a registration pursuant to Section 7 for the Company's account, if the Company's managing underwriter shall advise the Company and the Investor in writing that the inclusion in any registration pursuant hereto of some or all of (a) the Registrable Securities sought to be registered by the Investor and securities offered by other holders, and (b) the Company's securities sought to be registered creates a substantial risk that the proceeds or price per unit that will be derived from such registration will be reduced or that the number of securities to be registered is too large a number to be reasonably sold, (i) first, the number of Company securities sought to be registered shall be included in such registration, and (ii) next, the number of Registrable Securities offered by the Investor and securities offered by other holders shall be included in such registration to the extent permitted by the Company's managing underwriter with the number of Registrable Securities and such other securities being registered determined on a pro-rata basis based on the number of Registered Securities and securities the participating holders including the Investor desire to have registered; provided, however, that, if any participating Investor would be required pursuant to the provisions of this Section 7 to reduce the number of Registrable Securities that he may include in such registration, the Investor may withdraw all or any portion of its Registrable Securities from such registration and may resume selling shares under the registration statement (assuming it is effective) referred to in Section 2 after the 90-day lock-up period.

9. **Rule 144.** The Company covenants that it will file the reports required to be filed under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission thereunder (or, in the event that the Company is not required to file such reports, it will make publicly available information as set forth in Rule 144(c)(2) promulgated under the Securities Act), and it will take such further action as the Investor may reasonably request, or to the extent required from time to time to enable the Investor to sell their Registrable Securities without registration under the Securities Act within the limitation of the exemption provided by (a) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the Commission (collectively, "Rule 144"). Upon request of any Investor, the Company will deliver to the Investor a written statement as to whether it has complied with such requirements.

10. **Severability.** In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

12. **Benefit.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns.

13. **Notices and Addresses.** All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by Federal Express or similar overnight next business day delivery, or by email delivery followed by overnight next business day delivery as follows:

To the Company: Sport Endurance, Inc.  
222 Broadway, 19th Floor  
New York, NY 10038  
Attention: David Lelong  
Email: david@sportendurancehq.com

With a Copy to: Nason, Yeager, Gerson, Harris & Fumero, P.A.  
3001 PGA Boulevard, Suite 305  
Palm Beach Gardens, FL 33410  
Attention: Michael D. Harris, Esq.  
Email: mharris@nasonyeager.com

To the Investor, to: the address and email address listed on the signature page hereto.

or to such other address as any of them, by notice to the other may designate from time to time. The transmission confirmation receipt from the sender's facsimile machine shall be evidence of successful facsimile delivery. Time shall be counted from the date of transmission.

14. **Attorneys' Fees.** In the event that there is any controversy or claim arising out of or relating to this Agreement, or to the interpretation, breach or enforcement thereof, and any action or proceeding relating to this Agreement is filed, the prevailing party shall be entitled to an award by the court of reasonable attorneys' fees, costs and expenses.

15. **Oral Evidence.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.

16. **Additional Documents.** The parties hereto shall execute such additional instruments as may be reasonably required by their counsel in order to carry out the purpose and intent of this Agreement and to fulfill the obligations of the parties hereunder.

17. **Governing Law.** This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein or performance shall be governed or interpreted according to the internal laws of the State of Nevada without regard to choice of law considerations.

18. **Section or Paragraph Headings.** Section headings herein have been inserted for reference only and shall not be deemed to limit or otherwise affect, in any matter, or be deemed to interpret in whole or in part any of the terms or provisions of this Agreement.

19. **Force Majeure.** The Company shall be excused from any delay in performance or for non-performance of any of the terms and conditions of this Agreement caused by any circumstances beyond its control, including, but not limited to, any Act of God, fire, flood, or government regulation, direction or request, or accident, interruption of telecommunications facilities, labor dispute, unavoidable breakdown, civil unrest or disruption to the extent that any such circumstances affect the Company's ability to perform its obligations under this Agreement or the ability of the Commission to perform its responsibilities under the Securities Act.

*[Signature Page Follows]*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed personally or by a duly authorized representative thereof as of the day and year first above written.

**SPORT ENDURANCE, INC.**

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

Name: David Lelong

Title: Chief Executive Officer

**INVESTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Investor

\_\_\_\_\_  
Title of Authorized Signatory if Investor  
is a corporation or other entity

\_\_\_\_\_  
Signature of spouse or co-owner, if any

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email

  

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**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this "Agreement") is made and entered into as of May 6, 2019 by and among Better Choice Company Inc., a Delaware corporation (the "Company"), and the "Investors" named in the Subscription Agreements, dated April 25, 2019, by and among the Company and the Investors identified on the signature pages thereto (the "Subscription Agreements"). Capitalized terms used herein have the respective meanings ascribed thereto in the Subscription Agreements unless otherwise defined herein.

The parties hereby agree as follows:

1. Certain Definitions. As used in this Agreement, the following terms shall have the following meanings:

"1933 Act" means the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder..

"1934 Act" means the Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

"Common Stock" means the common stock, par value \$0.001 per share, of the Company.

"JOBS Act" means The Jumpstart Our Business Startups Act of 2012, as amended, and the rules and regulations promulgated by the SEC thereunder.

"Investors" means the Investors identified in the Subscription Agreements and any Affiliate or permitted transferee of any such Investor who is a subsequent holder of Registrable Securities.

"Prospectus" means (i) the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus, and (ii) any "free writing prospectus" as defined in Rule 405 under the 1933 Act.

"Register," "registered" and "registration" refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act, and the declaration or ordering of effectiveness of such Registration Statement or document.

"Registrable Securities" means (i) the Shares, (ii) the Common Stock issuable upon the exercise of the Warrants and (iii) any other shares of Common Stock issued pursuant to a stock split, as a dividend or other distribution with respect to, in exchange for or in replacement of the Shares or the Warrant Shares; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) upon the first to occur of (A) a Registration Statement with respect to the sale all of such Registrable Securities being declared effective by the SEC under the 1933 Act and such Registrable Securities having been disposed of or transferred by the holder thereof in accordance with such effective Registration Statement, (B) such Registrable Securities having been previously sold or transferred in accordance with Rule 144 (or another exemption from the registration requirements of the 1933 Act), (C) such securities becoming eligible for resale without volume or manner-of-sale restrictions and without current public information requirements pursuant to Rule 144 and (D) the third anniversary of the Closing Date.

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“Registration Statement” means any registration statement of the Company under the 1933 Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

“Required Investors” means the Investors holding a majority of the Registrable Securities outstanding from time to time.

“Rule 144” means Rule 144 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

“Rule 172” means Rule 172 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

“Rule 415” means Rule 415 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

“Rule 416” means Rule 416 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

“Rule 424” means Rule 424 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

“SEC” means the U.S. Securities and Exchange Commission.

“SEC Guidance” means (i) any publicly-available written or oral guidance of the SEC staff, or any comments, requirements or requests of the SEC staff and (ii) the 1933 Act.

“Warrants” means the warrants to purchase Common Stock acquired by the Investors pursuant to the Subscription Agreements.

“Warrant Exercise Price” means \$4.25 per share.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants at the Warrant Exercise Price.

2. Registration.

(a) Registration Statement.

(i) By July 5, 2019 (the "Filing Deadline"), the Company shall prepare and file with the SEC one Registration Statement covering the resale of all of the Registrable Securities which, for the avoidance of doubt, may also register the sale of primary securities. Subject to any SEC comments, such Registration Statement shall include the plan of distribution, substantially in the form and substance, set forth in each Investor's Selling Stockholder Questionnaire. Such Registration Statement also shall cover, to the extent allowable under the 1933 Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. Upon request, such Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided in accordance with Section 3(c) to the Investors prior to its filing or other submission. If a Registration Statement covering the Registrable Securities is not filed with the SEC on or prior to the Filing Deadline, at the election of each Investor, the Company will make pro rata payments to each electing Investor, as liquidated damages and not as a penalty, in an amount equal to 1% of the aggregate amount paid pursuant to the Subscription Agreements by such Investor for such Registrable Securities then held by such Investor for each 30-day period or pro rata for any portion thereof following the Filing Deadline for which no Registration Statement is filed with respect to the Registrable Securities. For each Investor that elects to receive such liquidated damages, such payments shall constitute such Investors' exclusive monetary remedy for such events, and shall be in addition to any other rights the Investors may have hereunder or under applicable law and shall not affect the right of the Investors to seek injunctive relief. Such payments shall be made to each electing Investor in cash no later than ten (10) Business Days after the end of each 30-day period (the "Payment Date"). Interest shall accrue at the rate of 1% per month on any such liquidated damages payments that shall not be paid by the Payment Date until such amount is paid in full.

(ii) The Company shall take commercially reasonable efforts to register the Registrable Securities on Form S-3 following the date such form is available for use by the Company, provided that if at such time the Registration Statement is on Form S-1, the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

(b) Expenses. The Company will pay all expenses associated with each Registration Statement, including filing and printing fees, the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws and listing fees, but excluding discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold. Except as provided in Section 6 hereof, the Company shall not be responsible for legal fees incurred by holders of Registrable Securities in connection with the performance of its rights and obligations under the Transaction Documents.

(c) Effectiveness.

(i) The Company shall use commercially reasonable efforts to have the Registration Statements declared effective as soon as practicable. The Company shall notify the Investors by facsimile or e-mail as promptly as practicable, and in any event, within forty-eight (48) hours, after (x) the SEC notified the Company that it has no further comments to the Registration Statement and (y) any Registration Statement is declared effective, and shall simultaneously provide the Investors with access to a copy of any related Prospectus to be used in connection with the sale or other disposition of the securities covered thereby. Subject to Section 2(d), if (A) a Registration Statement covering the Registrable Securities is not declared effective by the SEC prior to the 120th day after the Closing Date (or the 150th day if the SEC reviews such Registration Statement) (the “Effectiveness Deadline”), or (B) after a Registration Statement has been declared effective by the SEC, sales cannot be made pursuant to such Registration Statement for any reason (including without limitation by reason of a stop order, or the Company’s failure to update such Registration Statement), but excluding any Allowed Delay (as defined below) or, if the Registration Statement is on Form S-1, for a period of twenty (20) days following the date on which the Company files a post-effective amendment to incorporate the Company’s Annual Report on Form 10-K (a “Maintenance Failure”), then, at the election of each Investor, the Company will make pro rata payments to each electing Investor then holding Registrable Securities, as liquidated damages and not as a penalty, in an amount equal to 1% of the aggregate amount paid pursuant to the Subscription Agreements by such Investor for such Registrable Securities then held by such Investor for each 30-day period or pro rata for any portion thereof following the date by which such Registration Statement should have been effective (the “Blackout Period”). For each Investor that elects to receive liquidated damages, such payments shall constitute such Investors’ exclusive monetary remedy for such events and shall be in addition to any other rights the Investors may have hereunder or under applicable law and shall not affect the right of the Investors to seek injunctive relief. The amounts payable as liquidated damages pursuant to this paragraph shall be paid no later than ten (10) Business Days after each such 30-day period following the commencement of the Blackout Period until the termination of the Blackout Period. Such payments shall be made to each electing Investor in cash. Interest shall accrue at the rate of 1% per month on any such liquidated damages payments that shall not be paid by the Blackout Payment Date until such amount is paid in full.

(ii) Notwithstanding anything to the contrary contained herein, the Company may, upon written notice to any holder of Registrable Securities included in a Registration Statement, suspend the use of any Registration Statement, including any Prospectus that forms a part of a Registration Statement, if the Company (X) determines that it would be required to make disclosure of material information in the Registration Statement that the Company has a bona fide business purpose for preserving as confidential, (Y) the Company determines it must amend or supplement the Registration Statement or the related Prospectus so that such Registration Statement or Prospectus shall not include 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 the case of the Prospectus in light of the circumstances under which they were made, not misleading or (Z) the Company has experienced or is experiencing some other material non-public event, including a pending transaction involving the Company, the disclosure of which at such time, in the good faith judgment of the Company, would adversely affect the Company; provided, however, in no event shall holders of Registrable Securities be suspended from selling Registrable Securities pursuant to the Registration Statement for a period that exceeds 120 calendar days (which need not be consecutive) in any 360-day period (any such suspension contemplated by this Section 2(c)(ii), an “Allowed Delay”). Upon disclosure of such information or the termination of the condition described above, the Company shall provide prompt notice to holders whose Registrable Securities are included in the Registration Statement, and shall promptly terminate any suspension of sales it has put into effect and shall take such other reasonable actions to permit registered sales of Registrable Securities as contemplated hereby.

(d) Rule 415; Cutback. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act (provided, however, the Company shall be obligated to use commercially reasonable efforts to advocate with the SEC for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09) or requires any Investor to be named as an “underwriter,” the Company shall (i) promptly notify each holder of Registrable Securities thereof and (ii) make commercially reasonable efforts to persuade the SEC that the offering contemplated by such Registration Statement is a valid secondary offering and not an offering “by or on behalf of the issuer” as defined in Rule 415 and that none of the Investors is an “underwriter.” The Investors shall have the right to select one legal counsel, at the Investors’ expense, designated by the holders of a majority of the Registrable Securities to review and oversee any registration or matters pursuant to this Section 2(d), including participation in any meetings or discussions with the SEC regarding the SEC’s position and to comment on any written submission made to the SEC with respect thereto. No such written submission with respect to this matter shall be made to the SEC to which the Investors’ counsel reasonably objects. In the event that, despite the Company’s commercially reasonable efforts and compliance with the terms of this Section 2(d), the SEC refuses to alter its position, the Company shall (i) remove from such Registration Statement such portion of the Registrable Securities (the “Cut Back Shares”) and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company’s compliance with the requirements of Rule 415 (collectively, the “SEC Restrictions”); provided, however, that the Company shall not agree to name any Investor as an “underwriter” in such Registration Statement without the prior written consent of such Investor. In the event of a cutback hereunder, the Company shall give the Investor prompt written notice along with the calculations as to such Investor’s allotment. Any cut-back imposed on the Investors pursuant to this Section 2(d) shall be allocated among the Investors on a pro rata basis and shall be applied first to any of the Registrable Securities of such Investor as such Investor shall designate, unless the SEC Restrictions otherwise require or provide or the Investors otherwise agree. No liquidated damages shall accrue as to any Cut Back Shares until such date as the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Restrictions applicable to such Cut Back Shares (such date, the “Restriction Termination Date”). In furtherance of the foregoing, each Investor shall provide the Company with prompt written notice of its sale of substantially all of the Registrable Securities under such Registration Statement such that the Company will be able to file one or more additional Registration Statements covering the Cut Back Shares. From and after the Restriction Termination Date applicable to any Cut Back Shares, all of the provisions of this Section 2 (including the Company’s obligations with respect to the filing of a Registration Statement and its obligations to use commercially reasonable efforts to have such Registration Statement declared effective within the time periods set forth herein and the liquidated damages provisions relating thereto) shall again be applicable to such Cut Back Shares; provided, however, that (i) the Filing Deadline for such Registration Statement including such Cut Back Shares shall be ten (10) Business Days after such Restriction Termination Date, and (ii) the date by which the Company is required to obtain effectiveness with respect to such Cut Back Shares shall be the 60th day immediately after the Restriction Termination Date (or the 90th day if the SEC reviews such Registration Statement).

(e) Other Limitations. Notwithstanding any other provision herein or in the Subscription Agreements, (i) the Filing Deadline and each Effectiveness Deadline for a Registration Statement shall be extended and any Maintenance Failure shall be automatically waived by no action of the Investors, in each case, without default by or liquidated damages payable by the Company hereunder in the event that the Company's failure to make such filing or obtain such effectiveness or a Maintenance Failure results from the failure of an Investor to timely provide the Company with information requested by the Company and necessary to complete a Registration Statement in accordance with the requirements of the 1933 Act (in which case any such deadline would be extended, and a Maintenance Failure waived, with respect to all Registrable Securities until such time as the Investor provides such requested information) and (ii) in no event shall the aggregate amount of liquidated damages (or interest thereon) paid to an Investor hereunder exceed, in the aggregate, 6% of the aggregate purchase price of the Shares and Warrants purchased by such Investor under the Subscription Agreements.

(f) JOBS ACT Submissions. For purposes of this Agreement, if the Company elects to confidentially submit a draft of the Registration Statement with the SEC pursuant to the JOBS Act, the date on which the Company makes such confidential submission will be deemed the initial filing date of such Registration Statement.

3. Company Obligations. The Company will use commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the terms hereof, and pursuant thereto the Company will, as expeditiously as possible:

(a) use commercially reasonable efforts to cause such Registration Statement to become effective and to remain continuously effective until such time as there are no longer Registrable Securities held by the Investors (the "Effectiveness Period") and advise the Investors promptly in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and the related Prospectus as may be necessary to keep such Registration Statement effective for the Effectiveness Period and to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered thereby;

(c) permit, upon request, any counsel designated by the Investors to review each Registration Statement and all amendments and supplements thereto prior to their filing with the SEC and shall use commercially reasonable efforts to reflect in such documents any comments as such counsel may reasonably propose;

(d) furnish to each Investor whose Registrable Securities are included in any Registration Statement (i) promptly after the same is prepared and filed with the SEC, if requested by the Investor, one (1) copy of any Registration Statement and any amendment thereto, each preliminary prospectus and Prospectus and each amendment or supplement thereto, and each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion thereof which contains information for which the Company has sought confidential treatment), and (ii) such number of copies of a Prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as each Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor (it being understood and agreed that such documents, or access thereto, may be provided electronically);

(e) use commercially reasonable efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and, (ii) if such order is issued, obtain the withdrawal of any such order at the earliest possible moment;

(f) prior to any public offering of Registrable Securities, use commercially reasonable efforts to assist or cooperate with the Investors and their counsel in connection with their registration or qualification of such Registrable Securities for the offer and sale under the securities or blue sky laws of such jurisdictions reasonably requested by the Investors; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(f), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(f), or (iii) file a general consent to service of process in any such jurisdiction;

(g) use commercially reasonable efforts to cause all Registrable Securities covered by a Registration Statement to be listed on the primary securities exchange, interdealer quotation system or other market on which the Common Stock is then listed;

(h) promptly notify the Investors, at any time prior to the end of the Effectiveness Period, upon discovery that, or upon the happening of any event as a result of which, the Prospectus includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare, file with the SEC and furnish to such holder a supplement to or an amendment of such Prospectus as may be necessary so that such Prospectus shall not include 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 not misleading in light of the circumstances then existing;

(i) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Investors in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Investors are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder;

(j) with a view to making available to the Investors the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Investors to sell shares of Common Stock to the public without registration, the Company covenants and agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) six months after such date as all of the Registrable Securities may be sold without restriction by the holders thereof pursuant to Rule 144 or any other rule of similar effect or (B) such date as there are no longer Registrable Securities; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; and (iii) furnish electronically to each Investor upon request, as long as such Investor owns any Registrable Securities, (A) a written statement by the Company that it has complied with the reporting requirements of the 1934 Act, (B) a copy of or electronic access to the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q in which the Company has furnished its annual or quarterly financial statements, and (C) such other information as may be reasonably requested in order to avail such Investor of any rule or regulation of the SEC that permits the selling of any such Registrable Securities without registration; and

(k) if requested by an Investor, cooperate with such Investor to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to an effective Registration Statement, which certificates shall be free, to the extent permitted by applicable law, of all restrictive legends, and to enable such certificates to be in such denominations and registered in such names as any such Investor may request.

4. Due Diligence Review; Information. If any Investor is required under applicable securities laws to be described in a Registration Statement as an "underwriter," the Company shall, upon reasonable prior notice, make available, during normal business hours, for inspection and review by the Investors, advisors to and representatives of the Investors (who may or may not be affiliated with the Investors and who are reasonably acceptable to the Company) (collectively, the "Inspectors"), all pertinent financial and other records, and all other corporate documents and properties of the Company (collectively, the "Records") as may be reasonably necessary for the purpose of such review, and cause the Company's officers, directors and employees, within a reasonable time period, to supply all such information reasonably requested by the Inspectors (including, without limitation, in response to all questions and other inquiries reasonably made or submitted by any of them), prior to and from time to time after the filing and effectiveness of such Registration Statement for the sole purpose of enabling such Investor and its accountants and attorneys to conduct such due diligence solely for the purpose of establishing a due diligence defense to underwriter liability under the 1933 Act; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to such Investor) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this Section 4, the Subscription Agreements or any confidentiality agreement between the Company and each Investor. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and any Investor) shall be deemed to limit the Investors' ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

Notwithstanding the foregoing, the Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

5. Obligations of the Investors.

(a) Each Investor shall execute and deliver a Selling Stockholder Questionnaire prior to the Closing Date. Each Investor shall additionally furnish in writing to the Company such other information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least three (3) Business Days prior to the first anticipated filing date of any Registration Statement, the Company shall notify each Investor of the additional information the Company requires from such Investor if such Investor elects to have any of the Registrable Securities included in such Registration Statement (the "Registration Information Notice"). An Investor shall provide such information to the Company no later than two (2) Business Days following receipt of a Registration Information Notice if such Investor elects to have any of the Registrable Securities included in such Registration Statement. It is agreed and understood that it shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that (i) such Investor furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the effectiveness of the registration of such Registrable Securities, and (ii) the Investor execute such documents in connection with such registration as the Company may reasonably request, including, without limitation, a waiver of its registration rights hereunder to the extent an Investor elects not to have any of its Registrable Securities included in a Registration Statement.

(b) Each Investor, by its acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Investor has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 2(c)(ii) or (ii) the happening of an event pursuant to Section 3(h) hereof, such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement covering such Registrable Securities, until the Investor is advised by the Company that such dispositions may again be made.

(d) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement.

6. Indemnification.

(a) Indemnification by the Company. The Company will indemnify and hold harmless each Investor and its officers, directors, members, employees and agents, successors and assigns, and each other person, if any, who controls such Investor within the meaning of the 1933 Act, against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement or omission or alleged omission of any material fact contained in any Registration Statement, any preliminary Prospectus or final Prospectus, or any amendment or supplement thereof; provided, however, that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon (i) an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Investor or any such controlling person in writing specifically for use in such Registration Statement or Prospectus, (ii) the use by an Investor of an outdated or defective Prospectus after the Company has notified such Investor in writing that such Prospectus is outdated or defective or (iii) an Investor's failure to send or give a copy of the Prospectus or supplement (as then amended or supplemented), if required (and not exempted) to the Persons asserting an untrue statement or omission or alleged untrue statement or omission at or prior to the written confirmation of the sale of Registrable Securities.

(b) Indemnification by the Investors. Each Investor agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees, stockholders and each person who controls the Company (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities and expense (including reasonable attorney fees) resulting from any untrue statement of a material fact or any omission of a material fact required to be stated in any Registration Statement or Prospectus or preliminary Prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent, that such untrue statement or omission is contained in any information regarding such Investor and furnished in writing by such Investor to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of an Investor be greater than the dollar amount of the proceeds received by such Investor upon the sale of the Registrable Securities included in such Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (A) the indemnifying party has agreed to pay such fees or expenses, (B) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (C) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, which shall not be unreasonably withheld or conditioned, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.

(d) Contribution. If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the 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 indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

7. Miscellaneous.

(a) Amendments and Waivers. This Agreement may be amended only by a writing signed by the Company and the Required Investors. The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the Required Investors. Notwithstanding the foregoing, this Agreement may not be amended and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment or waiver applies to all Investors in the same fashion.

(b) Notices. All notices and other communications provided for or permitted hereunder shall be made as set forth in Section 8(c) of the Subscription Agreements.

(c) Assignments and Transfers by Investors. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investors and their respective successors and assigns. An Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by such Investor to such person, provided that (i) the Investor agrees in writing with the transferee or assignee to assign such rights and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (A) the name and address of such transferee or assignee and (B) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act or applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein and (v) such transfer shall have been made in accordance with the applicable requirements of the Subscription Agreements.

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Investors, provided, however, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the shares of Common Stock are converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Registrable Securities" shall be deemed to include the securities received by the Investors in connection with such transaction unless such securities are otherwise freely tradable by the Investors after giving effect to such transaction.

(e) Benefits of the Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(f) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile or e-mail, which shall be deemed an original.

(g) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

(i) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof (other than sections 5-1401 and 5-1402 of the General Obligations Law). Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

(l) Filing Restrictions. The Company will register the resale of Registrable Securities representing Cut Back Shares on an effective Registration Statement prior to or concurrent with registering the resale of its securities by a selling security holder not holding Registrable Securities; provided, however, that this Section 7(l) shall not apply to Registrable Securities representing Cut Back Shares that were excluded from any such Registration Statement on account of the failure of a holder of such Registrable Securities to comply with the provisions hereof, including, but not limited to, the requirement of a holder to provide information required to be included in a Registration Statement.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

**COMPANY:**

BETTER CHOICE COMPANY INC.

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

*[Signature Page to Registration Rights Agreement]*

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IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

**INVESTOR:**

*[investor names and addresses to be inserted once known]*

*[Signature Page to Registration Rights Agreement]*

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**FIRST AMENDMENT TO  
REGISTRATION RIGHTS AGREEMENT  
OF  
BETTER CHOICE COMPANY INC.**

THIS FIRST AMENDMENT to the Registration Rights Agreement (this "Amendment"), dated as of June 10, 2019, is entered into by and among Better Choice Company Inc., a Delaware corporation (the "Company") and the stockholders of the Company who have executed signature pages hereto (collectively, the "Stockholders" and, together with the Company, the "Parties"). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Rights Agreement (as defined below).

WHEREAS, the Company and certain investors named in the Subscription Agreements, dated April 25, 2019, by and among the Company and the investors identified on the signature pages thereto, are parties to that certain Registration Rights Agreement, dated as of May 6, 2019 (the "Registration Rights Agreement");

WHEREAS, Section 7(a) of the Registration Rights Agreement provides that the Registration Rights Agreement may be amended only by a writing signed by the Company and the Investors holding a majority of the Registrable Securities outstanding from time to time; and

WHEREAS, the Company and the Stockholders wish to amend the Registration Rights Agreement as provided herein.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Amendment to Section 2(a)(i). The first sentence of Section 2(a)(i) is hereby amended and restated to read as follows:

"By August 16, 2019 (the "Filing Deadline"), the Company shall prepare and file with the SEC one Registration Statement covering the resale of all of the Registrable Securities which, for the avoidance of doubt, may also register the sale of primary securities."

2. Amendment to Section 2(c)(i). The third sentence of Section 2(c)(i) is hereby amended and restated to read as

"Subject to Section 2(d), if (A) a Registration Statement covering the Registrable Securities is not declared effective by the SEC prior to the 162nd day after the Closing Date (or the 192nd day if the SEC reviews such Registration Statement) (the "Effectiveness Deadline"), or (B) after a Registration Statement has been declared effective by the SEC, sales cannot be made pursuant to such Registration Statement for any reason (including without limitation by reason of a stop order, or the Company's failure to update such Registration Statement), but excluding any Allowed Delay (as defined below) or, if the Registration Statement is on Form S-1, for a period of twenty (20) days following the date on which the Company files a post-effective amendment to incorporate the Company's Annual Report on Form 10-K (a "Maintenance Failure"), then, at the election of each Investor, the Company will make pro rata payments to each electing Investor then holding Registrable Securities, as liquidated damages and not as a penalty, in an amount equal to 1% of the aggregate amount paid pursuant to the Subscription Agreements by such Investor for such Registrable Securities (except in the case of the Warrants issued to Canaccord Genuity LLC on the date hereof, such liquidated damages shall be equal to 1% of the Warrant Exercise Price for such Warrants multiplied by the number of such Warrants outstanding) then held by such Investor for each 30-day period or pro rata for any portion thereof following the date by which such Registration Statement should have been effective (the "Blackout Period")."

3. No Further Effect. Except as amended hereby, all terms and provisions of the Registration Rights Agreement shall remain in full force and effect, and are hereby ratified and confirmed by the Parties. All references in the Registration Rights Agreement to “this Agreement,” “herein,” “hereof,” “hereby” and words of similar import shall refer to the Registration Rights Agreement, as amended hereby. In the event of any conflict between the provisions of this Amendment and the Registration Rights Agreement, the provisions of this Amendment shall control.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature delivered by facsimile, pdf, electronic mail or other electronic means shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original. The Parties shall not raise the use of facsimile machine, pdf, electronic mail or other electronic means to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine, pdf, electronic mail or other electronic means as a defense to the formation or enforceability of a contract and each of the Parties forever waives any such defense.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York, as applied to contracts made and performed within the State of New York, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

**COMPANY:**

**BETTER CHOICE COMPANY INC.**

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

*[Signature Page to First Amendment to Registration Rights Agreement]*

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is entered into as of May 6, 2019 (the “**Execution Date**”) by and among Better Choice Company Inc., a Delaware corporation (the “**Company**”), and the undersigned (the “**Investor**”).

WHEREAS, the Company intends to issue shares of its common stock to the Investor pursuant to that certain Agreement and Plan of Merger, dated as of February 28, 2019, by and among the Company, Bona Vida, Inc. and BCC Merger Sub, Inc. (the “**Merger Agreement**”); and

WHEREAS, Pursuant to Section 5.11 of the Merger Agreement, the Company has agreed to provide certain registration rights to the Investor.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND THE COVENANTS AS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

**1 . Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms herein defined.

“**2019 Shares**” has the meaning assigned to it in Section 2(b) of this Agreement.

“**2019 Investors**” has the meaning assigned to it in Section 2(b) of this Agreement.

“**Agreement**” has the meaning assigned to it in the introductory paragraph of this Agreement.

“**Applicable Stockholders**” has the meaning assigned to it in Section 2(c) of this Agreement.

“**Bona Vida Shareholder**” shall mean a Person that receives shares of Common Stock on the Closing Date pursuant to the terms of the Merger Agreement.

“**Closing Date**” has the meaning assigned to it in Section 2.2 of the Merger Agreement.

“**Common Stock**” means the Company’s authorized common stock, as constituted on the date of this Agreement, any stock into which such Common Stock may thereafter be changed and any stock of the Company of any other class, which is not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption, issued to the holders of shares of such Common Stock upon any re-classification thereof.

“**Commission**” means the Securities and Exchange Commission or any other governmental body at the time administering the Securities Act.

“**Company**” has the meaning assigned to it in the introductory paragraph of this Agreement.

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“**Demand Notice**” has the meaning assigned to it in Section 2(c) of this Agreement.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Excluded Forms**” means registration statements under the Securities Act, on Forms S-4 and S-8, or any successors thereto and any form used in connection with an initial public offering of securities.

“**Excluded Registration**” means (i) a registration relating to the sale or grant of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, equity incentive or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

“**Execution Date**” has the meaning assigned to it in the introductory paragraph of this Agreement.

“**Extra Shares**” has the meaning assigned to it in Section 2(b) of this Agreement.

“**Initial Registration**” has the meaning assigned to it in Section 2(a) of this Agreement.

“**Initiating Stockholders**” means, collectively, investors of the Company who properly initiate a registration request under this Agreement.

“**Investor**” has the meaning assigned to it in the introductory paragraph of this Agreement.

“**Merger Agreement**” has the meaning assigned to it in the first WHEREAS clause.

“**Other Shares**” has the meaning assigned to it in Section 4(f) of this Agreement.

“**Person**” includes any natural person, corporation, trust, association, company, partnership, joint venture, limited liability company and other entity and any government, governmental agency, instrumentality or political subdivision.

“**Pro Rata Share**” shall mean a number of Registrable Securities equal to the number of Registrable Securities received by the Investor divided by the total number of Registrable Securities received by all Bona Vida Shareholders.

The terms “**register**,” “**registered**” and “**registration**” refer to a registration effected by preparing and filing a registration statement on other than any of the Excluded Forms in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“**Registrable Securities**” means the Common Stock acquired by the Investor pursuant to the Merger Agreement and any securities of the Company issued with respect to such Common Stock by way of a stock dividend or stock split or in connection with a combination, recapitalization, share exchange, consolidation or other reorganization of the Company.

“**Rule 144**” has the meaning assigned to it in Section 10 of this Agreement.

“**SEC Restrictions**” has the meaning assigned to it in Section 9 of this Agreement.

“**Selling Expenses**” means all selling commissions, finder’s fees and stock transfer taxes applicable to the Registrable Securities registered by the Investor and all fees and disbursements of counsel for the Investor.

“**Securities Act**” means the Securities Act of 1933, as amended.

**2. Registration.**

(a) **Mandatory Registration.** As soon as practicable following the Closing Date, the Company shall use commercially reasonable efforts to file a registration statement on Form S-1 (or other applicable form) with the Commission permitting the Investor to publicly sell some or all of its Registrable Securities (the “**Initial Registration**”).

(b) **Number of Registrable Securities.** The number of Registrable Securities to be included as part of any registration statement shall be determined as follows: (i) the Company shall first include with such registration statement all shares of the Company’s Common Stock (the “**2019 Shares**”) sold to investors through a broker-dealer in a proposed securities offering closing on or about April 15, 2019 (the “**2019 Investors**”); and (ii) to the extent the Company may register a greater number of shares of the Company’s Common Stock than those comprising the 2019 Shares (the “**Extra Shares**”), the Investor shall be entitled to register its Pro Rata Share of one-third (1/3) of such Extra Shares.

(c) **Demand Registration.** If at any time after the effective date of the Initial Registration, the Company receives a request from stockholders of the Company holding five percent (5%) of the Registrable Securities then outstanding that the Company file a registration statement with respect to the Registrable Securities then outstanding, then the Company shall (i) within ten (10) days after the date such request is given, give notice thereof (the “**Demand Notice**”) to all stockholders which have registration rights (the “**Applicable Stockholders**”) other than the Initiating Stockholders; and (ii) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Stockholders, file a registration statement under the Securities Act covering all Registrable Securities that the Initiating Stockholders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Initiating Stockholders, as specified by notice given by each such stockholders to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of set forth herein.

**3 . Obligations of the Company.** If and whenever the Company is required by the provisions hereof to effect or cause the registration of any Registrable Securities under the Securities Act as provided herein, the Company shall:

(a) use commercially reasonable efforts to prepare and file with the Commission a registration statement with respect to such Registrable Securities and use commercially reasonable efforts to cause such registration statement to become and remain effective for the period referred to in Section 4(a);

(b) use commercially reasonable efforts to prepare and file with the Commission such amendments to such registration statement (including post-effective amendments) and supplements to the prospectus included therein as may be necessary to keep such registration statement effective, subject to the qualifications in Section 4(a), and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such registration statement during such period in accordance with the intended methods of disposition by the Investor set forth in such registration statement;

(c) furnish to the Investor such number of copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus), in conformity with the requirements of the Securities Act, and such other documents, as each Investor may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Securities owned by the Investor;

(d) use its commercially reasonable efforts to register or qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Investor; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act; and provided further, that in no event shall any stockholders of the Company be required to place any shares of Common Stock in escrow in order to register or qualify the Registrable Securities.

(e) notify the Investor at any time when a prospectus relating to its Registrable Securities is required to be delivered under the Securities Act, of the Company's becoming aware that the prospectus included in the related registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare and furnish to the Investor a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the Investors of such Registrable Securities, such prospectus shall not include 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 not misleading in the light of the circumstances then existing;

(f) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission;

(g) use commercially reasonable efforts to cause Registrable Securities to be listed or quoted on each national securities exchange and/or in each trading market on which the Common Stock of the Company is then listed or quoted; and

(h) notify the Investor of any stop order threatened or issued by the Commission and take all actions reasonably necessary to prevent the entry of such stop order or to remove it if entered.

**4. Other Procedures.**

(a) Subject to the Company's general obligation to use commercially reasonable efforts under Section 3, the Company shall be required to maintain the effectiveness of a registration statement (on Form S-1 or other applicable form) until the earlier of (i) the sale of all Registrable Securities or (ii) two (2) years from the effective date of the registration statement. The Company shall have no liability to the Investor for delays in the Investor being able to sell the Registrable Securities (x) as long as the Company uses commercially reasonable efforts to file a registration statement, amendments to the registration statement or supplements to a prospectus contained in a registration statement (including any amendment or post effective amendments), (y) where the required financial statements or auditor's consents are unavailable or (z) as provided in Section 4(f).

(b) In consideration of the Company's obligations under this Agreement, the Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e), the Investor shall forthwith discontinue his sale of Registrable Securities pursuant to the registration statement covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) and, if so directed by the Company, shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in the Investor's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

(c) The Company's obligation to file any registration statement or amendment, including any post-effective amendment, shall be subject to the Investor and each stockholder, as applicable, furnishing to the Company in writing such information and documents regarding such Investor and Applicable Stockholder of the Company and the distribution of such Investor's or Applicable Stockholder's Registrable Securities as may reasonably be required to be disclosed in the registration statement in question by the rules and regulations under the Securities Act. The Company's obligations are also subject to the Investor and each other Applicable Stockholder of the Company electing to include shares of Common Stock in such registration statement promptly executing any representation letter concerning compliance with Regulation M under the Exchange Act.

(d) If any such registration or comparable statement refers to the Investor by name or otherwise as a stockholder of the Company, but such reference to the Investor by name or otherwise is not required by the Securities Act or the rules thereunder, then each Investor shall have the right to require the deletion of the reference to the Investor, as may be applicable.

(e) In connection with the sale of Registrable Securities, the Investor shall deliver to each Investor a copy of the necessary prospectus and, if applicable, prospectus supplement, within the time required by Section 5(b) of the Securities Act.

(f) Notwithstanding the foregoing obligations, if the Company furnishes to stockholder of the Company requesting a registration pursuant to Section 3 a certificate signed by at least one (1) of the Company's chief executive officers stating that in the good faith judgment of the Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing for a period of not more than thirty (30) days after the request of the Initiating Stockholders is given; provided, however, that the Company may not invoke this right more than twice in any twelve (12)-month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such thirty (30)-day period other than an Excluded Registration.

5. **Registration Expenses.** In connection with any registration of Registrable Securities pursuant to Section 2, the Company shall, whether or not any such registration shall become effective, from time to time, pay all expenses (other than Selling Expenses) incident to its performance of or compliance, including, without limitation, all registration, and filing fees, fees and expenses of compliance with securities or blue sky laws, word processing, printing and copying expenses, messenger and delivery expenses, fees and disbursements of counsel for the Company and all independent public accountants and other Persons retained by the Company.

6. **Indemnification.**

(a) **Company Indemnification.** The Company will indemnify the Investor and each stockholder of the Company who holds Registrable Securities (if Registrable Securities held by the Investor or such other stockholder are included in the securities as to which such registration is being effected), each of its officers and directors, partners, members and each person controlling such Investor within the meaning of Section 15 of the Securities Act, to the extent permitted by applicable law, against all expenses, claims, losses, damages or liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained in any Registration Statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such Registration Statement, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or (ii) any violation by the Company of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to the Company in connection with any such registration; and in each case, the Company will reimburse the Investor and each such stockholder, each of its officers and directors, partners, members and each person controlling the Investor and each such stockholder, for any legal and any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on (A) any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by the Investor and each such stockholder or controlling person, and stated to be specifically for use therein, (B) the use by the Investor or any other stockholder of an outdated or defective prospectus after the Company has notified the Investor or such other stockholder in writing that the prospectus is outdated or defective, (C) the Investor's or such other stockholder's (or any other indemnified person's) failure to send or give a copy of the prospectus or supplement (as then amended or supplemented), if required, pursuant to Rule 172 under the Securities Act (or any successor rule) to the Persons asserting an untrue statement or alleged untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such person if such statement or omission was corrected in such prospectus or supplement, or (D) any violation by the Investor or such other stockholder of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to the Investor or such other stockholder.

(b) Investor Indemnification. Each stockholder of the Company holding Registrable Securities will, if Registrable Securities held by such stockholder are included in the securities as to which such registration is being effected, severally and not jointly, indemnify the Company, each of its directors and officers, other holders of the Company's securities covered by such Registration Statement, each person who controls the Company within the meaning of Section 15 of the Securities Act, and each such holder, each of its officers and directors and each person controlling such holder within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, to the extent, and only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such stockholder and stated to be specifically for use therein, or (ii) any violation by such stockholder of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to such stockholder, and in each case, such stockholder will reimburse the Company, each other stockholder, and directors, officers, persons, underwriters or control persons of the Company and the other I for any legal or any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating or defending any such claim, loss, damage, liability or action; provided, that the indemnity agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of such indemnifying stockholder (which consent shall not be unreasonably withheld or delayed). The liability of any stockholder for indemnification under this Section 6(b) in its capacity as a seller of Registrable Securities shall not exceed the greater of (i) the amount of net proceeds to such stockholder of the securities sold in any such registration and (ii) the purchase price of the Shares paid by such stockholder.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action involving a claim referred to in Section 6(a) or Section 6(b), such indemnified party shall, if a claim in respect thereof is made against an indemnifying party, give written notice to the indemnifying Party of the commencement of such action. The indemnifying party shall be relieved of its obligations under this Section 6(c) to the extent that the indemnified party delays in giving notice and the indemnifying party is damaged or prejudiced by the delay. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so as to assume the defense thereof, the indemnifying party shall be responsible for any legal or other expenses subsequently incurred by the indemnifying party in connection with the defense thereof, provided, however, that, if counsel for an indemnified party shall have reasonably concluded that there is an actual or potential conflict of interest between the indemnified and the indemnifying party the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party, and such indemnifying party shall reimburse such indemnified party and any Person controlling such indemnified party for the fees and expenses of counsel retained by the indemnified party which are reasonably related to the matters covered by the indemnity agreement provided in this Section 6; provided, however, that in no event shall any indemnification by the Investor under this Section 6 exceed the net proceeds from the sale of Registered Securities received by the Investor. No indemnified party shall make any settlement of any claims indemnified against hereunder without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. In the event that any indemnifying party enters into any settlement without the written consent of the indemnified party the indemnifying party shall not, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff of a release of such indemnified party from all liability in respect to such claim or litigation.

(d) If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the 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 indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

(e) Notwithstanding any of the foregoing, if, in connection with an underwritten public offering of the Registrable Securities, the Company, the Investor and the underwriter(s) enter into an underwriting agreement relating to such offering which contains provisions covering indemnification among the parties, then the indemnification provision of this Section 6 shall be deemed inoperative for purposes of such offering.

7. **Certain Limitations on Registration Rights.** At any time prior to the effectiveness of any registration statement filed pursuant to this Agreement, if the Company determines to file a registration statement with the Commission for the public sale of its securities and the managing underwriter of such offering offers to purchase the Registrable Securities for its own account at the same price including underwriting discounts and applicable expenses as paid to the Company, the Investor shall either (i) elect to include their Registrable Securities being registered pursuant to this Agreement in the registration statement covering the sale of the Company's securities, or (ii) immediately cease their public sales for a period of ninety (90) days following the effective date of the registration statement covering the sale by the Company. Additionally, the Investor may not participate in the registration statement relating to the sale by the Company of its Common Stock as provided above unless the Investor enters into an underwriting agreement with the managing underwriter and completes and/or executes all questionnaires, indemnities and other reasonable documents requested by the managing underwriter. The Investor shall be deemed to have agreed by acquisition of its Registrable Securities not to effect any public sale or distribution, including any sale pursuant to Rule 144 under the Securities Act, of any Registrable Securities and to use its best efforts not to effect any such public sale or distribution of any other equity security of the Company (including any short sale) or of any security convertible into or exchangeable or exercisable for any equity security of the Company (other than as part of such underwritten public offering) within ten (10) days before or ninety (90) days after the effective date of such registration statement. In such event, the Investor shall, if requested, sign a customary market stand-off letter with the Company's managing underwriter, and to comply with applicable rules and regulations of the Commission.

**8 . Allocation of Securities Included in Registration Statement.** In the case of a registration pursuant to Section 7 for the Company's account, if the Company's managing underwriter shall advise the Company and the Investor in writing that the inclusion in any registration pursuant hereto of some or all of (a) the Registrable Securities permitted to be registered by the Investor and securities offered by other stockholders, and (b) the Company's securities sought to be registered creates a substantial risk that the proceeds or price per unit that will be derived from such registration will be reduced or that the number of securities to be registered is too large a number to be reasonably sold, (i) first, the number of Company securities sought to be registered shall be included in such registration, (ii) next, the number of Registrable Securities offered by the 2019 Investors shall be included in such registration, and (iii) next, the number of Registrable Securities offered by (x) the Bona Vida Shareholders, (y) purchasers in the Company's December 2018 private placement and (z) the former members of Trupet LLC (other than the Company) shall be included in such registration statement, with each group of investors in clauses (x), (y) and (z) permitted to register one-third of any permissible sum (with each Bona Vida Shareholder allowed to include up to his Pro Rata Share) to the extent permitted by the Company's managing underwriter; provided, however, that, if the Investor would be required pursuant to the provisions of this Section 8 to reduce the number of Registrable Securities that it may include in such registration, the Investor may withdraw all or any portion of its Registrable Securities from such registration statement and may resume selling shares under the registration statement (assuming it is effective) referred to in Section 7 after the 90-day lock-up period.

**9 . Rule 415; Cutback.** If at any time the Commission staff takes the position that the registration of some or all of the Registrable Securities in a registration statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the Securities Act or requires any Person registering Company securities as part of a registration statement contemplated hereunder to be named as an "underwriter," the Company shall use its commercially reasonable efforts to persuade the Commission staff that the offering contemplated by the registration statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that none of the Persons registering Company securities as part of a registration statement contemplated hereunder is an "underwriter." In the event that, despite the Company's commercially reasonable efforts and compliance with the terms of this Section 9, the Commission staff refuses to alter its position, the Company shall (a) remove from the registration statement such portion of the Company's securities and/or (b) agree to such restrictions and limitations on the registration and resale of the Company's securities as the Commission may require to assure the Company's compliance with the requirements of Rule 415 (collectively, the "**SEC Restrictions**"); provided, however, that the Company shall not agree to name any Person registering Company securities as part of a registration statement contemplated hereunder as an "underwriter" in such registration statement without the prior written consent of such Person. Any cutback imposed pursuant to this Section 9 shall be allocated as follows: (i) first, the number of Company securities sought to be registered by the 2019 Investors shall be included in such registration, and (ii) next, to the extent permissible after giving effect to clause (i) of this Section 9, the Investor's Pro Rata Share of one-third of the remaining Company securities shall be included in such registration, unless the SEC Restrictions require otherwise.

**10. Rule 144.** The Company covenants that it will file the reports required to be filed under the Exchange Act and the rules and regulations adopted by the Commission thereunder (or, in the event that the Company is not required to file such reports, it will make publicly available information as set forth in Rule 144(c)(2) promulgated under the Securities Act), and it will take such further action as the Investor may reasonably request, or to the extent required from time to time to enable the Investor to sell their Registrable Securities without registration under the Securities Act within the limitation of the exemption provided by (a) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the Commission (collectively, "**Rule 144**"). Upon request of any Investor, the Company will deliver to the Investor a written statement as to whether it has complied with such requirements.

**11. Severability.** In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

**12. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

**13. Benefit.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns.

**14. Notices and Addresses.** All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by Federal Express or similar overnight next business day delivery, or by email delivery followed by overnight next business day delivery as follows:

To the Company:

Better Choice Company Inc.  
81 Prospect Street  
Brooklyn, New York 11201  
Attention: Mike Young  
Email: myoung@cottcap.com

With a Copy to:

Nason, Yeager, Gerson, Harris & Fumero, P.A.  
3001 PGA Boulevard, Suite 305  
Palm Beach Gardens, FL 33410  
Attention: Michael D. Harris, Esq.  
Email: mharris@nasonyeager.com

To the Investor: to the address and email address listed on the signature page hereto or to such other address as any of them, by notice to the other may designate from time to time. The transmission confirmation receipt from the sender's facsimile machine shall be evidence of successful facsimile delivery. Time shall be counted from the date of transmission.

**15. Oral Evidence.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.

**16. Additional Documents.** The parties hereto shall execute such additional instruments as may be reasonably required by their counsel in order to carry out the purpose and intent of this Agreement and to fulfill the obligations of the parties hereunder.

**17. Governing Law.** This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein or performance shall be governed or interpreted according to the internal laws of the State of New York without regard to choice of law considerations.

**18. Section or Paragraph Headings.** Section headings herein have been inserted for reference only and shall not be deemed to limit or otherwise affect, in any matter, or be deemed to interpret in whole or in part any of the terms or provisions of this Agreement.

**19. Force Majeure.** The Company shall be excused from any delay in performance or for non-performance of any of the terms and conditions of this Agreement caused by any circumstances beyond its control, including, but not limited to, any Act of God, fire, flood, or government regulation, direction or request, or accident, interruption of telecommunications facilities, labor dispute, unavoidable breakdown, civil unrest or disruption to the extent that any such circumstances affect the Company's ability to perform its obligations under this Agreement or the ability of the Commission to perform its responsibilities under the Securities Act.

**20. Investor Acknowledgement.** The Investor acknowledges and agrees that the staff of the Commission has a policy limiting the number of shares that can be registered in any one or related registration statements, and that while the Company anticipates that there may be some room to include some of the Investor's Registrable Securities issued to the Investor in connection with the Merger Agreement, the ultimate decision will be made by the staff of the Commission. Consequently, the inability of the Company to include any of the Investor's Registrable Securities in a registration statement upon commercially reasonable efforts by the Company shall not be a violation of this Agreement by the Company.

**21. Assignments and Transfers by the Investor.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Investor and its successors and assigns. The Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by the Investor to such person, provided that (i) the Investor agrees in writing with the transferee or assignee to assign such rights and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (A) the name and address of such transferee or assignee and (B) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the Securities Act or applicable state securities laws; and (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

**22. Assignments and Transfers by the Company.** This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Investor, provided, however, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the shares of Common Stock are converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Registrable Securities" shall be deemed to include the securities received by the Investors in connection with such transaction unless such securities are otherwise freely tradable by the Investor after giving effect to such transaction.

*[Signature Page Follows]*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed personally or by a duly authorized representative thereof as of the Execution Date.

**BETTER CHOICE COMPANY INC.**

By: \_\_\_\_\_  
Name: David Lelong  
Title: President

**[FOR INDIVIDUAL]**

Name of Holder: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

**[FOR ENTITY]**

Name of Holder:

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

*[Signature Page to the Registration Rights Agreement]*

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**REGISTRATION RIGHTS AGREEMENT**

THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is entered into as of May 6, 2019 (the “**Execution Date**”) by and among Better Choice Company Inc., a Delaware corporation (the “**Company**”), and the undersigned (the “**Investor**”).

WHEREAS, the Company intends to issue shares of its common stock to the Investor pursuant to that certain Securities Exchange Agreement, dated as of February 2, 2019, by and among the Company, Trupet LLC and the holders of the Membership Interests of Trupet LLC (the “**SEA**”); and

WHEREAS, Pursuant to Section 5.12 of the SEA, the Company has agreed to provide certain registration rights to the Investor.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND THE COVENANTS AS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

**1. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms herein defined.

“**2019 Shares**” has the meaning assigned to it in Section 2(b) of this Agreement.

“**2019 Investors**” has the meaning assigned to it in Section 2(b) of this Agreement.

“**Agreement**” has the meaning assigned to it in the introductory paragraph of this Agreement.

“**Applicable Stockholders**” has the meaning assigned to it in Section 2(c) of this Agreement.

“**Closing Date**” has the meaning assigned to it in Section 2.2(a) of the SEA.

“**Common Stock**” means the Company’s authorized common stock, as constituted on the date of this Agreement, any stock into which such Common Stock may thereafter be changed and any stock of the Company of any other class, which is not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption, issued to the holders of shares of such Common Stock upon any re-classification thereof.

“**Commission**” means the Securities and Exchange Commission or any other governmental body at the time administering the Securities Act.

“**Company**” has the meaning assigned to it in the introductory paragraph of this Agreement.

“**Demand Notice**” has the meaning assigned to it in Section 2(c) of this Agreement.

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“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Excluded Forms**” means registration statements under the Securities Act, on Forms S-4 and S-8, or any successors thereto and any form used in connection with an initial public offering of securities.

“**Excluded Registration**” means (i) a registration relating to the sale or grant of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, equity incentive or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

“**Execution Date**” has the meaning assigned to it in the introductory paragraph of this Agreement.

“**Extra Shares**” has the meaning assigned to it in Section 2(b) of this Agreement.

“**Initial Registration**” has the meaning assigned to it in Section 2(a) of this Agreement.

“**Initiating Stockholders**” means, collectively, investors of the Company who properly initiate a registration request under this Agreement.

“**Investor**” has the meaning assigned to it in the introductory paragraph of this Agreement.

“**Other Shares**” has the meaning assigned to it in Section 4(f) of this Agreement.

“**Person**” includes any natural person, corporation, trust, association, company, partnership, joint venture, limited liability company and other entity and any government, governmental agency, instrumentality or political subdivision.

“**Pro Rata Share**” shall mean a number of Registrable Securities equal to the number of Registrable Securities received by the Investor divided by the total number of Registrable Securities received by all Trupet Members.

The terms “**register**,” “**registered**” and “**registration**” refer to a registration effected by preparing and filing a registration statement on other than any of the Excluded Forms in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“**Registrable Securities**” means the Common Stock acquired by the Investor pursuant to the SEA and any securities of the Company issued with respect to such Common Stock by way of a stock dividend or stock split or in connection with a combination, recapitalization, share exchange, consolidation or other reorganization of the Company.

“**Rule 144**” has the meaning assigned to it in Section 10 of this Agreement.

“SEA” has the meaning assigned to it in the first WHEREAS clause.

“SEC Restrictions” has the meaning assigned to it in Section 9 of this Agreement.

“Securities Act” means the Securities Act of 1933, as amended.

“Selling Expenses” means all selling commissions, finder’s fees and stock transfer taxes applicable to the Registrable Securities registered by the Investor and all fees and disbursements of counsel for the Investor.

“Trumpet Member” shall mean a Person that receives shares of Common Stock on the Closing Date pursuant to the terms of the SEA.

## 2. Registration.

(a) Mandatory Registration. As soon as practicable following the Closing Date, the Company shall use commercially reasonable efforts to file a registration statement on Form S-1 (or other applicable form) with the Commission permitting the Investor to publicly sell some or all of its Registrable Securities (the “**Initial Registration**”).

(b) Number of Registrable Securities. The number of Registrable Securities to be included as part of any registration statement shall be determined as follows: (i) the Company shall first include with such registration statement all shares of the Company’s Common Stock (the “**2019 Shares**”) sold to investors through a broker-dealer in a proposed securities offering closing on or about April 15, 2019 (the “**2019 Investors**”); and (ii) to the extent the Company may register a greater number of shares of the Company’s Common Stock than those comprising the 2019 Shares (the “**Extra Shares**”), the Investor shall be entitled to register its Pro Rata Share of one-third (1/3) of such Extra Shares.

(c) Demand Registration. If at any time after the effective date of the Initial Registration, the Company receives a request from stockholders of the Company holding five percent (5%) of the Registrable Securities then outstanding that the Company file a registration statement with respect to the Registrable Securities then outstanding, then the Company shall (i) within ten (10) days after the date such request is given, give notice thereof (the “**Demand Notice**”) to all stockholders which have registration rights (the “**Applicable Stockholders**”) other than the Initiating Stockholders; and (ii) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Stockholders, file a registration statement under the Securities Act covering all Registrable Securities that the Initiating Stockholders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Initiating Stockholders, as specified by notice given by each such stockholders to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of set forth herein.

3. Obligations of the Company. If and whenever the Company is required by the provisions hereof to effect or cause the registration of any Registrable Securities under the Securities Act as provided herein, the Company shall:

(a) use commercially reasonable efforts to prepare and file with the Commission a registration statement with respect to such Registrable Securities and use commercially reasonable efforts to cause such registration statement to become and remain effective for the period referred to in Section 4(a);

(b) use commercially reasonable efforts to prepare and file with the Commission such amendments to such registration statement (including post-effective amendments) and supplements to the prospectus included therein as may be necessary to keep such registration statement effective, subject to the qualifications in Section 4(a), and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such registration statement during such period in accordance with the intended methods of disposition by the Investor set forth in such registration statement;

(c) furnish to the Investor such number of copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus), in conformity with the requirements of the Securities Act, and such other documents, as each Investor may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Securities owned by the Investor;

(d) use its commercially reasonable efforts to register or qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Investor; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act; and provided further, that in no event shall any stockholders of the Company be required to place any shares of Common Stock in escrow in order to register or qualify the Registrable Securities.

(e) notify the Investor at any time when a prospectus relating to its Registrable Securities is required to be delivered under the Securities Act, of the Company's becoming aware that the prospectus included in the related registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare and furnish to the Investor a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the Investors of such Registrable Securities, such prospectus shall not include 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 not misleading in the light of the circumstances then existing;

(f) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission;

(g) use commercially reasonable efforts to cause Registrable Securities to be listed or quoted on each national securities exchange and/or in each trading market on which the Common Stock of the Company is then listed or quoted; and

(h) notify the Investor of any stop order threatened or issued by the Commission and take all actions reasonably necessary to prevent the entry of such stop order or to remove it if entered.

**4. Other Procedures.**

(a) Subject to the Company's general obligation to use commercially reasonable efforts under Section 3, the Company shall be required to maintain the effectiveness of a registration statement (on Form S-1 or other applicable form) until the earlier of (i) the sale of all Registrable Securities or (ii) two (2) years from the effective date of the registration statement. The Company shall have no liability to the Investor for delays in the Investor being able to sell the Registrable Securities (x) as long as the Company uses commercially reasonable efforts to file a registration statement, amendments to the registration statement or supplements to a prospectus contained in a registration statement (including any amendment or post effective amendments), (y) where the required financial statements or auditor's consents are unavailable or (z) as provided in Section 4(f).

(b) In consideration of the Company's obligations under this Agreement, the Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e), the Investor shall forthwith discontinue his sale of Registrable Securities pursuant to the registration statement covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) and, if so directed by the Company, shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in the Investor's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

(c) The Company's obligation to file any registration statement or amendment, including any post-effective amendment, shall be subject to the Investor and each stockholder, as applicable, furnishing to the Company in writing such information and documents regarding such Investor and Applicable Stockholder of the Company and the distribution of such Investor's or Applicable Stockholder's Registrable Securities as may reasonably be required to be disclosed in the registration statement in question by the rules and regulations under the Securities Act. The Company's obligations are also subject to the Investor and each other Applicable Stockholder of the Company electing to include shares of Common Stock in such registration statement promptly executing any representation letter concerning compliance with Regulation M under the Exchange Act.

(d) If any such registration or comparable statement refers to the Investor by name or otherwise as a stockholder of the Company, but such reference to the Investor by name or otherwise is not required by the Securities Act or the rules thereunder, then each Investor shall have the right to require the deletion of the reference to the Investor, as may be applicable.

(e) In connection with the sale of Registrable Securities, the Investor shall deliver to each Investor a copy of the necessary prospectus and, if applicable, prospectus supplement, within the time required by Section 5(b) of the Securities Act.

(f) Notwithstanding the foregoing obligations, if the Company furnishes to stockholder of the Company requesting a registration pursuant to Section 3 a certificate signed by at least one (1) of the Company's chief executive officers stating that in the good faith judgment of the Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing for a period of not more than thirty (30) days after the request of the Initiating Stockholders is given; provided, however, that the Company may not invoke this right more than twice in any twelve (12)-month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such thirty (30)-day period other than an Excluded Registration.

5. **Registration Expenses.** In connection with any registration of Registrable Securities pursuant to Section 2, the Company shall, whether or not any such registration shall become effective, from time to time, pay all expenses (other than Selling Expenses) incident to its performance of or compliance, including, without limitation, all registration, and filing fees, fees and expenses of compliance with securities or blue sky laws, word processing, printing and copying expenses, messenger and delivery expenses, fees and disbursements of counsel for the Company and all independent public accountants and other Persons retained by the Company.

6. **Indemnification.**

(a) **Company Indemnification.** The Company will indemnify the Investor and each stockholder of the Company who holds Registrable Securities (if Registrable Securities held by the Investor or such other stockholder are included in the securities as to which such registration is being effected), each of its officers and directors, partners, members and each person controlling such Investor within the meaning of Section 15 of the Securities Act, to the extent permitted by applicable law, against all expenses, claims, losses, damages or liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained in any Registration Statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such Registration Statement, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or (ii) any violation by the Company of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to the Company in connection with any such registration; and in each case, the Company will reimburse the Investor and each such stockholder, each of its officers and directors, partners, members and each person controlling the Investor and each such stockholder, for any legal and any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on (A) any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by the Investor and each such stockholder or controlling person, and stated to be specifically for use therein, (B) the use by the Investor or any other stockholder of an outdated or defective prospectus after the Company has notified the Investor or such other stockholder in writing that the prospectus is outdated or defective, (C) the Investor's or such other stockholder's (or any other indemnified person's) failure to send or give a copy of the prospectus or supplement (as then amended or supplemented), if required, pursuant to Rule 172 under the Securities Act (or any successor rule) to the Persons asserting an untrue statement or alleged untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such person if such statement or omission was corrected in such prospectus or supplement, or (D) any violation by the Investor or such other stockholder of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to the Investor or such other stockholder.

(b) Investor Indemnification. Each stockholder of the Company holding Registrable Securities will, if Registrable Securities held by such stockholder are included in the securities as to which such registration is being effected, severally and not jointly, indemnify the Company, each of its directors and officers, other holders of the Company's securities covered by such Registration Statement, each person who controls the Company within the meaning of Section 15 of the Securities Act, and each such holder, each of its officers and directors and each person controlling such holder within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, to the extent, and only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such stockholder and stated to be specifically for use therein, or (ii) any violation by such stockholder of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to such stockholder, and in each case, such stockholder will reimburse the Company, each other stockholder, and directors, officers, persons, underwriters or control persons of the Company and the other I for any legal or any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating or defending any such claim, loss, damage, liability or action; provided, that the indemnity agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of such indemnifying stockholder (which consent shall not be unreasonably withheld or delayed). The liability of any stockholder for indemnification under this Section 6(b) in its capacity as a seller of Registrable Securities shall not exceed the greater of (i) the amount of net proceeds to such stockholder of the securities sold in any such registration and (ii) the purchase price of the Shares paid by such stockholder.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action involving a claim referred to in Section 6(a) or Section 6(b), such indemnified party shall, if a claim in respect thereof is made against an indemnifying party, give written notice to the indemnifying Party of the commencement of such action. The indemnifying party shall be relieved of its obligations under this Section 6(c) to the extent that the indemnified party delays in giving notice and the indemnifying party is damaged or prejudiced by the delay. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so as to assume the defense thereof, the indemnifying party shall be responsible for any legal or other expenses subsequently incurred by the indemnifying party in connection with the defense thereof, provided, however, that, if counsel for an indemnified party shall have reasonably concluded that there is an actual or potential conflict of interest between the indemnified and the indemnifying party the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party, and such indemnifying party shall reimburse such indemnified party and any Person controlling such indemnified party for the fees and expenses of counsel retained by the indemnified party which are reasonably related to the matters covered by the indemnity agreement provided in this Section 6; provided, however, that in no event shall any indemnification by the Investor under this Section 6 exceed the net proceeds from the sale of Registered Securities received by the Investor. No indemnified party shall make any settlement of any claims indemnified against hereunder without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. In the event that any indemnifying party enters into any settlement without the written consent of the indemnified party the indemnifying party shall not, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff of a release of such indemnified party from all liability in respect to such claim or litigation.

(d) If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the 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 indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

(e) Notwithstanding any of the foregoing, if, in connection with an underwritten public offering of the Registrable Securities, the Company, the Investor and the underwriter(s) enter into an underwriting agreement relating to such offering which contains provisions covering indemnification among the parties, then the indemnification provision of this Section 6 shall be deemed inoperative for purposes of such offering.

7. **Certain Limitations on Registration Rights.** At any time prior to the effectiveness of any registration statement filed pursuant to this Agreement, if the Company determines to file a registration statement with the Commission for the public sale of its securities and the managing underwriter of such offering offers to purchase the Registrable Securities for its own account at the same price including underwriting discounts and applicable expenses as paid to the Company, the Investor shall either (i) elect to include their Registrable Securities being registered pursuant to this Agreement in the registration statement covering the sale of the Company's securities, or (ii) immediately cease their public sales for a period of ninety (90) days following the effective date of the registration statement covering the sale by the Company. Additionally, the Investor may not participate in the registration statement relating to the sale by the Company of its Common Stock as provided above unless the Investor enters into an underwriting agreement with the managing underwriter and completes and/or executes all questionnaires, indemnities and other reasonable documents requested by the managing underwriter. The Investor shall be deemed to have agreed by acquisition of its Registrable Securities not to effect any public sale or distribution, including any sale pursuant to Rule 144 under the Securities Act, of any Registrable Securities and to use its best efforts not to effect any such public sale or distribution of any other equity security of the Company (including any short sale) or of any security convertible into or exchangeable or exercisable for any equity security of the Company (other than as part of such underwritten public offering) within ten (10) days before or ninety (90) days after the effective date of such registration statement. In such event, the Investor shall, if requested, sign a customary market stand-off letter with the Company's managing underwriter, and to comply with applicable rules and regulations of the Commission.

8. **Allocation of Securities Included in Registration Statement.** In the case of a registration pursuant to Section 7 for the Company's account, if the Company's managing underwriter shall advise the Company and the Investor in writing that the inclusion in any registration pursuant hereto of some or all of (a) the Registrable Securities permitted to be registered by the Investor and securities offered by other stockholders, and (b) the Company's securities sought to be registered creates a substantial risk that the proceeds or price per unit that will be derived from such registration will be reduced or that the number of securities to be registered is too large a number to be reasonably sold, (i) first, the number of Company securities sought to be registered shall be included in such registration, (ii) next, the number of Registrable Securities offered by the 2019 Investors shall be included in such registration, and (iii) next, the number of Registrable Securities offered by (x) the Trupet Members, (y) purchasers in the Company's December 2018 private placement and (z) the former shareholders of Bona Vida, Inc. shall be included in such registration statement, with each group of investors in clauses (x), (y) and (z) permitted to register one-third of any permissible sum (with each Trupet Member allowed to include up to his Pro Rata Share) to the extent permitted by the Company's managing underwriter; provided, however, that, if the Investor would be required pursuant to the provisions of this Section 8 to reduce the number of Registrable Securities that it may include in such registration, the Investor may withdraw all or any portion of its Registrable Securities from such registration statement and may resume selling shares under the registration statement (assuming it is effective) referred to in Section 7 after the 90-day lock-up period.

9. **Rule 415: Cutback.** If at any time the Commission staff takes the position that the registration of some or all of the Registrable Securities in a registration statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the Securities Act or requires any Person registering Company securities as part of a registration statement contemplated hereunder to be named as an "underwriter," the Company shall use its commercially reasonable efforts to persuade the Commission staff that the offering contemplated by the registration statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that none of the Persons registering Company securities as part of a registration statement contemplated hereunder is an "underwriter." In the event that, despite the Company's commercially reasonable efforts and compliance with the terms of this Section 9, the Commission staff refuses to alter its position, the Company shall (a) remove from the registration statement such portion of the Company's securities and/or (b) agree to such restrictions and limitations on the registration and resale of the Company's securities as the Commission may require to assure the Company's compliance with the requirements of Rule 415 (collectively, the "**SEC Restrictions**"); provided, however, that the Company shall not agree to name any Person registering Company securities as part of a registration statement contemplated hereunder as an "underwriter" in such registration statement without the prior written consent of such Person. Any cutback imposed pursuant to this Section 9 shall be allocated as follows: (i) first, the number of Company securities sought to be registered by the 2019 Investors shall be included in such registration, and (ii) next, to the extent permissible after giving effect to clause (i) of this Section 9, the Investor's Pro Rata Share of one-third of the remaining Company securities shall be included in such registration, unless the SEC Restrictions require otherwise.

10. **Rule 144.** The Company covenants that it will file the reports required to be filed under the Exchange Act and the rules and regulations adopted by the Commission thereunder (or, in the event that the Company is not required to file such reports, it will make publicly available information as set forth in Rule 144(c)(2) promulgated under the Securities Act), and it will take such further action as the Investor may reasonably request, or to the extent required from time to time to enable the Investor to sell their Registrable Securities without registration under the Securities Act within the limitation of the exemption provided by (a) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the Commission (collectively, "**Rule 144**"). Upon request of any Investor, the Company will deliver to the Investor a written statement as to whether it has complied with such requirements.

11. **Severability.** In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

13. **Benefit.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns.

14. **Notices and Addresses.** All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by Federal Express or similar overnight next business day delivery, or by email delivery followed by overnight next business day delivery as follows:

To the Company: Better Choice Company Inc.  
81 Prospect Street  
Brooklyn, New York 11201  
Attention: Mike Young  
Email: myoung@cottcap.com

With a Copy to: Nason, Yeager, Gerson, Harris & Fumero, P.A.  
3001 PGA Boulevard, Suite 305  
Palm Beach Gardens, FL 33410  
Attention: Michael D. Harris, Esq.  
Email: mharris@nasonyeager.com

To the Investor: to the address and email address listed on the signature page hereto or to such other address as any of them, by notice to the other may designate from time to time. The transmission confirmation receipt from the sender's facsimile machine shall be evidence of successful facsimile delivery. Time shall be counted from the date of transmission.

**15. Oral Evidence.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.

**16. Additional Documents.** The parties hereto shall execute such additional instruments as may be reasonably required by their counsel in order to carry out the purpose and intent of this Agreement and to fulfill the obligations of the parties hereunder.

**17. Governing Law.** This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein or performance shall be governed or interpreted according to the internal laws of the State of New York without regard to choice of law considerations.

**18. Section or Paragraph Headings.** Section headings herein have been inserted for reference only and shall not be deemed to limit or otherwise affect, in any matter, or be deemed to interpret in whole or in part any of the terms or provisions of this Agreement.

**19. Force Majeure.** The Company shall be excused from any delay in performance or for non-performance of any of the terms and conditions of this Agreement caused by any circumstances beyond its control, including, but not limited to, any Act of God, fire, flood, or government regulation, direction or request, or accident, interruption of telecommunications facilities, labor dispute, unavoidable breakdown, civil unrest or disruption to the extent that any such circumstances affect the Company's ability to perform its obligations under this Agreement or the ability of the Commission to perform its responsibilities under the Securities Act.

**20. Investor Acknowledgement.** The Investor acknowledges and agrees that the staff of the Commission has a policy limiting the number of shares that can be registered in any one or related registration statements, and that while the Company anticipates that there may be some room to include some of the Investor's Registrable Securities issued to the Investor in connection with the SEA, the ultimate decision will be made by the staff of the Commission. Consequently, the inability of the Company to include any of the Investor's Registrable Securities in a registration statement upon commercially reasonable efforts by the Company shall not be a violation of this Agreement by the Company.

**21. Assignments and Transfers by the Investor.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Investor and its successors and assigns. The Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by the Investor to such person, provided that (i) the Investor agrees in writing with the transferee or assignee to assign such rights and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (A) the name and address of such transferee or assignee and (B) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the Securities Act or applicable state securities laws; and (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

**22. Assignments and Transfers by the Company.** This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Investor, provided, however, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the shares of Common Stock are converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Registrable Securities" shall be deemed to include the securities received by the Investors in connection with such transaction unless such securities are otherwise freely tradable by the Investor after giving effect to such transaction.

*[Signature Page Follows]*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed personally or by a duly authorized representative thereof as of the Execution Date.

**BETTER CHOICE COMPANY INC.**

By: \_\_\_\_\_  
Name: David Lelong  
Title: President

**[FOR INDIVIDUAL]**

Name of Holder: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

**[FOR ENTITY]**

Name of Holder:

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

*[Signature Page to the Registration Rights Agreement]*

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**BETTER CHOICE COMPANY INC.  
2019 INCENTIVE AWARD PLAN**

**ARTICLE 1.**

**PURPOSE**

The purpose of the Better Choice Company Inc. 2019 Incentive Award Plan (as it may be amended or restated from time to time, the Plan) is to promote the success and enhance the value of Better Choice Company Inc. (the Company) by linking the individual interests of Directors, Employees, and Consultants to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of Directors, Employees, and Consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent.

**ARTICLE 2.**

**DEFINITIONS AND CONSTRUCTION**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 "Administrator" shall mean the Compensation Committee of the Board, or any other Committee to the extent that the Compensation Committee of the Board has delegated its powers or authority under the Plan to such Committee.

2.2 "Applicable Accounting Standards" shall mean Generally Accepted Accounting Principles in the United States, International Financial Reporting Standards or such other accounting principles or standards as may apply to the Company's financial statements under United States federal securities laws from time to time.

2.3 "Applicable Law" shall mean any applicable law, including, without limitation: (a) provisions of the Code, the Securities Act, the Exchange Act and any rules or regulations thereunder; (b) corporate, securities, tax or other laws, statutes, rules, requirements or regulations, whether federal, state, local or foreign; and (c) rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded.

2.4 "Award" shall mean an Option, a Stock Appreciation Right, a Restricted Stock award, a Restricted Stock Unit award, an Other Stock or Cash Based Award or a Dividend Equivalent award, which may be awarded or granted under the Plan.

2.5 "Award Agreement" shall mean any written notice, agreement, terms and conditions, contract or other instrument or document evidencing an Award, including through electronic medium, which shall contain such terms and conditions with respect to an Award as the Administrator shall determine consistent with the Plan.

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2.6 “Board” shall mean the Board of Directors of the Company.

2.7 “Change in Control” shall mean (a) the sale of all or substantially all of the assets of the Company to any other person or entity (other than the Company, any of its Subsidiaries or any employee benefit plan maintained by the Company or any of its Subsidiaries), (b) a change in beneficial ownership or control of the Company effected through a transaction or series of transactions (other than an offering of Common Stock or other securities to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any “person” or related “group” of “persons” (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Company, any of its Subsidiaries or any employee benefit plan maintained by the Company or any of its Subsidiaries), directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of such entity’s securities outstanding immediately after such acquisition, or (c) the Incumbent Directors cease for any reason to constitute a majority of the Board.

Notwithstanding the foregoing, if a Change in Control constitutes a payment event with respect to any Award (or any portion of an Award) that provides for the deferral of compensation that is subject to Section 409A, to the extent required to avoid the imposition of additional taxes under Section 409A, the transaction or event described in subsection (a), (b), (c) or (d) with respect to such Award (or portion thereof) shall only constitute a Change in Control for purposes of the payment timing of such Award if such transaction also constitutes a “change in control event,” as defined in Treasury Regulation Section 1.409A-3(i)(5).

The Administrator shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change in Control has occurred pursuant to the above definition, the date of the occurrence of such Change in Control and any incidental matters relating thereto; provided that any exercise of authority in conjunction with a determination of whether a Change in Control is a “change in control event” as defined in Treasury Regulation Section 1.409A-3(i)(5) shall be consistent with such regulation.

2.8 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, together with the regulations and official guidance promulgated thereunder, whether issued prior or subsequent to the grant of any Award.

2.9 “Committee” shall mean the Compensation Committee of the Board, or another committee or subcommittee of the Board which may be comprised of one or more Directors and/or executive officers of the Company as appointed by the Board, to the extent permitted in accordance with Applicable Law.

2.10 “Common Stock” shall mean the common stock of the Company.

2.11 “Company” shall have the meaning set forth in Article 1.

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2.12 “Consultant” shall mean any consultant or adviser engaged to provide services to the Company or any parent of the Company or Subsidiary who qualifies as a consultant or advisor under the applicable rules of the Securities and Exchange Commission for registration of shares on a Form S-8 Registration Statement.

2.13 “Director” shall mean a member of the Board, as constituted from time to time.

2.14 “Dividend Equivalent” shall mean a right to receive the equivalent value (in cash or Shares) of dividends paid on Shares, awarded under Section 9.2.

2.15 “DRO” shall mean a “domestic relations order” as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended from time to time, or the rules thereunder.

2.16 “Effective Date” shall mean the date the Plan is adopted by the Board, subject to approval of the Plan by the Company’s stockholders.

2.17 “Eligible Individual” shall mean any person who is an Employee, a Consultant or a Non-Employee Director, as determined by the Administrator.

2.18 “Employee” shall mean any officer or other employee (as determined in accordance with Section 3401(c) of the Code and the Treasury Regulations thereunder) of the Company or of any parent of the Company or Subsidiary.

2.19 “Equity Restructuring” shall mean a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of Shares (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per-share value of the Common Stock underlying outstanding Awards.

2.20 “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended from time to time.

2.21 “Expiration Date” shall have the meaning given to such term in Section 12.1(c).

2.22 “Fair Market Value” shall mean, as of any given date, the value of a Share determined as follows:

(a) If the Common Stock is (i) listed on any established securities exchange (such as the New York Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market and the Nasdaq Global Select Market), (ii) listed on any national market system or (iii) quoted or traded on any automated quotation system, its Fair Market Value shall be the closing sales price for a Share as quoted on such exchange or system for such date or, if there is no closing sales price for a Share on the date in question, the closing sales price for a Share on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

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(b) If the Common Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is regularly quoted by a recognized securities dealer, its Fair Market Value shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a Share on such date, the high bid and low asked prices for a Share on the last preceding date for which such information exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, its Fair Market Value shall be established by the Administrator in its sole discretion.

Notwithstanding the foregoing, with respect to any Award granted on the pricing date of the Company's initial public offering, the Fair Market Value shall mean the initial public offering price of a Share as set forth in the Company's final prospectus relating to its initial public offering filed with the Securities and Exchange Commission.

2.23 "Greater Than 10% Stockholder" shall mean an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any subsidiary corporation (as defined in Section 424(f) of the Code) or parent corporation thereof (as defined in Section 424(e) of the Code).

2.24 "Holder" shall mean a person who has been granted an Award.

2.25 "Incentive Stock Option" shall mean an Option that is intended to qualify as an incentive stock option and conforms to the applicable provisions of Section 422 of the Code.

2.26 "Incumbent Directors" shall mean for any period of 12 consecutive months, individuals who, at the beginning of such period, constitute the Board together with any new Director(s) (other than a Director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in Section 2.8(a) or 2.8(c) whose election or nomination for election to the Board was approved by a vote of at least a majority (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for Director without objection to such nomination) of the Directors then still in office who either were Directors at the beginning of the 12-month period or whose election or nomination for election was previously so approved. No individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to Directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any person other than the Board shall be an Incumbent Director.

2.27 "Non-Employee Director" shall mean a Director of the Company who is not an Employee.

2.28 "Non-Employee Director Equity Compensation Policy" shall have the meaning set forth in Section 4.6.

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2.29 “Non-Qualified Stock Option” shall mean an Option that is not an Incentive Stock Option or which is designated as an Incentive Stock Option but does not meet the applicable requirements of Section 422 of the Code.

2.30 “Option” shall mean a right to purchase Shares at a specified exercise price, granted under Article 5. An Option shall be either a Non-Qualified Stock Option or an Incentive Stock Option; provided, however, that Options granted to Non-Employee Directors and Consultants shall only be Non-Qualified Stock Options.

2.31 “Option Term” shall have the meaning set forth in Section 5.4.

2.32 “Organizational Documents” shall mean, collectively, (a) the Company’s certificate of incorporation, bylaws or other similar organizational documents relating to the creation and governance of the Company, and (b) the Committee’s charter or other similar organizational documentation relating to the creation and governance of the Committee.

2.33 “Other Stock or Cash Based Award” shall mean a cash payment, cash bonus award, stock payment, stock bonus award, performance award or incentive award that is paid in cash, Shares or a combination of both, awarded under Section 9.1, which may include, without limitation, deferred stock, deferred stock units, performance awards, retainers, committee fees, and meeting-based fees.

2.34 “Permitted Transferee” shall mean, with respect to a Holder, any “family member” of the Holder, as defined in the General Instructions to Form S-8 Registration Statement under the Securities Act (or any successor form thereto), or any other transferee specifically approved by the Administrator after taking into account Applicable Law.

2.35 “Performance Criteria” shall mean the criteria (and adjustments) that the Administrator selects for an Award for purposes of establishing the Performance Goal or Performance Goals for a Performance Period. The Performance Criteria that may be used to establish Performance Goals include, but are not limited to, the following: (i) net earnings or losses (either before or after one or more of the following: (A) interest, (B) taxes, (C) depreciation, (D) amortization and (E) non-cash equity-based compensation expense); (ii) gross or net sales or revenue or sales or revenue growth; (iii) net income (either before or after taxes); (iv) adjusted net income; (v) operating earnings or profit (either before or after taxes); (vi) cash flow (including, but not limited to, operating cash flow and free cash flow); (vii) return on assets; (viii) return on capital (or invested capital) and cost of capital; (ix) return on stockholders’ equity; (x) total stockholder return; (xi) return on sales; (xii) gross or net profit or operating margin; (xiii) costs, reductions in costs and cost control measures; (xiv) expenses; (xv) working capital; (xvi) earnings or loss per share; (xvii) adjusted earnings or loss per share; (xviii) price per share or dividends per share (or appreciation in and/or maintenance of such price or dividends); (xix) regulatory achievements or compliance (including, without limitation, regulatory body approval for commercialization of a product); (xx) implementation or completion of critical projects; (xxi) market share; (xxii) economic value; and (xxiii) individual employee performance, any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or other employees or to market performance indicators or indices.

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2.36 “Performance Goals” shall mean, for a Performance Period, one or more goals established in writing by the Administrator for the Performance Period based upon one or more Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a Subsidiary, division, business unit, or an individual. The achievement of each Performance Goal shall be determined with reference to Applicable Accounting Standards or other methodology as determined appropriate by the Administrator.

2.37 “Performance Period” shall mean one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Holder’s right to, vesting of, and/or the payment in respect of, an Award.

2.38 “Plan” shall have the meaning set forth in Article 1.

2.39 “Program” shall mean any program adopted by the Administrator pursuant to the Plan containing the terms and conditions intended to govern a specified type of Award granted under the Plan and pursuant to which such type of Award may be granted under the Plan.

2.40 “Public Trading Date” shall mean the first date upon which Common Stock is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system.

2.41 “Restricted Stock” shall mean Common Stock awarded under Article 7 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.

2.42 “Restricted Stock Units” shall mean the right to receive Shares awarded under Article 8.

2.43 “SAR Term” shall have the meaning set forth in Section 5.4.

2.44 “Section 409A” shall mean Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder, including, without limitation, any such regulations or other guidance that may be issued after the Effective Date.

2.45 “Securities Act” shall mean the Securities Act of 1933, as amended.

2.46 “Shares” shall mean shares of Common Stock.

2.47 “Stock Appreciation Right” shall mean an Award entitling the Holder (or other person entitled to exercise pursuant to the Plan) to exercise all or a specified portion thereof (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying (i) the difference obtained by subtracting (x) the exercise price per share of such Award from (y) the Fair Market Value on the date of exercise of such Award by (ii) the number of Shares with respect to which such Award shall have been exercised, subject to any limitations the Administrator may impose.

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2.48 “Subsidiary” shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if each of the entities other than the last entity in the unbroken chain beneficially owns, at the time of the determination, securities or interests representing at least fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.49 “Substitute Award” shall mean an Award granted under the Plan in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock, in any case, upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity; provided, however, that in no event shall the term “Substitute Award” be construed to refer to an award made in connection with the cancellation and repricing of an Option or Stock Appreciation Right.

2.50 “Termination of Service” shall mean the date the Holder ceases to be an Eligible Individual. The Administrator, in its sole discretion, shall determine the effect of all matters and questions relating to any Termination of Service, including, without limitation, whether a Termination of Service has occurred, whether a Termination of Service resulted from a discharge for cause and all questions of whether particular leaves of absence constitute a Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Administrator otherwise provides in the terms of any Program, Award Agreement or otherwise, or as otherwise required by Applicable Law, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service only if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then-applicable regulations and revenue rulings under said Section. For purposes of the Plan, a Holder’s employee-employer relationship or consultancy relations shall be deemed to be terminated in the event that the Subsidiary employing or contracting with such Holder ceases to remain an Subsidiary following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

### ARTICLE 3.

#### SHARES SUBJECT TO THE PLAN

##### 3.1 Number of Shares.

(a) Subject to Sections 3.1(b) and 12.2, Awards may be made under the Plan covering an aggregate number of Shares equal to the sum of: (i) 6,000,000, and (ii) an annual increase on the first day of each calendar year beginning on January 1, 2020 and ending on and including January 1, 2029, equal to the lesser of (A) 10% of the Shares outstanding (on an as-converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of Shares as determined by the Board; provided, however, no more than 6,000,000 Shares may be issued upon the exercise of Incentive Stock Options. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Common Stock, treasury Common Stock or Common Stock purchased on the open market.

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(b) If any Shares subject to an Award are forfeited or expire, are converted to shares of another person in connection with a recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, exchange of shares or other similar event, or such Award is settled for cash (in whole or in part) (including Shares repurchased by the Company under Section 7.4 at the same price paid by the Holder), the Shares subject to such Award shall, to the extent of such forfeiture, expiration or cash settlement, again be available for future grants of Awards under the Plan. Notwithstanding anything to the contrary contained herein, the following Shares shall not be added to the Shares authorized for grant under Section 3.1(a) and shall not be available for future grants of Awards: (i) Shares tendered by a Holder or withheld by the Company in payment of the exercise price of an Option; (ii) Shares tendered by the Holder or withheld by the Company to satisfy any tax withholding obligation with respect to an Award; (iii) Shares subject to a Stock Appreciation Right or other stock-settled Award (including Awards that may be settled in cash or stock) that are not issued in connection with the settlement or exercise, as applicable, of the Stock Appreciation Right or other stock-settled Award; and (iv) Shares purchased on the open market by the Company with the cash proceeds received from the exercise of Options. Any Shares repurchased by the Company under Section 7.4 at the same price paid by the Holder so that such Shares are returned to the Company shall again be available for Awards. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the Shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

(c) Substitute Awards may be granted on such terms as the Administrator deems appropriate, notwithstanding limitations on Awards in the Plan. Substitute Awards shall not reduce the Shares authorized for grant under the Plan, except as may be required by reason of Section 422 of the Code, and Shares subject to such Substitute Awards shall not be added to the Shares available for Awards under the Plan as provided in Section 3.1(b) above. Additionally, in the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by its stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan (and Shares subject to such Awards shall not be added to the Shares available for Awards under the Plan as provided in Section 3.1(b) above); provided that Awards using such available Shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Subsidiaries immediately prior to such acquisition or combination.

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## ARTICLE 4.

### GRANTING OF AWARDS

4.1 Participation. The Administrator may, from time to time, select from among all Eligible Individuals those to whom an Award shall be granted and shall determine the nature and amount of each Award, which shall not be inconsistent with the requirements of the Plan. Except for any Non-Employee Director's right to Awards that may be required pursuant to the Non-Employee Director Equity Compensation Policy as described in Section 4.6, no Eligible Individual or other person shall have any right to be granted an Award pursuant to the Plan and neither the Company nor the Administrator is obligated to treat Eligible Individuals, Holders or any other persons uniformly. Participation by each Holder in the Plan shall be voluntary and nothing in the Plan or any Program shall be construed as mandating that any Eligible Individual or other person shall participate in the Plan.

4.2 Award Agreement. Each Award shall be evidenced by an Award Agreement that sets forth the terms, conditions and limitations for such Award as determined by the Administrator in its sole discretion (consistent with the requirements of the Plan and any applicable Program). Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code. The Administrator, in its sole discretion, may grant Awards to Eligible Individuals that are based on one or more Performance Criteria or achievement of one or more Performance Goals or any such other criteria or goals as the Administrator shall establish.

4.3 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including Rule 16b-3 of the Exchange Act and any amendments thereto) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

4.4 At-Will Service. Nothing in the Plan or in any Program or Award Agreement hereunder shall confer upon any Holder any right to continue in the employ of, or as a Director or Consultant for, the Company or any Subsidiary, or shall interfere with or restrict in any way the rights of the Company and any Subsidiary, which rights are hereby expressly reserved, to discharge any Holder at any time for any reason whatsoever, with or without cause, and with or without notice, or to terminate or change all other terms and conditions of employment or engagement, except to the extent expressly provided otherwise in a written agreement between the Holder and the Company or any Subsidiary.

4.5 Foreign Holders. Notwithstanding any provision of the Plan or applicable Program to the contrary, in order to comply with the laws in countries other than the United States in which the Company and its Subsidiaries operate or have Employees, Non-Employee Directors or Consultants, or in order to comply with the requirements of any foreign securities exchange or other Applicable Law, the Administrator, in its sole discretion, shall have the power and authority to: (a) determine which Subsidiaries shall be covered by the Plan; (b) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with Applicable Law (including, without limitation, applicable foreign laws or listing requirements of any foreign securities exchange); (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable; provided, however, that no such subplans and/or modifications shall increase the share limitation contained in Section 3.1; and (e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any foreign securities exchange.

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4.6 Non-Employee Director Awards.

(a) Non-Employee Director Equity Compensation Policy. The Administrator, in its sole discretion, may provide that Awards granted to Non-Employee Directors shall be granted pursuant to a written nondiscretionary formula established by the Administrator (the “Non-Employee Director Equity Compensation Policy”), subject to the limitations of the Plan. The Non-Employee Director Equity Compensation Policy shall set forth the type of Award(s) to be granted to Non-Employee Directors, the number of Shares to be subject to Non-Employee Director Awards, the conditions on which such Awards shall be granted, become exercisable and/or payable and expire, and such other terms and conditions as the Administrator shall determine in its sole discretion. The Non-Employee Director Equity Compensation Policy may be modified by the Administrator from time to time in its sole discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time.

**ARTICLE 5.**

**GRANTING OF OPTIONS AND STOCK APPRECIATION RIGHTS**

5.1 Granting of Options and Stock Appreciation Rights to Eligible Individuals. The Administrator is authorized to grant Options and Stock Appreciation Rights to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine, which shall not be inconsistent with the Plan, including any limitations in the Plan that apply to Incentive Stock Options.

5.2 Qualification of Incentive Stock Options. The Administrator may grant Options intended to qualify as Incentive Stock Options only to employees of the Company, any of the Company’s present or future “parent corporations” or “subsidiary corporations” as defined in Sections 424(e) or (f) of the Code, respectively, and any other entities the employees of which are eligible to receive Incentive Stock Options under the Code. No person who qualifies as a Greater Than 10% Stockholder may be granted an Incentive Stock Option unless such Incentive Stock Option conforms to the applicable provisions of Section 422 of the Code. To the extent that the aggregate fair market value of stock with respect to which “incentive stock options” (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code) are exercisable for the first time by a Holder during any calendar year under the Plan, and all other plans of the Company and any parent corporation or subsidiary corporation thereof (as defined in Section 424(e) and 424(f) of the Code, respectively), exceeds \$100,000, the Options shall be treated as Non-Qualified Stock Options to the extent required by Section 422 of the Code. The rule set forth in the immediately preceding sentence shall be applied by taking Options and other “incentive stock options” into account in the order in which they were granted and the fair market value of stock shall be determined as of the time the respective options were granted. Any interpretations and rules under the Plan with respect to Incentive Stock Options shall be consistent with the provisions of Section 422 of the Code. Neither the Company nor the Administrator shall have any liability to a Holder, or any other person, (a) if an Option (or any part thereof) which is intended to qualify as an Incentive Stock Option fails to qualify as an Incentive Stock Option or (b) for any action or omission by the Company or the Administrator that causes an Option not to qualify as an Incentive Stock Option, including, without limitation, the conversion of an Incentive Stock Option to a Non-Qualified Stock Option or the grant of an Option intended as an Incentive Stock Option that fails to satisfy the requirements under the Code applicable to an Incentive Stock Option.

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5.3 Option and Stock Appreciation Right Exercise Price. The exercise price per Share subject to each Option and Stock Appreciation Right shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value of a Share on the date the Option or Stock Appreciation Right, as applicable, is granted (or, as to Incentive Stock Options, on the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). In addition, in the case of Incentive Stock Options granted to a Greater Than 10% Stockholder, such price shall not be less than 110% of the Fair Market Value of a Share on the date the Option is granted (or the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). Notwithstanding the foregoing, in the case of an Option or Stock Appreciation Right that is a Substitute Award, the exercise price per share of the Shares subject to such Option or Stock Appreciation Right, as applicable, may be less than the Fair Market Value per share on the date of grant; provided that the exercise price of any Substitute Award shall be determined in accordance with the applicable requirements of Section 424 and 409A of the Code.

5.4 Option and SAR Term. The term of each Option (the “Option Term”) and the term of each Stock Appreciation Right (the “SAR Term”) shall be set by the Administrator in its sole discretion; provided, however, that the Option Term or SAR Term, as applicable, shall not be more than (a) ten (10) years from the date the Option or Stock Appreciation Right, as applicable, is granted to an Eligible Individual (other than a Greater Than 10% Stockholder), or (b) five (5) years from the date an Incentive Stock Option is granted to a Greater Than 10% Stockholder. Except as limited by the requirements of Section 409A or Section 422 of the Code and regulations and rulings thereunder or the first sentence of this Section 5.4 and without limiting the Company’s rights under Section 10.7, the Administrator may extend the Option Term of any outstanding Option or the SAR Term of any outstanding Stock Appreciation Right, and may extend the time period during which vested Options or Stock Appreciation Rights may be exercised, in connection with any Termination of Service of the Holder or otherwise, and may amend, subject to Section 10.7 and 12.1, any other term or condition of such Option or Stock Appreciation Right relating to such Termination of Service of the Holder or otherwise.

5.5 Option and SAR Vesting. The period during which the right to exercise, in whole or in part, an Option or Stock Appreciation Right vests in the Holder shall be set by the Administrator and set forth in the applicable Award Agreement. Notwithstanding the foregoing and unless determined otherwise by the Company, in the event that on the last business day of the term of an Option or Stock Appreciation Right (other than an Incentive Stock Option) (a) the exercise of the Option or Stock Appreciation Right is prohibited by Applicable Law, as determined by the Company, or (b) Shares may not be purchased or sold by the applicable Participant due to any Company insider trading policy (including blackout periods) or a “lock-up” agreement undertaken in connection with an issuance of securities by the Company, the term of the Option or Stock Appreciation Right shall be extended until the date that is thirty (30) days after the end of the legal prohibition, black-out period or lock-up agreement, as determined by the Company; provided, however, in no event shall the extension last beyond the ten year term of the applicable Option or Stock Appreciation Right. Unless otherwise determined by the Administrator in the Award Agreement, the applicable Program or by action of the Administrator following the grant of the Option or Stock Appreciation Right, (i) no portion of an Option or Stock Appreciation Right which is unexercisable at a Holder’s Termination of Service shall thereafter become exercisable and (ii) the portion of an Option or Stock Appreciation Right that is unexercisable at a Holder’s Termination of Service shall automatically expire on the date of such Termination of Service.

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**ARTICLE 6.**

**EXERCISE OF OPTIONS AND STOCK APPRECIATION RIGHTS**

6.1 Exercise and Payment. An exercisable Option or Stock Appreciation Right may be exercised in whole or in part. However, unless the Administrator otherwise determines, an Option or Stock Appreciation Right shall not be exercisable with respect to fractional Shares and the Administrator may require that, by the terms of the Option or Stock Appreciation Right, a partial exercise must be with respect to a minimum number of Shares. Payment of the amounts payable with respect to Stock Appreciation Rights pursuant to this Article 6 shall be in cash, Shares (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised), or a combination of both, as determined by the Administrator.

6.2 Manner of Exercise. All or a portion of an exercisable Option or Stock Appreciation Right shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, the stock plan administrator of the Company or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written notice of exercise in a form the Administrator approves (which may be electronic) complying with the applicable rules established by the Administrator. The notice shall be signed or otherwise acknowledge electronically by the Holder or other person then entitled to exercise the Option or Stock Appreciation Right or such portion thereof;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with Applicable Law.

(c) In the event that the Option shall be exercised pursuant to Section 10.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option or Stock Appreciation Right, as determined in the sole discretion of the Administrator; and

(d) Full payment of the exercise price and applicable withholding taxes for the Shares with respect to which the Option or Stock Appreciation Right, or portion thereof, is exercised, in a manner permitted by the Administrator in accordance with Sections 10.1 and 10.2.

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6.3 Notification Regarding Disposition. The Holder shall give the Company prompt written or electronic notice of any disposition or other transfers (other than in connection with a Change in Control) of Shares acquired by exercise of an Incentive Stock Option which occurs within (a) two years from the date of granting (including the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code) such Option to such Holder, or (b) one year after the date of transfer of such Shares to such Holder. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Holder in such disposition or other transfer.

## ARTICLE 7.

### AWARD OF RESTRICTED STOCK

7.1 Award of Restricted Stock. The Administrator is authorized to grant Restricted Stock, or the right to purchase Restricted Stock, to Eligible Individuals, and shall determine the terms and conditions, including the restrictions applicable to each award of Restricted Stock, which terms and conditions shall not be inconsistent with the Plan or any applicable Program, and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate. The Administrator shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that if a purchase price is charged, such purchase price shall be no less than the par value, if any, of the Shares to be purchased, unless otherwise permitted by Applicable Law. In all cases, legal consideration shall be required for each issuance of Restricted Stock to the extent required by Applicable Law.

7.2 Rights as Stockholders. Subject to Section 7.4, upon issuance of Restricted Stock, the Holder shall have, unless otherwise provided by the Administrator, all of the rights of a stockholder with respect to said Shares, subject to the restrictions in the Plan, any applicable Program and/or the applicable Award Agreement, including the right to receive all dividends and other distributions paid or made with respect to the Shares to the extent such dividends and other distributions have a record date that is on or after the date on which the Holder to whom such Restricted Stock are granted becomes the record holder of such Restricted Stock; provided, however, that, in the sole discretion of the Administrator, any extraordinary dividends or distributions with respect to the Shares may be subject to the restrictions set forth in Section 7.3. In addition, notwithstanding anything to the contrary herein, with respect to a share of Restricted Stock, dividends which are paid prior to vesting shall only be paid out to the Holder to the extent that the share of Restricted Stock vests.

7.3 Restrictions. All shares of Restricted Stock (including any shares received by Holders thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) and, unless the Administrator provides otherwise, any property (other than cash) transferred to Holders in connection with an extraordinary dividend or distribution shall be subject to such restrictions and vesting requirements as the Administrator shall provide in the applicable Program or Award Agreement.

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7.4 Repurchase or Forfeiture of Restricted Stock. Except as otherwise determined by the Administrator, if no price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Holder's rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company and cancelled without consideration on the date of such Termination of Service. If a price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Company shall have the right to repurchase from the Holder the unvested Restricted Stock then subject to restrictions at a cash price per share equal to the price paid by the Holder for such Restricted Stock or such other amount as may be specified in the applicable Program or Award Agreement.

7.5 Section 83(b) Election. If a Holder makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Holder would otherwise be taxable under Section 83(a) of the Code, the Holder shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service along with proof of the timely filing thereof with the Internal Revenue Service.

## ARTICLE 8.

### AWARD OF RESTRICTED STOCK UNITS

8.1 Grant of Restricted Stock Units. The Administrator is authorized to grant Awards of Restricted Stock Units to any Eligible Individual selected by the Administrator in such amounts and subject to such terms and conditions as determined by the Administrator. A Holder will have no rights of a stockholder with respect to Shares subject to any Restricted Stock Unit unless and until the Shares are delivered in settlement of the Restricted Stock Unit.

8.2 Vesting of Restricted Stock Units. At the time of grant, the Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including, without limitation, vesting based upon the Holder's duration of service to the Company or any Subsidiary, one or more Performance Goals or other specific criteria, in each case on a specified date or dates or over any period or periods, as determined by the Administrator. An Award of Restricted Stock Units shall only be eligible to vest while the Holder is an Employee, a Consultant or a Director, as applicable; provided, however, that the Administrator, in its sole discretion, may provide (in an Award Agreement or otherwise) that a Restricted Stock Unit award may become vested subsequent to a Termination of Service in the event of the occurrence of certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service subject to Section 11.7.

8.3 Maturity and Payment. At the time of grant, the Administrator shall specify the maturity date applicable to each grant of Restricted Stock Units, which shall be no earlier than the vesting date or dates of the Award and may be determined at the election of the Holder (if permitted by the applicable Award Agreement); provided that, except as otherwise determined by the Administrator, and subject to compliance with Section 409A, in no event shall the maturity date relating to each Restricted Stock Unit occur following the later of (a) the 15<sup>th</sup> day of the third month following the end of the calendar year in which the applicable portion of the Restricted Stock Unit vests; and (b) the 15<sup>th</sup> day of the third month following the end of the Company's fiscal year in which the applicable portion of the Restricted Stock Unit vests. On the maturity date, the Company shall, in accordance with the applicable Award Agreement and subject to Section 10.4(f), transfer to the Holder one unrestricted, fully transferable Share for each Restricted Stock Unit scheduled to be paid out on such date and not previously forfeited, or in the sole discretion of the Administrator, an amount in cash equal to the Fair Market Value of such Shares on the maturity date or a combination of cash and Common Stock as determined by the Administrator.

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## ARTICLE 9.

### AWARD OF OTHER STOCK OR CASH BASED AWARDS AND DIVIDEND EQUIVALENTS

9.1 Other Stock or Cash Based Awards. The Administrator is authorized to grant Other Stock or Cash Based Awards, including awards entitling a Holder to receive Shares or cash to be delivered immediately or in the future, to any Eligible Individual. Subject to the provisions of the Plan and any applicable Program, the Administrator shall determine the terms and conditions of each Other Stock or Cash Based Award, including the term of the Award, any exercise or purchase price, Performance Criteria and Performance Goals, transfer restrictions, vesting conditions and other terms and conditions applicable thereto, which shall be set forth in the applicable Award Agreement. Other Stock or Cash Based Awards may be paid in cash, Shares, or a combination of cash and Shares, as determined by the Administrator, and may be available as a form of payment in the settlement of other Awards granted under the Plan, as stand-alone payments, as a part of a bonus, deferred bonus, deferred compensation or other arrangement, and/or as payment in lieu of compensation to which an Eligible Individual is otherwise entitled.

9.2 Dividend Equivalents. Dividend Equivalents may be granted by the Administrator, either alone or in tandem with another Award, based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date the Dividend Equivalents are granted to a Holder and the date such Dividend Equivalents terminate or expire, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional Shares by such formula and at such time and subject to such restrictions and limitations as may be determined by the Administrator. In addition, Dividend Equivalents with respect to an Award that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Holder to the extent that the vesting conditions are subsequently satisfied and the Award vests. Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Options or Stock Appreciation Rights.

## ARTICLE 10.

### ADDITIONAL TERMS OF AWARDS

10.1 Payment. The Administrator shall determine the method or methods by which payments by any Holder with respect to any Awards granted under the Plan shall be made, including, without limitation: (a) cash, wire transfer of immediately available funds or check, (b) Shares (including, in the case of payment of the exercise price of an Award, Shares issuable pursuant to the exercise of the Award) or Shares held for such minimum period of time as may be established by the Administrator, in each case, having a Fair Market Value on the date of delivery equal to the aggregate payments required, (c) delivery of a written or electronic notice that the Holder has placed a market sell order with a broker acceptable to the Company with respect to Shares then issuable upon exercise or vesting of an Award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payments required; provided that payment of such proceeds is then made to the Company upon settlement of such sale, (d) other form of legal consideration acceptable to the Administrator in its sole discretion, or (e) any combination of the above permitted forms of payment. Notwithstanding any other provision of the Plan to the contrary, no Holder who is a Director or an "executive officer" of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to make payment with respect to any Awards granted under the Plan, or continue any extension of credit with respect to such payment, with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

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10.2 Tax Withholding. The Company or any Subsidiary shall have the authority and the right to deduct or withhold, or require a Holder to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Holder's FICA, employment tax or other social security contribution obligation) required by law to be withheld with respect to any taxable event concerning a Holder arising as a result of the Plan or any Award. The Administrator may, in its sole discretion and in satisfaction of the foregoing requirement, or in satisfaction of such additional withholding obligations as a Holder may have elected, allow a Holder to satisfy such obligations by any payment means described in Section 10.1 hereof, including without limitation, by allowing such Holder to elect to have the Company or any Subsidiary withhold Shares otherwise issuable under an Award (or allow the surrender of Shares). The number of Shares that may be so withheld or surrendered shall be limited to the number of Shares that have a fair market value on the date of withholding or repurchase no greater than the aggregate amount of such liabilities based on the maximum statutory withholding rates in such Holder's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income. The Administrator shall determine the fair market value of the Shares, consistent with applicable provisions of the Code, for tax withholding obligations due in connection with a broker-assisted cashless Option or Stock Appreciation Right exercise involving the sale of Shares to pay the Option or Stock Appreciation Right exercise price or any tax withholding obligation.

10.3 Transferability of Awards

(a) Except as otherwise provided in Sections 10.3(b) and 10.3(c):

(i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than (A) by will or the laws of descent and distribution or (B) subject to the consent of the Administrator, pursuant to a DRO, unless and until such Award has been exercised or the Shares underlying such Award have been issued, and all restrictions applicable to such Shares have lapsed;

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(ii) No Award or interest or right therein shall be liable for or otherwise subject to the debts, contracts or engagements of the Holder or the Holder's successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy) unless and until such Award has been exercised, or the Shares underlying such Award have been issued, and all restrictions applicable to such Shares have lapsed, and any attempted disposition of an Award prior to satisfaction of these conditions shall be null and void and of no effect, except to the extent that such disposition is permitted by Section 10.3(a)(i); and

(iii) During the lifetime of the Holder, only the Holder may exercise any exercisable portion of an Award granted to such Holder under the Plan, unless it has been disposed of pursuant to a DRO. After the death of the Holder, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Program or Award Agreement, be exercised by the Holder's personal representative or by any person empowered to do so under the deceased Holder's will or under the then-applicable laws of descent and distribution.

(b) Notwithstanding Section 10.3(a), the Administrator, in its sole discretion, may determine to permit a Holder or a Permitted Transferee of such Holder to transfer an Award other than an Incentive Stock Option (unless such Incentive Stock Option is intended to become a Nonqualified Stock Option) to any one or more Permitted Transferees of such Holder, subject to the following terms and conditions: (i) an Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than (A) to another Permitted Transferee of the applicable Holder or (B) by will or the laws of descent and distribution or, subject to the consent of the Administrator, pursuant to a DRO; (ii) an Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Holder (other than the ability to further transfer the Award to any person other than another Permitted Transferee of the applicable Holder); (iii) the Holder (or transferring Permitted Transferee) and the receiving Permitted Transferee shall execute any and all documents requested by the Administrator, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under Applicable Law and (C) evidence the transfer; and (iv) the transfer of an Award to a Permitted Transferee shall be without consideration. In addition, and further notwithstanding Section 10.3(a), hereof, the Administrator, in its sole discretion, may determine to permit a Holder to transfer Incentive Stock Options to a trust that constitutes a Permitted Transferee if, under Section 671 of the Code and other Applicable Law, the Holder is considered the sole beneficial owner of the Incentive Stock Option while it is held in the trust.

(c) Notwithstanding Section 10.3(a), a Holder may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Holder and to receive any distribution with respect to any Award upon the Holder's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Program or Award Agreement applicable to the Holder and any additional restrictions deemed necessary or appropriate by the Administrator. If the Holder is married or a domestic partner in a domestic partnership qualified under Applicable Law and resides in a community property state, a designation of a person other than the Holder's spouse or domestic partner, as applicable, as the Holder's beneficiary with respect to more than 50% of the Holder's interest in the Award shall not be effective without the prior written or electronic consent of the Holder's spouse or domestic partner. If no beneficiary has been designated or survives the Holder, payment shall be made to the person entitled thereto pursuant to the Holder's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Holder at any time; provided that the change or revocation is delivered in writing to the Administrator prior to the Holder's death.

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10.4 Conditions to Issuance of Shares.

(a) The Administrator shall determine the methods by which Shares shall be delivered or deemed to be delivered to Holders. Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of any Award, unless and until the Administrator has determined that the issuance of such Shares is in compliance with Applicable Law and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Administrator may require that a Holder make such reasonable covenants, agreements and representations as the Administrator, in its sole discretion, deems advisable in order to comply with Applicable Law.

(b) All share certificates delivered pursuant to the Plan and all Shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with Applicable Law. The Administrator may place legends on any share certificate or book entry to reference restrictions applicable to the Shares (including, without limitation, restrictions applicable to Restricted Stock).

(c) The Administrator shall have the right to require any Holder to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Award, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) Unless the Administrator otherwise determines, no fractional Shares shall be issued and the Administrator, in its sole discretion, shall determine whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding down.

(e) The Company, in its sole discretion, may (i) retain physical possession of any stock certificate evidencing Shares until any restrictions thereon shall have lapsed and/or (ii) require that the stock certificates evidencing such Shares be held in custody by a designated escrow agent (which may but need not be the Company) until the restrictions thereon shall have lapsed, and that the Holder deliver a stock power, endorsed in blank, relating to such Shares.

(f) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by Applicable Law, the Company shall not deliver to any Holder certificates evidencing Shares issued in connection with any Award and instead such Shares shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

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10.5 Forfeiture and Claw-Back Provisions. All Awards (including any proceeds, gains or other economic benefit actually or constructively received by a Holder upon any receipt or exercise of any Award or upon the receipt or resale of any Shares underlying the Award and any payments of a portion of an incentive-based bonus pool allocated to a Holder) shall be subject to the provisions of any claw-back policy implemented by the Company, including, without limitation, any claw-back policy adopted to comply with the requirements of Applicable Law, including, without limitation, the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder, whether or not such claw-back policy was in place at the time of grant of an Award, to the extent set forth in such claw-back policy and/or in the applicable Award Agreement.

10.6 Repricing. Subject to Section 12.2, the Administrator shall not, without the approval of the stockholders of the Company, (a) authorize the amendment of any outstanding Option or Stock Appreciation Right to reduce its price per Share, or (b) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per Share exceeds the Fair Market Value of the underlying Shares. Furthermore, for purposes of this Section 10.6, except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares), the terms of outstanding Awards may not be amended to reduce the exercise price per Share of outstanding Options or Stock Appreciation Rights or cancel outstanding Options or Stock Appreciation Rights in exchange for cash, other Awards or Options or Stock Appreciation Rights with an exercise price per Share that is less than the exercise price per Share of the original Options or Stock Appreciation Rights without the approval of the stockholders of the Company.

10.7 Amendment of Awards. Subject to Applicable Law, the Administrator may amend, modify or terminate any outstanding Award, including but not limited to, substituting therefor another Award of the same or a different type, changing the date of exercise or settlement, and converting an Incentive Stock Option to a Non-Qualified Stock Option. The Holder's consent to such action shall be required unless (a) the Administrator determines that the action, taking into account any related action, would not materially and adversely affect the Holder, or (b) the change is otherwise permitted under the Plan (including, without limitation, under Section 12.2 or 12.10).

10.8 Lock-Up Period. The Company may, in connection with registering the offering of any Company securities under the Securities Act, prohibit Holders from, directly or indirectly, selling or otherwise transferring any Shares or other Company securities during a period of up to one hundred eighty days following the effective date of a Company registration statement filed under the Securities Act, or such longer period as determined by the underwriter. In order to enforce the foregoing, the Company shall have the right to place restrictive legends on the certificates of any securities of the Company held by the Holder and to impose stop transfer instructions with the Company's transfer agent with respect to any securities of the Company held by the Holder until the end of such period.

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10.9 Data Privacy. As a condition of receipt of any Award, each Holder explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of personal data as described in this Section 10.9 by and among, as applicable, the Company and its Subsidiaries for the exclusive purpose of implementing, administering and managing the Holder's participation in the Plan. The Company and its Subsidiaries may hold certain personal information about a Holder, including but not limited to, the Holder's name, home address and telephone number, date of birth, social security or insurance number or other identification number, salary, nationality, job title(s), any shares of stock held in the Company or any of its Subsidiaries, details of all Awards, in each case, for the purpose of implementing, managing and administering the Plan and Awards (the "Data"). The Company and its Subsidiaries may transfer the Data amongst themselves as necessary for the purpose of implementation, administration and management of a Holder's participation in the Plan, and the Company and its Subsidiaries may each further transfer the Data to any third parties assisting the Company and its Subsidiaries in the implementation, administration and management of the Plan. These recipients may be located in the Holder's country, or elsewhere, and the Holder's country may have different data privacy laws and protections than the recipients' country. Through acceptance of an Award, each Holder authorizes such recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing the Holder's participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Company or any of its Subsidiaries or the Holder may elect to deposit any Shares. The Data related to a Holder will be held only as long as is necessary to implement, administer, and manage the Holder's participation in the Plan. A Holder may, at any time, view the Data held by the Company with respect to such Holder, request additional information about the storage and processing of the Data with respect to such Holder, recommend any necessary corrections to the Data with respect to the Holder or refuse or withdraw the consents herein in writing, in any case without cost, by contacting his or her local human resources representative. The Company may cancel the Holder's ability to participate in the Plan and, in the Administrator's discretion, the Holder may forfeit any outstanding Awards if the Holder refuses or withdraws his or her consents as described herein. For more information on the consequences of refusal to consent or withdrawal of consent, Holders may contact their local human resources representative.

## ARTICLE 11.

### ADMINISTRATION

11.1 Administrator. The Committee shall administer the Plan (except as otherwise permitted herein). To the extent required to comply with the provisions of Rule 16b-3, it is intended that each member of the Committee will be, at the time the Committee takes any action with respect to an Award that is subject to Rule 16b-3, a "non-employee director" within the meaning of Rule 16b-3. Additionally, to the extent required by Applicable Law, each of the individuals constituting the Committee shall be an "independent director" under the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded. Notwithstanding the foregoing, any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 11.1 or the Organizational Documents. Except as may otherwise be provided in the Organizational Documents or as otherwise required by Applicable Law, (a) appointment of Committee members shall be effective upon acceptance of appointment, (b) Committee members may resign at any time by delivering written or electronic notice to the Board and (c) vacancies in the Committee may only be filled by the Board. Notwithstanding the foregoing, (i) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to Awards granted to Non-Employee Directors and, with respect to such Awards, the term "Administrator" as used in the Plan shall be deemed to refer to the Board and (ii) the Board or Committee may delegate its authority hereunder to the extent permitted by Section 11.6.

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11.2 Duties and Powers of Administrator. It shall be the duty of the Administrator to conduct the general administration of the Plan in accordance with its provisions. The Administrator shall have the power to interpret the Plan, all Programs and Award Agreements, and to adopt such rules for the administration, interpretation and application of the Plan and any Program as are not inconsistent with the Plan, to interpret, amend or revoke any such rules and to amend the Plan or any Program or Award Agreement; provided that the rights or obligations of the Holder of the Award that is the subject of any such Program or Award Agreement are not materially and adversely affected by such amendment, unless the consent of the Holder is obtained or such amendment is otherwise permitted under Section 10.7 or Section 12.10. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee in its capacity as the Administrator under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or any successor rule, or any regulations or rules issued thereunder, or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded are required to be determined in the sole discretion of the Committee.

11.3 Action by the Administrator. Unless otherwise established by the Board, set forth in any Organizational Documents or as required by Applicable Law, a majority of the Administrator shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by all members of the Administrator in lieu of a meeting, shall be deemed the acts of the Administrator. Each member of the Administrator is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan. Neither the Administrator nor any member or delegate thereof shall have any liability to any person (including any Holder) for any action taken or omitted to be taken or any determination made in good faith with respect to the Plan or any Award.

11.4 Authority of Administrator. Subject to the Organizational Documents, any specific designation in the Plan and Applicable Law, the Administrator has the exclusive power, authority and sole discretion to:

- (a) Designate Eligible Individuals to receive Awards;
  - (b) Determine the type or types of Awards to be granted to each Eligible Individual (including, without limitation, any Awards granted in tandem with another Award granted pursuant to the Plan);
  - (c) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;
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(d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, purchase price, any Performance Criteria and/or Performance Goals, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, and any provisions related to non-competition and claw-back and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;

(e) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(f) Prescribe the form of each Award Agreement, which need not be identical for each Holder;

(g) Decide all other matters that must be determined in connection with an Award;

(h) Establish, adopt, or revise any Programs, rules and regulations as it may deem necessary or advisable to administer the Plan;

(i) Interpret the terms of, and any matter arising pursuant to, the Plan, any Program or any Award Agreement; and

(j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan.

11.5 Decisions Binding. The Administrator's interpretation of the Plan, any Awards granted pursuant to the Plan, any Program or any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding and conclusive on all persons.

11.6 Delegation of Authority. The Board or Committee may from time to time delegate to a committee of one or more Directors or one or more officers of the Company the authority to grant or amend Awards or to take other administrative actions pursuant to this Article 11; provided, however, that in no event shall an officer of the Company be delegated the authority to grant Awards to, or amend Awards held by, the following individuals: (a) individuals who are subject to Section 16 of the Exchange Act, or (b) officers of the Company (or Directors) to whom authority to grant or amend Awards has been delegated hereunder; provided, further, that any delegation of administrative authority shall only be permitted to the extent it is permissible under any Organizational Documents and Applicable Law. Any delegation hereunder shall be subject to the restrictions and limits that the Board or Committee specifies at the time of such delegation or that are otherwise included in the applicable Organizational Documents, and the Board or Committee, as applicable, may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 11.6 shall serve in such capacity at the pleasure of the Board or the Committee, as applicable, and the Board or the Committee may abolish any committee at any time and re-vest in itself any previously delegated authority.

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11.7 Acceleration. Subject to the Organizational Documents, any specific designation in the Plan and Applicable Law, the Administrator has the exclusive power, authority and sole discretion to accelerate, wholly or partially, the vesting or lapse of restrictions (and, if applicable, the Company shall cease to have a right of repurchase) of any Award or portion thereof at any time after the grant of an Award, subject to whatever terms and conditions it selects and Section 12.2.

## ARTICLE 12.

### MISCELLANEOUS PROVISIONS

#### 12.1 Amendment, Suspension or Termination of the Plan

(a) Except as otherwise provided in Section 12.1(b), the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board; provided that, except as provided in Section 10.7 and Section 12.10, no amendment, suspension or termination of the Plan shall, without the consent of the Holder, materially and adversely affect any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides.

(b) Notwithstanding Section 12.1(a), the Board may not, except as provided in Section 12.2, take any of the following actions without approval of the Company's stockholders given within twelve (12) months before or after such action: (i) increase the limit imposed in Section 3.1 on the maximum number of Shares which may be issued under the Plan, (ii) reduce the price per share of any outstanding Option or Stock Appreciation Right granted under the Plan or take any action prohibited under Section 11.6, or (iii) cancel any Option or Stock Appreciation Right in exchange for cash or another Award in violation of Section 10.6.

(c) No Awards may be granted or awarded during any period of suspension or after termination of the Plan, and notwithstanding anything herein to the contrary, in no event may any Award be granted under the Plan after the tenth (10<sup>th</sup>) anniversary of the earlier of (i) the date on which the Plan was adopted by the Board or (ii) the date the Plan was approved by the Company's stockholders (such anniversary, the "Expiration Date"). Any Awards that are outstanding on the Expiration Date shall remain in force according to the terms of the Plan, the applicable Program and the applicable Award Agreement.

#### 12.2 Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of the Company's stock or the share price of the Company's stock other than an Equity Restructuring, the Administrator may make equitable adjustments to reflect such change with respect to: (i) the aggregate number and kind of Shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of Shares which may be issued under the Plan); (ii) the number and kind of Shares (or other securities or property) subject to outstanding Awards; (iii) the terms and conditions of any outstanding Awards (including, without limitation, any applicable Performance Criteria and Performance Goals with respect thereto); and (iv) the grant or exercise price per share for any outstanding Awards under the Plan; and (v) the number and kind of Shares (or other securities or property) for which automatic grants are subsequently to be made to new and continuing Non-Employee Directors pursuant to any Non-Employee Director Compensation Policy adopted in accordance with Section 4.6.

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(b) In the event of any transaction or event described in Section 12.2(a) or any unusual or nonrecurring transactions or events affecting the Company, any Subsidiary of the Company, or the financial statements of the Company or any Subsidiary, or of changes in Applicable Law or Applicable Accounting Standards, the Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in Applicable Law or Applicable Accounting Standards:

(i) To provide for the termination of any such Award in exchange for an amount of cash and/or other property with a value equal to the amount that would have been attained upon the exercise of such Award or realization of the Holder's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 12.2 the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Holder's rights, then such Award may be terminated by the Company without payment);

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and applicable exercise or purchase price, in all cases, as determined by the Administrator;

(iii) To make adjustments in the number and type of Shares of the Company's stock (or other securities or property) subject to outstanding Awards, and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Awards and Awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all Shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Program or Award Agreement;

(v) To replace such Award with other rights or property selected by the Administrator; and/or

(vi) To provide that the Award cannot vest, be exercised or become payable after such event.

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(c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Sections 12.2(a) and 12.2(b):

(i) The number and type of securities subject to each outstanding Award and the exercise price or grant price thereof, if applicable, shall be equitably adjusted (and the adjustments provided under this Section 12.2(c)(i) shall be nondiscretionary and shall be final and binding on the affected Holder and the Company); and/or

(ii) The Administrator shall make such equitable adjustments, if any, as the Administrator, in its sole discretion, may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of Shares that may be issued under the Plan (including, but not limited to, adjustments of the limitation in Section 3.1 on the maximum number and kind of Shares which may be issued under the Plan).

(d) Notwithstanding any other provision of the Plan, in the event of a Change in Control, unless the Administrator elects to (i) terminate an Award in exchange for cash, rights or property, or (ii) cause an Award to become fully exercisable and no longer subject to any forfeiture restrictions prior to the consummation of a Change in Control, pursuant to Section 12.2, (A) such Award (other than any portion subject to performance-based vesting) shall continue in effect or be assumed or an equivalent Award (which may include, without limitation, an Award settled in cash) substituted by the successor corporation or a parent or subsidiary of the successor corporation and (B) the portion of such Award subject to performance-based vesting shall be subject to the terms and conditions of the applicable Award Agreement and, in the absence of applicable terms and conditions, the Administrator's discretion. In the event an Award continues in effect or is assumed or an equivalent Award substituted, and a Holder incurs a Termination of Service without "cause" (as such term is defined in the sole discretion of the Administrator, or as set forth in the Award Agreement relating to such Award) upon or within twelve (12) months following the Change in Control, then such Holder shall be fully vested in such continued, assumed or substituted Award.

(e) In the event that the successor corporation in a Change in Control refuses to assume or substitute for an Award (other than any portion subject to performance-based vesting), the Administrator may cause (i) any or all of such Award (or portion thereof) to terminate in exchange for cash, rights or other property pursuant to Section 12.2(b)(i) or (ii) any or all of such Award (or portion thereof) to become fully exercisable immediately prior to the consummation of such transaction and all forfeiture restrictions on any or all of such Award to lapse. If any such Award is exercisable in lieu of assumption or substitution in the event of a Change in Control, the Administrator shall notify the Holder that such Award shall be fully exercisable for a period of fifteen (15) days from the date of such notice, contingent upon the occurrence of the Change in Control, and such Award shall terminate upon the expiration of such period.

(f) For the purposes of this Section 12.2, an Award shall be considered assumed if, following the Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change in Control was not solely common stock of the successor corporation or its parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Award, for each Share subject to an Award, to be solely common stock of the successor corporation or its parent equal in fair market value to the per-share consideration received by holders of Common Stock in the Change in Control.

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(g) The Administrator, in its sole discretion, may include such further provisions and limitations in any Award, agreement or certificate, as it may deem equitable and in the best interests of the Company that are not inconsistent with the provisions of the Plan.

(h) Unless otherwise determined by the Administrator, no adjustment or action described in this Section 12.2 or in any other provision of the Plan shall be authorized to the extent it would (i) cause the Plan to violate Section 422(b)(1) of the Code, (ii) result in short-swing profits liability under Section 16 of the Exchange Act or violate the exemptive conditions of Rule 16b-3 of the Exchange Act, or (iii) cause an Award to fail to be exempt from or comply with Section 409A.

(i) The existence of the Plan, any Program, any Award Agreement and/or the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(j) In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the Shares or the share price of the Common Stock including any Equity Restructuring, for reasons of administrative convenience, the Administrator, in its sole discretion, may refuse to permit the exercise of any Award during a period of up to thirty (30) days prior to the consummation of any such transaction.

12.3 Approval of Plan by Stockholders. The Plan shall be submitted for the approval of the Company's stockholders within twelve (12) months after the date of the Board's initial adoption of the Plan. Awards may be granted or awarded prior to such stockholder approval; provided that such Awards shall not be exercisable, shall not vest and the restrictions thereon shall not lapse and no Shares shall be issued pursuant thereto prior to the time when the Plan is approved by the Company's stockholders; and provided, further, that if such approval has not been obtained at the end of said twelve (12) month period, all Awards previously granted or awarded under the Plan shall thereupon be canceled and become null and void.

12.4 No Stockholders Rights. Except as otherwise provided herein or in an applicable Program or Award Agreement, a Holder shall have none of the rights of a stockholder with respect to Shares covered by any Award until the Holder becomes the record owner of such Shares.

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12.5 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Holder may be permitted through the use of such an automated system.

12.6 Effect of Plan upon Other Compensation Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company or any Subsidiary. Nothing in the Plan shall be construed to limit the right of the Company or any Subsidiary: (a) to establish any other forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Subsidiary, or (b) to grant or assume options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose including without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

12.7 Compliance with Laws. The Plan, the granting and vesting of Awards under the Plan and the issuance and delivery of Shares and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all Applicable Law (including but not limited to state, federal and foreign securities law and margin requirements), and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all Applicable Law. The Administrator, in its sole discretion, may take whatever actions it deems necessary or appropriate to effect compliance with Applicable Law, including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars. Notwithstanding anything to the contrary herein, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate Applicable Law. To the extent permitted by Applicable Law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to Applicable Law.

12.8 Titles and Headings, References to Sections of the Code or Exchange Act. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control. References to sections of the Code or the Exchange Act shall include any amendment or successor thereto.

12.9 Governing Law. The Plan and any Programs and Award Agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts of laws thereof or of any other jurisdiction.

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12.10 Section 409A. To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A, the Plan, the Program pursuant to which such Award is granted and the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A. In that regard, to the extent any Award under the Plan or any other compensatory plan or arrangement of the Company or any of its Subsidiaries is subject to Section 409A, and such Award or other amount is payable on account of a Holder's Termination of Service (or any similarly defined term), then (a) such Award or amount shall only be paid to the extent such Termination of Service qualifies as a "separation from service" as defined in Section 409A, and (b) if such Award or amount is payable to a "specified employee" as defined in Section 409A then, to the extent required in order to avoid a prohibited distribution under Section 409A, such Award or other compensatory payment shall not be payable prior to the earlier of (i) the expiration of the six-month period measured from the date of the Holder's Termination of Service, or (ii) the date of the Holder's death. To the extent applicable, the Plan, the Program and any Award Agreements shall be interpreted in accordance with Section 409A. Notwithstanding any provision of the Plan to the contrary, in the event that, following the Effective Date the Administrator determines that any Award may be subject to Section 409A, the Administrator may (but is not obligated to), without a Holder's consent, adopt such amendments to the Plan and the applicable Program and Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to (A) exempt the Award from Section 409A and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (B) comply with the requirements of Section 409A and thereby avoid the application of any penalty taxes under Section 409A. The Company makes no representations or warranties as to the tax treatment of any Award under Section 409A or otherwise. The Company shall have no obligation under this Section 12.10 or otherwise to take any action (whether or not described herein) to avoid the imposition of taxes, penalties or interest under Section 409A with respect to any Award and shall have no liability to any Holder or any other person if any Award, compensation or other benefits under the Plan are determined to constitute non-compliant, "nonqualified deferred compensation" subject to the imposition of taxes, penalties and/or interest under Section 409A.

12.11 Unfunded Status of Awards. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Holder pursuant to an Award, nothing contained in the Plan or any Program or Award Agreement shall give the Holder any rights that are greater than those of a general creditor of the Company or any Subsidiary.

12.12 Indemnification. To the extent permitted under Applicable Law and the Organizational Documents, each member of the Administrator (and each delegate thereof pursuant to Section 11.6) shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan or any Award Agreement and against and from any and all amounts paid by him or her, with the Board's approval, in satisfaction of judgment in such action, suit, or proceeding against him or her; provided he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf and, once the Company gives notice of its intent to assume such defense, the Company shall have sole control over such defense with counsel of the Company's choosing. The foregoing right of indemnification shall not be available to the extent that a court of competent jurisdiction in a final judgment or other final adjudication, in either case not subject to further appeal, determines that the acts or omissions of the person seeking indemnity giving rise to the indemnification claim resulted from such person's bad faith, fraud or willful criminal act or omission. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Organizational Documents, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

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12.13 Relationship to Other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Subsidiary except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

12.14 Expenses. The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.

12.15 Section 162(m) Reliance Period. To the maximum extent permitted under Section 162(m) of the Code and Applicable Law, Awards under this Plan shall not be subject to the deduction limit set forth in U.S. Treasury Regulation 1.162-27(b) pursuant to Section 162(m) of the Code and the rules and regulations promulgated thereunder, to the extent such Awards may qualify for any post-public offering reliance period deduction limit exception set forth in U.S. Treasury Regulation 1.162-27(f) (or any successor thereto), and the Plan and Award Agreements shall be interpreted accordingly.

\* \* \* \* \*

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of Better Choice Company Inc. on \_\_\_\_\_, 2019.

\* \* \* \* \*

I hereby certify that the foregoing Plan was approved by the stockholders of Better Choice Company Inc. on \_\_\_\_\_, 2019.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_

**BETTER CHOICE COMPANY, INC.  
2019 INCENTIVE AWARD PLAN**

**STOCK OPTION GRANT NOTICE AND  
STOCK OPTION AGREEMENT**

Better Choice Company, Inc., a Delaware corporation (the "Company"), pursuant to its 2019 Incentive Award Plan, as amended from time to time (the "Plan"), hereby grants to the holder listed below ("Holder") an option to purchase the number of Shares set forth below (the "Option"). The Option is subject to the terms and conditions set forth in this Stock Option Grant Notice (the "Grant Notice"), the Stock Option Agreement attached hereto as Exhibit A (the "Agreement") and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Agreement.

**Holder:** [ • ]  
**Grant Date:** [ • ]  
**Exercise Price Per Share:** \$[ • ]  
**Total Number of Shares Subject to Option:** [ • ]  
**Expiration Date:** [ • ]  
**Type of Option:**  Incentive Stock Option  Non-Qualified Stock Option  
**Vesting Schedule:** Subject to Holder's continued status as an Employee, Director or Consultant through each vesting date, the Option shall vest and become exercisable as to [25% of the Shares subject thereto on the first anniversary of the Grant Date and as to 1/36th of the Shares subject thereto on each monthly anniversary thereafter (rounded down to the next whole number of Shares), such that the Option shall be fully vested and exercisable on the third anniversary of the Grant Date].<sup>1</sup>

By Holder's signature below, Holder agrees to be bound by the terms and conditions of the Plan, the Agreement and the Grant Notice. Holder has reviewed the Agreement, the Plan and the Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Grant Notice and fully understands all provisions of the Grant Notice, the Agreement and the Plan. Holder hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan, the Grant Notice or the Agreement.

**BETTER CHOICE COMPANY, INC.**

**HOLDER**

By: \_\_\_\_\_  
 Print Name: Damian Dalla-Longa  
 Title: Chief Executive Officer

By: \_\_\_\_\_  
 Print Name: [NAME]

<sup>1</sup> NTD: Revise vesting schedule as appropriate.

**EXHIBIT A**  
**TO STOCK OPTION GRANT NOTICE**

**STOCK OPTION AGREEMENT**

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Holder an Option under the Plan to purchase the number of Shares set forth in the Grant Notice.

**ARTICLE I.**  
**GENERAL**

Section 1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice. For purposes of this Agreement,

(a) “Cause” shall mean a Company Group Member having “Cause” to terminate Holder’s employment, as defined in any relevant employment or similar agreement or offer letter between Holder and a Company Group Member; provided that, in the absence of an employment agreement or offer letter containing such a definition, “Cause” shall mean shall mean (i) Holder is convicted of, or pleads guilty or nolo contendere to, a felony related to the business of a Company Group Member; (ii) Holder, in carrying out Holder’s duties, has acted with gross negligence or intentional misconduct which results in material harm to a Company Group Member; (iii) Holder misappropriates funds of a Company Group Member or otherwise defrauds a Company Group Member involving a material amount of money or property; (iv) Holder breaches Holder’s fiduciary duty to a Company Group Member, resulting in material profit to Holder personally, directly or indirectly; (v) Holder materially breaches any agreement with a Company Group Member and fails to cure such breach within 30 days of receipt of notice; (vi) Holder breaches any restrictive covenant in any agreement between Holder and a Company Group Member; (vii) Holder becomes subject to a preliminary or permanent injunction issued by a United States District Court enjoining Holder from violating any securities law administered or regulated by the Securities and Exchange Commission; (viii) Holder becomes subject to a cease and desist order or other order issued by the Securities and Exchange Commission after an opportunity for a hearing; (ix) Holder refuses to carry out a resolution adopted by the board of directors of a Company Group Member; or (x) Holder abuses alcohol or drugs in a manner that interferes with the successful performance of Holder’s Duties.

(b) “Cessation Date” shall mean the date of Holder’s Termination of Service (regardless of the reason for such termination).

(c) “Company Group” shall mean the Company and its Subsidiaries.

(d) “Company Group Member” shall mean each member of the Company Group.

(e) “Disability” shall have the meaning ascribed to such term in any relevant employment or similar agreement or offer letter between Holder and a Company Group Member; provided that, in the absence of such agreement containing such definition, “Disability” shall mean (i) Holder is unable to substantially engage in Holder’s duties by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for a continuous period of not less than 12 months; (ii) Holder is, by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of a Company Group Member; or (iii) Holder is determined to be totally disabled by the Social Security Administration.

(f) [“Good Reason”] shall have the meaning ascribed to such term in any relevant employment or similar agreement or offer letter between Holder and a Company Group Member.]<sup>2</sup>

Section 1.2 Incorporation of Terms of Plan. The Option is subject to the terms and conditions set forth in this Agreement and the Plan, each of which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

## ARTICLE II. GRANT OF OPTION

Section 2.1 Grant of Option. In consideration of Holder’s past and/or continued employment with or service to any Company Group Member and for other good and valuable consideration, effective as of the grant date set forth in the Grant Notice (the “Grant Date”), the Company has granted to Holder the Option to purchase any part or all of an aggregate number of Shares set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement, subject to adjustment as provided in Section 12.2 of the Plan.

Section 2.2 Exercise Price. The exercise price per Share of the Shares subject to the Option (the “Exercise Price”) shall be as set forth in the Grant Notice.

Section 2.3 Consideration to the Company. In consideration of the grant of the Option by the Company, Holder agrees to render faithful and efficient services to any Company Group Member.

## ARTICLE III. PERIOD OF EXERCISABILITY

Section 3.1 Commencement of Exercisability.

(a) Subject to Holder’s continued employment with or service to a Company Group Member on each applicable vesting date and subject to Sections 3.2, 3.3, 6.9 and 6.14 hereof, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice. Notwithstanding the foregoing, the Option shall not vest or be exercisable unless and until the stockholders of the Company approve the Plan in accordance with Section 12.3 of the Plan.

(b) Notwithstanding the Grant Notice or the provisions of Section 3.1(a) and (c), in the event of Holder’s Termination of Service by a Company Group Member without Cause [or by the Holder for Good Reason] during the two-year period immediately following a Change in Control, the Option shall become vested and exercisable in full upon the Cessation Date.

(c) Subject to Section 3.1(b) and unless otherwise determined by the Administrator or as set forth in a written agreement between Holder and the Company, any portion of the Option that has not become vested and exercisable on or prior to the Cessation Date (including, without limitation, pursuant to any employment or similar agreement by and between Holder and the Company) shall be forfeited on the Cessation Date and shall not thereafter become vested or exercisable.

Section 3.2 Duration of Exercisability. The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment that becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3 hereof. Once the Option becomes unexercisable, it shall be forfeited immediately.

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<sup>2</sup> NTD: Only include for those employees with employment agreements.

Section 3.3     Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

- (a)     The expiration date set forth in the Grant Notice;provided that such expiration date shall not be later than the tenth (10th) anniversary of the Grant Date;
- (b)     Except as the Administrator may otherwise approve, the ninetieth (90th) day following the Cessation Date by reason of Holder's Termination of Service for any reason other than due to death, Disability or by a Company Group Member for Cause;
- (c)     Except as the Administrator may otherwise approve, immediately upon the Cessation Date by reason of Holder's Termination of Service by a Company Group Member for Cause; and
- (d)     The expiration of twelve (12) months from the Cessation Date by reason of Holder's Termination of Service due to death or Disability.

Section 3.4     Tax Withholding. Notwithstanding any other provision of this Agreement:

(a)     The Company Group has the authority to deduct or withhold, or require Holder to remit to the applicable Company Group Member, an amount sufficient to satisfy any applicable federal, state, local and foreign taxes (including the employee portion of any FICA obligation) required by Applicable Law to be withheld with respect to any taxable event arising pursuant to this Agreement. The Company Group may withhold or Holder may make such payment in one or more of the forms specified below:

- (i)     by cash or check made payable to the Company Group Member with respect to which the withholding obligation arises;
- (ii)    by the deduction of such amount from other compensation payable to Holder;

(iii)    with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by requesting that the Company Group withhold a net number of vested Shares otherwise issuable upon the exercise of the Option having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company Group based on the maximum statutory withholding rates in Holder's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income;

(iv)    with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by tendering to the Company vested Shares held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences and having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company Group based on the maximum statutory withholding rates in Holder's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income;

(v) with respect to any withholding taxes arising in connection with the exercise of the Option, through the delivery of a notice that Holder has placed a market sell order with a broker acceptable to the Company with respect to Shares then issuable to Holder pursuant to the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company Group Member with respect to which the withholding obligation arises in satisfaction of such withholding taxes; provided that payment of such proceeds is then made to the applicable Company Group Member at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or

(vi) in any combination of the foregoing.

(b) With respect to any withholding taxes arising in connection with the Option, in the event Holder fails to provide timely payment of all sums required pursuant to Section 3.4(a), the Company shall have the right and option, but not the obligation, to treat such failure as an election by Holder to satisfy all or any portion of Holder's required payment obligation pursuant to Section 3.4(a)(ii) or Section 3.4(a)(iii) above, or any combination of the foregoing as the Company may determine to be appropriate. The Company shall not be obligated to deliver any certificate representing Shares issuable with respect to the exercise of the Option to, or to cause any such Shares to be held in book-entry form by, Holder or his or her legal representative unless and until Holder or his or her legal representative shall have paid or otherwise satisfied in full the amount of all federal, state, local and foreign taxes applicable with respect to the taxable income of Holder resulting from the exercise of the Option or any other taxable event related to the Option.

(c) In the event any tax withholding obligation arising in connection with the Option will be satisfied under Section 3.4(a)(iii), then the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on Holder's behalf a whole number of Shares from those Shares then issuable upon the exercise of the Option as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the tax withholding obligation and to remit the proceeds of such sale to the Company Group Member with respect to which the withholding obligation arises. Holder's acceptance of this Option constitutes Holder's instruction and authorization to the Company and such brokerage firm to complete the transactions described in this Section 3.4(c), including the transactions described in the previous sentence, as applicable. The Company may refuse to issue any Shares to Holder until the foregoing tax withholding obligations are satisfied, provided that no payment shall be delayed under this Section 3.4(c) if such delay will result in a violation of Section 409A.

(d) Holder is ultimately liable and responsible for all taxes owed in connection with the Option, regardless of any action any Company Group Member takes with respect to any tax withholding obligations that arise in connection with the Option. No Company Group Member makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or exercise of the Option or the subsequent sale of Shares. The Company Group does not commit and is under no obligation to structure the Option to reduce or eliminate Holder's tax liability.

#### **ARTICLE IV. EXERCISE OF OPTION**

Section 4.1 Person Eligible to Exercise. During the lifetime of Holder, only Holder may exercise the Option or any portion thereof. After the death of Holder, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3 hereof, be exercised by Holder's personal representative or by any Person empowered to do so under the deceased Holder's will or under the then Applicable Laws of descent and distribution.

Section 4.2 Partial Exercise. Subject to Section 6.2, any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3 hereof.

Section 4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company (or any third party administrator or other Person designated by the Company), during regular business hours, of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3 hereof.

(a) An exercise notice in a form specified by the Administrator, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Administrator;

(b) The receipt by the Company of full payment for the Shares with respect to which the Option or portion thereof is exercised, in such form of consideration permitted under Section 4.4 that is acceptable to the Administrator;

(c) The payment of any applicable withholding tax in accordance with Section 3.4;

(d) Any other written representations or documents as may be required in the Administrator's sole discretion to effect compliance with Applicable Law; and

(e) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 by any Person or Persons other than Holder, appropriate proof of the right of such Person or Persons to exercise the Option.

Notwithstanding any of the foregoing, the Administrator shall have the right to specify all conditions of the manner of exercise, which conditions may vary by country and which may be subject to change from time to time.

Section 4.4 Method of Payment. Payment of the Exercise Price shall be by any of the following, or a combination thereof, at the election of Holder:

(a) Cash or check;

(b) With the consent of the Administrator, surrender of vested Shares (including, without limitation, Shares otherwise issuable upon exercise of the Option) held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences and having a Fair Market Value on the date of delivery equal to the aggregate Exercise Price of the Option or exercised portion thereof;

(c) Through the delivery of a notice that Holder has placed a market sell order with a broker acceptable to the Company with respect to Shares then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Exercise Price; *provided* that payment of such proceeds is then made to the Company at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or

(d) Any other form of legal consideration acceptable to the Administrator.

Section 4.5      Conditions to Issuance of Shares. The Company shall not be required to issue or deliver any certificate or certificates for any shares of Common Stock purchased upon the exercise of the Option or portion thereof or to cause any shares of Common Stock to be held in book-entry form prior to fulfillment of all of the following conditions: (a) the admission of such Shares to listing on all stock exchanges on which such Shares are then listed, (b) the completion of any registration or other qualification of such Shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, (c) the obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its absolute discretion, determine to be necessary or advisable, (d) the receipt by the Company of full payment for such Shares, which may be in one or more of the forms of consideration permitted under Section 4.4, and (e) the receipt of full payment of any applicable withholding tax in accordance with Section 4.4 by the Company Group Member with respect to which the applicable withholding obligation arises.

Section 4.6      Rights as Stockholder. Neither Holder nor any Person claiming under or through Holder will have any of the rights or privileges of a stockholder of the Company in respect of any Shares purchasable upon the exercise of any part of the Option unless and until certificates representing such Shares (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Holder (including through electronic delivery to a brokerage account). No adjustment will be made for a dividend or other right for which the record date is prior to the date of such issuance, recordation and delivery, except as provided in Section 12.2 of the Plan. Except as otherwise provided herein, after such issuance, recordation and delivery, Holder will have all the rights of a stockholder of the Company with respect to such Shares, including, without limitation, the right to receipt of dividends and distributions on such Shares.

## **ARTICLE V. OTHER PROVISIONS**

Section 5.1      Administration. The Administrator shall have the power to interpret the Plan, the Grant Notice and this Agreement, and to adopt such rules for the administration, interpretation and application of the Plan, the Grant Notice and this Agreement, as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Holder, the Company and all other interested Persons. To the extent allowable pursuant to Applicable Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan, the Grant Notice or this Agreement.

Section 5.2      Whole Shares. The Option may only be exercised for whole Shares.

Section 5.3      Option Not Transferable. Subject to Section 4.1 hereof, the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the Option have been issued, and all restrictions applicable to such Shares have lapsed. Neither the Option nor any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Holder or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence. Notwithstanding the foregoing, with the consent of the Administrator, if the Option is a Non-Qualified Stock Option, it may be transferred to Permitted Transferees pursuant to any conditions and procedures the Administrator may require.

Section 5.4      Adjustments. The Administrator may accelerate the vesting of all or a portion of the Option in such circumstances as it, in its sole discretion, may determine. Holder acknowledges that the Option is subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 12.2 of the Plan.

Section 5.5      Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Holder shall be addressed to Holder at Holder's last address reflected on the Company's records. By a notice given pursuant to this Section 6.5, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

Section 5.6      Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 5.7      Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

Section 5.8      Conformity to Securities Laws. Holder acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Law, including, without limitation, the provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan, the Grant Notice and this Agreement shall be deemed amended to the extent necessary to conform to Applicable Law.

Section 5.9      Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator or the Board; provided that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the Option in any material way without the prior written consent of Holder.

Section 5.10     Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 5.3 and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

Section 5.11     Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Holder is subject to Section 16 of the Exchange Act, the Plan, the Option, the Grant Notice and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

Section 5.12 Not a Contract of Employment. Nothing in this Agreement or in the Plan shall confer upon Holder any right to continue to serve as an employee or other service provider of any Company Group Member or shall interfere with or restrict in any way the rights of the Company Group, which rights are hereby expressly reserved, to discharge or terminate the services of Holder at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between a Company Group Member and Holder.

Section 5.13 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Holder with respect to the subject matter hereof, including in any relevant employment or similar agreement or offer letter between Holder and a Company Group Member or any exhibit thereto.

Section 5.14 Section 409A. This Option is not intended to constitute “nonqualified deferred compensation” within the meaning of Section 409A. However, notwithstanding any other provision of the Plan, the Grant Notice or this Agreement, if at any time the Administrator determines that this Option (or any portion thereof) may be subject to Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Holder or any other Person for failure to do so) to adopt such amendments to the Plan, the Grant Notice or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Option either to be exempt from the application of Section 409A or to comply with the requirements of Section 409A.

Section 5.15 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

Section 5.16 Limitation on Holder’s Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Holder shall have only the right to receive Shares as a general unsecured creditor with respect to the Option, as and when exercised pursuant to the terms hereof.

Section 5.17 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which shall be deemed an original and all of which together shall constitute one instrument.

Section 5.18 Broker-Assisted Sales. In the event of any broker-assisted sale of Shares in connection with the payment of withholding taxes as provided in Section 3.4(a)(v) or Section 3.4(c) or the payment of the Exercise Price as provided in Section 4.4(c): (a) any Shares to be sold through a broker-assisted sale will be sold on the day the tax withholding obligation or exercise of the Option, as applicable, occurs or arises, or as soon thereafter as practicable; (b) such Shares may be sold as part of a block trade with other Holders in the Plan in which all Holders receive an average price; (c) Holder will be responsible for all broker’s fees and other costs of sale, and Holder agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the proceeds of such sale exceed the applicable tax withholding obligation or Exercise Price, the Company agrees to pay such excess in cash to Holder as soon as reasonably practicable; (e) Holder acknowledges that the Company or its designee is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy the applicable tax withholding obligation or Exercise Price; and (f) in the event the proceeds of such sale are insufficient to satisfy the applicable tax withholding obligation, Holder agrees to pay immediately upon demand to the Company Group Member with respect to which the withholding obligation arises an amount in cash sufficient to satisfy any remaining portion of the applicable Company Group Member’s withholding obligation.

Section 5.19     Incentive Stock Options. Holder acknowledges that to the extent the aggregate Fair Market Value of Shares (determined as of the time the option with respect to the Shares is granted) with respect to which Incentive Stock Options, including this Option (if applicable), are exercisable for the first time by Holder during any calendar year exceeds \$100,000 or if for any other reason such Incentive Stock Options do not qualify or cease to qualify for treatment as “incentive stock options” under Section 422 of the Code, such Incentive Stock Options shall be treated as Non-Qualified Stock Options. Holder further acknowledges that the rule set forth in the preceding sentence shall be applied by taking the Option and other stock options into account in the order in which they were granted, as determined under Section 422(d) of the Code and the Treasury Regulations thereunder. Holder also acknowledges that an Incentive Stock Option exercised more than three (3) months after Holder’s Termination of Service, other than by reason of death or disability, will be taxed as a Non-Qualified Stock Option.

Section 5.20     Notification of Disposition. If this Option is designated as an Incentive Stock Option, Holder shall give prompt written notice to the Company of any disposition or other transfer of any Shares acquired under this Agreement if such disposition or transfer is made (a) within two (2) years from the Grant Date or (b) within one (1) year after the transfer of such Shares to Holder. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by Holder in such disposition or other transfer.

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**INDEMNIFICATION AND ADVANCEMENT AGREEMENT**

This Indemnification and Advancement Agreement ("Agreement") is made as of [●], 2019, by and between Better Choice Company Inc., a Delaware corporation (the "Company"), and [*name of indemnitee*], [a member of the Board of Directors/an officer] of the Company ("Indemnitee"). This Agreement supersedes and replaces any and all previous agreements between the Company and Indemnitee covering indemnification and advancement.

**RECITALS**

WHEREAS, the Board of Directors of the Company (the "Board") believes that highly competent persons have become more reluctant to serve as directors, officers, or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification and advancement of expenses against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Company's bylaws (as currently in effect and as may be amended from time to time, the "Bylaws") require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification and advancement of expenses;

WHEREAS, the uncertainties relating to such insurance, to indemnification, and to advancement of expenses may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

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WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and any resolutions adopted pursuant thereto, and is not a substitute therefor, nor diminishes or abrogates any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Bylaws, DGCL and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve as an officer or director without adequate additional protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified and be advanced expenses.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as a [director]/[officer] of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law). This Agreement does not create any obligation on the Company to continue Indemnitee in such position and is not an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

Section 2. Definitions. As used in this Agreement:

(a) "Agent" means any person who is authorized by the Company or an Enterprise to act for or represent the interests of the Company or an Enterprise, respectively.

(b) A "Change in Control" occurs upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing thirty-five percent (35%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative beneficial ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 51% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

vi. For purposes of this Section 2(b), the following terms have the following meanings:

- 1 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.
- 2 "Person" has the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person excludes (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.
- 3 "Beneficial Owner" has the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner excludes any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(c) "Corporate Status" describes the status of a person who is or was acting as a director, officer, employee, fiduciary, or Agent of the Company or an Enterprise.

(d) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" means any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity for which Indemnitee is or was serving at the request of the Company as a director, officer, employee, or Agent.

(f) “Expenses” includes all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent and, (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise. The parties hereto agree that, for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee’s counsel as being reasonable in the good faith judgment of such counsel will be presumed conclusively to be reasonable. Expenses, however, do not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(h) “Potential Change in Control” means the occurrence of any of the following events: (i) the Company enters into any written or oral agreement, undertaking or arrangement, the consummation of which would result in the occurrence of a Change in Control; (ii) any Person or the Company publicly announces an intention to take or consider taking actions which if consummated would constitute a Change in Control; (iii) any Person who becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 5% or more of the combined voting power of the Company’s then outstanding securities entitled to vote generally in the election of directors increases his beneficial ownership of such securities by 5% or more over the percentage so owned by such Person on the date hereof; or (iv) the Board adopts a resolution to the effect that, for purposes of this Agreement, a Potential Change in Control has occurred.

(i) The term “Proceeding” includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee’s Corporate Status or by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee’s part while acting pursuant to Indemnitee’s Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. A Proceeding also includes a situation the Indemnitee believes in good faith may lead to or culminate in the institution of a Proceeding.

Section 3. Indemnity in Third-Party Proceedings. The Company will indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company will indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. The Company will not indemnify Indemnitee for Expenses under this Section 4 related to any claim, issue or matter in a Proceeding for which Indemnitee has been finally adjudged by a court to be liable to the Company, unless, and only to the extent that, the Delaware Court of Chancery or any court in which the Proceeding was brought determines upon application by Indemnitee that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with any Proceeding the extent that Indemnitee is successful, on the merits or otherwise. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding to which Indemnitee is not a party but to which Indemnitee is a witness, deponent, interviewee, or otherwise asked to participate.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses but not, however, for the total amount thereof, the Company will indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification. Notwithstanding any limitation in Sections 3, 4, or 5, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law (including but not limited to, the DGCL and any amendments to or replacements of the DGCL adopted after the date of this Agreement that expand the Company's ability to indemnify its officers and directors) if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor).

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company is not obligated under this Agreement to make any indemnification payment to Indemnitee in connection with any Proceeding:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except to the extent provided in Section 16(b) and except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or a committee thereof, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to indemnification or advancement, of Expenses, including a Proceeding (or any part of any Proceeding) initiated pursuant to Section 14 of this Agreement, (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses.

(a) The Company will advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding (or any part of any Proceeding) initiated by Indemnitee if (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to obtain indemnification or advancement of Expenses from the Company or Enterprise, including a proceeding initiated pursuant to Section 14 or (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation. The Company will advance the Expenses within thirty (30) calendar days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding.

(b) Advances will be unsecured and interest free. Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, thus Indemnitee qualifies for advances upon the execution of this Agreement and delivery to the Company. No other form of undertaking is required other than the execution of this Agreement. The Company will make advances without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

Section 11. Procedure for Notification of Claim for Indemnification or Advancement.

(a) Indemnitee will notify the Company in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. Indemnitee will include in the written notification to the Company a description of the nature of the Proceeding and the facts underlying the Proceeding and provide such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Indemnitee's failure to notify the Company will not relieve the Company from any obligation it may have to Indemnitee under this Agreement, and any delay in so notifying the Company will not constitute a waiver by Indemnitee of any rights under this Agreement. The secretary of the Company will, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification or advancement.

- (b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

- (a) Unless a Change of Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made:

- i. by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;
- ii. by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;
- iii. if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by written opinion provided by Independent Counsel selected by the Board; or
- iv. if so directed by the Board, by the stockholders of the Company.

- (b) If a Change in Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made by written opinion provided by Independent Counsel selected by Indemnitee (unless Indemnitee requests such selection be made by the Board)

(c) The party selecting Independent Counsel pursuant to subsection (a)(iii) or (b) of this Section 12 will provide written notice of the selection to the other party. The notified party may, within ten (10) calendar days after receiving written notice of the selection of Independent Counsel, deliver to the selecting party a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within thirty (30) calendar days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, Independent Counsel has not been selected or, if selected, any objection to has not been resolved, either the Company or Indemnitee may petition the Delaware Court for the appointment as Independent Counsel of a person selected by such court or by such other person as such court designates. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company will advance and pay any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making the indemnification determination irrespective of the determination as to Indemnitee's entitlement to indemnification and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing of the determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied and providing a copy of any written opinion provided to the Board by Independent Counsel.

(e) If it is determined that Indemnitee is entitled to indemnification, the Company will make payment to Indemnitee within ten (10) calendar days after such determination.

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination will, to the fullest extent not prohibited by law, presume Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company will, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the determination of the Indemnitee's entitlement to indemnification has not been made pursuant to Section 12 within sixty (60) calendar days after the latter of (i) receipt by the Company of Indemnitee's request for indemnification pursuant to Section 11(a) and (ii) the final disposition of the Proceeding for which Indemnitee requested indemnification (the "Determination Period"), the requisite determination of entitlement to indemnification will, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee will be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law. The Determination Period may be extended for a reasonable time, not to exceed an additional thirty (30) calendar days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, the Determination Period may be extended an additional fifteen (15) calendar days if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a)(iv) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee will be deemed to have acted in good faith if Indemnitee acted based on the records or books of account of the Company, its subsidiaries, or an Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company, its subsidiaries, or an Enterprise in the course of their duties, or on the advice of legal counsel for the Company, its subsidiaries, or an Enterprise or on information or records given or reports made to the Company or an Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Company, its subsidiaries, or an Enterprise. Further, Indemnitee will be deemed to have acted in a manner "not opposed to the best interests of the Company," as referred to in this Agreement if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan. The provisions of this Section 13(d) is not exclusive and does not limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise may not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Indemnitee may commence litigation against the Company in the Delaware Court of Chancery to obtain indemnification or advancement of Expenses provided by this Agreement in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) the Company does not advance Expenses pursuant to Section 10 of this Agreement, (iii) the determination of entitlement to indemnification is not made pursuant to Section 12 of this Agreement within the Determination Period, (iv) the Company does not indemnify Indemnitee pursuant to Section 5 or 6 or the second to last sentence of Section 12(d) of this Agreement within ten (10) calendar days after receipt by the Company of a written request therefor, (v) the Company does not indemnify Indemnitee pursuant to Section 3, 4, 7, or 8 of this Agreement within ten (10) calendar days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence such Proceeding seeking an adjudication or an award in arbitration within 180 calendar days following the date on which Indemnitee first has the right to commence such Proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause does not apply in respect of a Proceeding brought by Indemnitee to enforce Indemnitee's rights under Section 5 of this Agreement. The Company will not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 will be conducted in all respects as a *de novo* trial, or arbitration, on the merits and Indemnitee may not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company will have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and will not introduce evidence of the determination made pursuant to Section 12 of this Agreement.

(c) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is entitled to indemnification, the Company will be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company is, to the fullest extent not prohibited by law, precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and will stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company, to the fullest extent permitted by law, will (within ten (10) calendar days after receipt by the Company of a written request therefor) advance to Indemnitee such Expenses which are incurred by Indemnitee in connection with any action concerning this Agreement, Indemnitee's right to indemnification or advancement of Expenses from the Company, or concerning any directors' and officers' liability insurance policies maintained by the Company, and will indemnify Indemnitee against any and all such Expenses unless the court determines that each of the Indemnitee's claims in such Proceeding were made in bad faith or were frivolous or are prohibited by law.

Section 15. Establishment of Trust.

(a) In the event of a Potential Change in Control or a Change in Control, the Company will, upon written request by Indemnitee, create a trust for the benefit of Indemnitee (the "Trust") and from time to time upon written request of Indemnitee will fund such Trust in an amount sufficient to satisfy the reasonably anticipated indemnification and advancement obligations of the Company to the Indemnitee in connection with any Proceeding for which Indemnitee has demanded indemnification and/or advancement prior to the Potential Change in Control or Change in Control (the "Funding Obligation"). The trustee of the Trust (the "Trustee") will be a bank or trust company or other individual or entity chosen by the Indemnitee and reasonably acceptable to the Company. Nothing in this Section 15 relieves the Company of any of its obligations under this Agreement.

(b) The amount or amounts to be deposited in the Trust pursuant to the Funding Obligation will be determined by mutual agreement of the Indemnitee and the Company or, if the Company and the Indemnitee are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement. The terms of the Trust will provide that, except upon the consent of both the Indemnitee and the Company, upon a Change in Control: (i) the Trust may not be revoked, or the principal thereof invaded, without the written consent of the Indemnitee; (ii) the Trustee will advance, to the fullest extent permitted by applicable law, within two (2) business days of a request by the Indemnitee; (iii) the Company will continue to fund the Trust in accordance with the Funding Obligation; (iv) the Trustee will promptly pay to the Indemnitee all amounts for which the Indemnitee is entitled to indemnification pursuant to this Agreement or otherwise; and (v) all unexpended funds in such Trust revert to the Company upon mutual agreement by the Indemnitee and the Company or, if the Indemnitee and the Company are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement, that the Indemnitee has been fully indemnified under the terms of this Agreement. New York law (without regard to its conflicts of laws rules) governs the Trust and the Trustee will consent to the exclusive jurisdiction of Delaware Court of Chancery, in accordance with Section 25 of this Agreement.

Section 16. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The indemnification and advancement of Expenses provided by this Agreement are not exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. The indemnification and advancement of Expenses provided by this Agreement may not be limited or restricted by any amendment, alteration or repeal of this Agreement in any way with respect to any action taken or omitted by Indemnitee in Indemnitee's Corporate Status occurring prior to any amendment, alteration or repeal of this Agreement. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy is cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more Persons with whom or which Indemnitee may be associated.

i. The Company hereby acknowledges and agrees:

1) the Company is the indemnitor of first resort with respect to any request for indemnification or advancement of Expenses made pursuant to this Agreement concerning any Proceeding arising from or related to Indemnitee's Corporate Status with the Company;

2) the Company is primarily liable for all indemnification and advancement of Expenses obligations for any Proceeding arising from or related to Indemnitee's Corporate Status, whether created by law, organizational or constituent documents, contract (including this Agreement) or otherwise;

3) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding are secondary to the obligations of the Company's obligations;

4) the Company will indemnify Indemnitee and advance Expenses to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person; and

ii. the Company irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation, reimbursement, exoneration or indemnification, or any other recovery of any kind in respect of amounts paid by the Company to Indemnitee pursuant to this Agreement.

iii. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss for Indemnitee, the payor has a right of subrogation against the Company or its insurers for all amounts so paid which would otherwise be payable by the Company or its insurers under this Agreement. In no event will payment by any other Person with whom or which Indemnitee may be associated (or their insurers affect the obligations of the Company hereunder or shift primary liability for the Company's obligation to indemnify or advance of Expenses to any other Person with whom or which Indemnitee may be associated.

iv. Any indemnification or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated is specifically in excess over the Company's obligation to indemnify and advance Expenses or any valid and collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, the Company will obtain a policy or policies covering Indemnitee to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies, including coverage in the event the Company does not or cannot, for any reason, indemnify or advance Expenses to Indemnitee as required by this Agreement. If, at the time of the receipt of a notice of a claim pursuant to this Agreement, the Company has director and officer liability insurance in effect, the Company will give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company will thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Indemnitee agrees to assist the Company efforts to cause the insurers to pay such amounts and will comply with the terms of such policies, including selection of approved panel counsel, if required.

(d) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee for any Proceeding concerning Indemnitee's Corporate Status with an Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise. The Company and Indemnitee intend that any such Enterprise (and its insurers) be the indemnitor of first resort with respect to indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise. The Company's obligation to indemnify and advance Expenses to Indemnitee is secondary to the obligations the Enterprise or its insurers owe to Indemnitee. Indemnitee agrees to take all reasonably necessary and desirable action to obtain from an Enterprise indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise.

(e) In the event of any payment made by the Company under this Agreement, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any Enterprise or insurance carrier. Indemnitee will execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

Section 17. Duration of Agreement. This Agreement continues until and terminates upon the later of: (a) ten (10) years after the date that Indemnitee ceases to serve as a [director]/[officer] of the Company or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of Expenses rights provided by or granted pursuant to this Agreement are binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 18. Severability. If any provision or provisions of this Agreement is held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby and remain enforceable to the fullest extent permitted by law; (b) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 19. Interpretation. Any ambiguity in the terms of this Agreement will be resolved in favor of Indemnitee and in a manner to provide the maximum indemnification and advancement of Expenses permitted by law. The Company and Indemnitee intend that this Agreement provide to the fullest extent permitted by law for indemnification in excess of that expressly provided, without limitation, by the Certificate of Incorporation, the Bylaws, vote of the Company stockholders or disinterested directors, or applicable law.

Section 20. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and is not a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 21. Modification and Waiver. No supplement, modification or amendment of this Agreement is binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed or constitutes a waiver of any other provisions of this Agreement nor will any waiver constitute a continuing waiver.

Section 22. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company does not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 23. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given if (a) delivered by hand to the other party, (b) sent by reputable overnight courier to the other party or (c) sent by facsimile transmission or electronic mail, with receipt of oral confirmation that such communication has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee provides to the Company.

(b) If to the Company to:

[•]

or to any other address as may have been furnished to Indemnitee by the Company.

Section 24. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 25. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties are governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or Proceeding arising out of or in connection with this Agreement may be brought only in the Delaware Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or Proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or Proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or Proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 26. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together constitutes one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 27. Headings. The headings of this Agreement are inserted for convenience only and do not constitute part of this Agreement or affect the construction thereof.

*[Signature Page to Follow]*

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

BETTER CHOICE COMPANY INC.

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

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

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

INDEMNITEE

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

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

Address: \_\_\_\_\_

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of May 6, 2019 (the "Effective Date") by and between Damian Dalla-Longa (the "Executive") and Better Choice Company, Inc. (together with any of its subsidiaries and affiliates as may employ the Executive from time to time, the "Company").

WHEREAS, the Company desires to employ the Executive upon the terms and conditions set forth herein;

WHEREAS, the Executive desires to be employed by the Company upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Representations and Warranties. The Executive hereby represents and warrants to the Company that the Executive (i) is not subject to any non-solicitation or non-competition agreement affecting the Executive's employment with the Company, (ii) is not subject to any confidentiality or nonuse/nondisclosure agreement affecting the Executive's employment with the Company, and (iii) will bring to the Company no trade secrets, confidential business information, documents, or other personal property of a prior employer.

2. Term of Employment.

(a) Term. The Company hereby employs the Executive, and the Executive hereby accepts employment with the Company, for a period of 2 years commencing as of the Effective Date (such period, as it may be extended or renewed, the "Term"), unless sooner terminated in accordance with the provisions of Section 6. The Term shall be automatically renewed for successive 2 year terms unless notice of non-renewal is given by either party at least 30 days before the end of the Term.

(b) Continuing Effect. Notwithstanding any termination of this Agreement, at the end of the Term or otherwise, the provisions of Sections 6(e), 7, 8, 9, 10, 12 15, 16, 18, and 21 shall remain in full force and effect and the provisions of Section 9 shall be binding upon the legal representatives, successors and assigns of the Executive.

3. Duties.

(a) General Duties. The Executive shall serve as the Co-Chief Executive Officer and Board Director of the Company, with customary responsibilities, duties and authority as may from time to time be assigned to the Executive by the Company's Board of Directors (the "Board"), which responsibilities and duties may include services for subsidiaries and affiliates of the Company (the "Duties"). The Executive shall report to the Board or such person so delegated by the Board. The Executive shall, if requested by the Board, also serve as an officer or director of any affiliate or subsidiary of the Company for no additional compensation. The Executive agrees to observe and comply with the Company's rules and policies as adopted by the Company from time to time.

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(b) Devotion of Time. Subject to the last sentence of this Section 3(b), the Executive shall devote the Executive's full business time, skill, energy and attention to the business and affairs of the Company and its subsidiaries and affiliates as are necessary to perform the Executive's duties and responsibilities pursuant to this Agreement. The Executive shall not enter the employ of or serve as a consultant to, or in any way perform any professional services with or without compensation to, any other persons, business, or organization, without the prior consent of the Board. Notwithstanding the above, the Executive shall be permitted to devote a limited amount of the Executive's time to any not-for-profit charity or civic group, provided that such activities do not interfere with, or otherwise create a conflict with, the Executive's performance of the Executive's duties and responsibilities as provided hereunder.

(c) Location of Office. The Executive's principal business office shall be in New York City, NY (the "Principal Office"). However, the Executive's Duties shall include all business travel necessary for the performance of the Executive's Duties.

(d) Adherence to Inside Information Policies. The Executive acknowledges that the Company is publicly-held and, as a result, has implemented inside information policies designed to preclude its executives and those of its subsidiaries from violating the federal securities laws by trading on material, non-public information or passing such information on to others in breach of any duty owed to the Company and its subsidiaries or any third party. The Executive shall promptly execute any agreements generally distributed by the Company to its employees requiring such employees to abide by its inside information policies.

#### 4. Compensation and Expenses.

(a) Base Salary. For the services of the Executive to be rendered under this Agreement, the Company shall pay the Executive an annual salary of USD \$300,000 (the "Base Salary"), less such deductions as shall be required to be withheld by applicable law and regulations payable in accordance with the Company's customary payroll practices. The Executive's Base Salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the Base Salary during the Term.

(b) Signing Bonus. The Executive shall be entitled to a gross lump-sum payment in the amount of USD \$100,000 which shall be payable to the Executive as soon as reasonably possible following the execution of this Agreement.

(c) Target Bonus. For each fiscal year of the Company that commences during the Term, the Executive shall have the opportunity to earn a bonus in accordance with the terms and conditions set forth on Exhibit A hereto (an "Annual Bonus"). Any such Annual Bonus shall be payable on, or at such date as is determined by the Board within 60 days following, the last day of the fiscal year with respect to which it relates. Except as provided in Section 6, notwithstanding any other provision of this Section 4(b) or Exhibit A hereto, no Annual Bonus shall be payable with respect to any fiscal year unless the Executive remains continuously employed with the Company during the period beginning on the Effective Date and ending on the applicable bonus payment date. For the avoidance of doubt, during calendar year 2019 (ending December 31, 2019), the Executive shall be entitled to a pro-rated bonus for services rendered during 2019.

(d) Equity Compensation. In consideration of the Executive entering into this Agreement and as an inducement to join the Company, on, or as soon as reasonably practicable following, the Effective Date, the Company shall grant to the Executive certain equity compensation rights and awards set forth on Exhibit B hereto ("Equity Awards") pursuant to the Better Choice Company, Inc. 2019 Equity Incentive Plan (the "Plan"). The Equity Awards shall be subject to the terms and conditions of the Plan, or any successor plan thereto, which may be modified or revoked at any time in the sole discretion of the Company, and applicable award agreements thereunder.

(e) Expenses. In addition to any compensation received pursuant to this Section 4, the Company will reimburse or advance funds to the Executive for all reasonable documented travel (including travel expenses incurred by the Executive related to the Executive's travel to the Company's other offices), entertainment and other business expenses incurred in connection with the performance of the Executive's Duties under this Agreement, provided that the Executive properly provides a written accounting of such expenses to the Company in accordance with the Company's practices. Such reimbursement or advances will be made in accordance with policies and procedures of the Company in effect from time to time relating to reimbursement of, or advances to, its executive officers.

5. Benefits.

(a) Paid Time Off. For each twelve-month period during the Term, the Executive shall be entitled to 5 weeks of paid time off without loss of compensation or other benefits to which he is entitled under this Agreement, to be taken at such times as the Executive may select and the affairs of the Company may permit. Any unused days will be carried over to the next year of the Term and upon the termination of this Agreement, any accrued and unused paid time-off shall be paid to Executive.

(b) Paternity Leave. The Executive will be entitled to 2 weeks of paid paternity leave, in accordance with the Company's policies.

(c) Fringe Benefit and Perquisites. During the Term, the Executive shall be entitled to fringe benefits and perquisites consistent with the practices of the Company, and to the extent the Company provides similar benefits or perquisites (or both) to similarly situated executives of the Company.

(d) Employee Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans, practices and programs maintained by the Company, as in effect from time to time (collectively, "Employee Benefit Plans"), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or cancel any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law. Notwithstanding the foregoing sentence, during the Term, the Company shall provide the Executive with health insurance covering the Executive and family dependents.

6. Termination.

(a) Death or Disability. Except as otherwise provided in this Agreement, this Agreement shall automatically terminate upon the death or disability of the Executive. For purposes of this Section 6(a), "disability" shall mean (i) the Executive is unable to substantially engage in the Executive's Duties by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for a continuous period of not less than 12 months; (ii) the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company; or (iii) the Executive is determined to be totally disabled by the Social Security Administration. Any question as to the existence of a disability shall be determined by the written opinion of the Executive's regularly attending physician (or the Executive's guardian) (or the Social Security Administration, where applicable). In the event that the Executive's employment is terminated by reason of the Executive's death or disability, the Company shall pay the following to the Executive or the Executive's personal representative: (i) any accrued but unpaid Base Salary for services rendered to the date of termination and any accrued but unpaid expenses required to be reimbursed under this Agreement and any accrued paid time off (the "Accrued Payments"), and (ii) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year). The Executive or the Executive's legally appointed guardian, as the case may be, shall have up to 12 months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term. The Executive (or the Executive's estate) shall receive the payments provided herein at such times as the Executive would have received them if there was no death or disability.

(b) Termination by the Company for Cause or by the Executive Without Good Reason. The Company may, upon a unanimous vote by the Board (excluding the Executive), terminate the Executive's employment pursuant to the terms of this Agreement at any time for Cause (as defined below) by giving the Executive written notice of termination. Such termination shall become effective upon the giving of such notice. Upon any such termination for Cause, or in the event the Executive terminates the Executive's employment with the Company without Good Reason (as defined in Section 6(c)), the Executive shall receive the Accrued Payments and shall have no right to any other compensation or reimbursement under Section 4 (except for common equity and options that have already vested), or to participate in any Executive benefit programs under Section 5, except as may otherwise be provided for by law, for any period subsequent to the effective date of termination. For purposes of this Agreement, "Cause" shall mean: (i) the Executive is convicted of, or pleads guilty or nolo contendere to, a felony related to the business of the Company; (ii) the Executive, in carrying out the Executive's duties hereunder, has acted with gross negligence or intentional misconduct which results in material harm to the Company; (iii) the Executive misappropriates Company funds or otherwise defrauds the Company involving a material amount of money or property; (iv) the Executive breaches the Executive's fiduciary duty to the Company, resulting in material profit to the Executive personally, directly or indirectly; (v) the Executive materially breaches any agreement with the Company and fails to cure such breach within 30 days of receipt of notice; (vi) the Executive breaches any provision of Section 8 or Section 9 of this Agreement; (vii) the Executive becomes subject to a preliminary or permanent injunction issued by a United States District Court enjoining the Executive from violating any securities law administered or regulated by the Securities and Exchange Commission; (viii) the Executive becomes subject to a cease and desist order or other order issued by the Securities and Exchange Commission after an opportunity for a hearing; (ix) the Executive refuses to carry out a resolution adopted by the Company's Board at a meeting in which the Executive was offered a reasonable opportunity to argue that the resolution should not be adopted; or (x) the Executive abuses alcohol or drugs in a manner that interferes with the successful performance of the Executive's Duties.

(c) Termination by the Company Without Cause, Termination by the Executive for Good Reason or at the end of a Term after the Company provides notice of Non-Renewal.

(1) This Agreement may be terminated: (i) by the Executive for Good Reason (as defined below), (ii) by the Company without Cause, or (iii) at the end of a Term after the Company provides the Executive with notice of non-renewal.

(2) In the event this Agreement is terminated by the Executive for Good Reason or by the Company without Cause, subject to Section (6)(c) (4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Amounts;

(B) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year);

(C) continued payment of the then Base Salary during the 12.0 month period following the date of termination (the "Severance Period"), payable in accordance with the Company's regular payroll practices as of the date of such termination;

(D) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term;

(E) the Equity Awards, to the extent not already vested, shall become fully vested on the date of termination; and

(F) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, during the Severance Period, subject to the terms of any applicable plan or insurance contract and applicable law.

(3) In the event this Agreement is terminated at the end of a Term after the Company provides the Executive with notice of non-renewal and the Executive remains employed until the end of the Term, subject to Section 6(c)(4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Amounts;

(B) the Equity Awards, to the extent not already vested, shall become fully vested on the date of termination;

(C) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term; and

(D) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, for 12.0 months, subject to the terms of any applicable plan or insurance contract and applicable law;

provided, however, that the Executive shall only be entitled to receive the payments or benefits set forth in Section 6(c)(3)(B) and (D) if the Executive is willing and able (i) to execute a new agreement providing terms and conditions substantially similar to those in this Agreement and (ii) to continue providing such services, and therefore, the Company's non-renewal of the Term will be considered an "involuntary separation from service" within the meaning of Treasury Regulation Section 1.409A-1(n).

(4) The payments and benefits provided in Sections 6(c)(2)(B), (C), (E) and (F) and Section 6(c)(3)(B) and (D) shall be conditioned on (i) the Executive's execution and nonrevocation of a waiver and release of claims in the Company's customary form (a "Release") as of the Release Expiration Date, in accordance with Section 21(d), and (ii) the Executive's continued compliance with the restrictive covenants set forth in Sections 8 and 9 of this Agreement (the "Restrictive Covenants"). Notwithstanding any other provision of this Agreement, no payments will be made or benefits provided pursuant to such sections prior to the date the Release becomes irrevocable in accordance with its terms or following the date the Executive first breaches any of the Restrictive Covenants.

(5) The term "Good Reason" shall mean: (i) a material diminution in the Executive's authority, title, duties or responsibilities due to no fault of the Executive other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law; (ii) the Company requires the Executive to permanently change the Executive's principal business office as defined in Section 3(c) to a location that is greater than 20.0 miles from the Principal Office, (iii) a change in the Executive's overall compensation or bonus structure such that the Executive's overall compensation is materially diminished; or (v) any other action or inaction that constitutes a material breach by the Company under this Agreement. Prior to the Executive terminating the Executive's employment with the Company for Good Reason, the Executive must provide written notice to the Company, within 30 days following the Executive's initial awareness of the existence of such condition, that such Good Reason exists and setting forth in detail the grounds the Executive believes constitutes Good Reason. If the Company does not cure the condition(s) constituting Good Reason within 30 days following receipt of such notice, then the Executive's employment shall be deemed terminated for Good Reason.

(d) Any termination made by the Company under this Agreement shall be approved by the Board.

(e) Upon (1) termination of the Executive's employment with the Company for any reason or (2) the Company's request at any time during the Executive's employment (provided it does not interfere with the Executive's ability to perform the Executive's duties and responsibilities hereunder), the Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, security devices, employer credit cards, network access devices, computers, cell phones, smartphones, manuals, work product, thumb drives or other removable information storage devices, and hard drives, and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or work product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with the Executive's employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive's possession or control, including those stored on any non- Company devices, networks, storage locations and media in the Executive's possession or control. The Executive shall confirm the Executive's compliance with this Section 6(e), in writing, at any time within five days of the Executive's receipt of a request for same from the Company.

(f) The provisions of this Section 6 shall supersede in their entirety any severance payment or benefit obligations to the Executive pursuant to the provisions in any severance plan, policy, program or other arrangement maintained by the Company.

7. Indemnification. As provided in an Indemnification Agreement to be entered into between the Company and the Executive, a copy of which is annexed as Exhibit C, the Company shall indemnify the Executive, to the maximum extent permitted by applicable law, against all costs, charges and expenses incurred or sustained by him in connection with any action, suit or proceeding to which the Executive may be made a party by reason of the Executive being an officer, director or employee of the Company or of any subsidiary or affiliate of the Company. The Company shall provide, at its expense, directors and officers insurance for the Executive in amounts and for a term consistent with industry standards.

8. Non-Competition Agreement.

(a) Definitions. For the purpose of this Agreement:

(1) "Restricted Area" means the United States of America;

(2) "Restricted Period" means the period during such time as Executive is an employee of the Company and the one (1) year period immediately following the last day of the Executive's employment with the Company.

(3) "Prohibited Activity" means any activity in which the Executive contributes the Executive's knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, member, advisor, consultant, agent, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar businesses as the Company or any of its affiliates or subsidiaries, including but not limited to those engaged in the Business. For the avoidance of doubt, "Prohibited Activity" includes any activity requiring the disclosure of any Confidential Information.

(4) "Trade Secret" means Confidential Information which meets the additional requirements of the federal Defend Trade Secrets Act, the Uniform Trade Secrets Act, similar state law or applicable common law.

(5) "Trade Secret Prohibited Activity" means any Prohibited Activity that may require or inevitably requires disclosure of any Trade Secret of the Company Group.

(6) "Business" means the sale of pet foods, flea and tick products, pet nutritional products and related pet supplies, and also includes any other product or services which the Company has taken concrete steps to offer for sale, but has not yet commenced selling or marketing, during or prior to the Term, and any products or services disclosed on the Company's website.

(b) Non-Competition. Because of the Company's legitimate business interest as described herein and the good and valuable consideration offered to the Executive, during the Term of this Agreement and during the Restricted Period the Executive agrees and covenants not to engage in any Prohibited Activity within the Restricted Area.

(c) Trade Secrets. Notwithstanding the foregoing or anything contained herein to the contrary, and subject only to Section 9(a)(1)(B) hereof, the Executive acknowledges and agrees that during the Executive's employment with the Company and indefinitely following the cessation of that employment for any reason, the Executive shall not directly or indirectly disclose or divulge any Trade Secret or engage in any Trade Secret Prohibited Activity (so long as the information remains a Trade Secret under applicable law) without the prior written consent of the Company, which may be granted or withheld in the sole discretion of the Company.

(d) Non-Solicitation, Non-Disparagement. During the Restricted Period, the Executive shall not, directly or indirectly, whether for the Executive's own account or for the account of any person or entity, solicit, attempt to solicit, endeavor to entice away from the Company, attempt to hire, hire, deal with, attempt to attract business from, accept business from, or otherwise interfere with (whether by reason of cancellation, withdrawal, modification of relationship or otherwise) any actual or prospective relationship of the Company with any person or entity: (i) who is, or was within one (1) year of the date upon which this Agreement is terminated, employed by or otherwise engaged to perform services for the Company, including, but not limited to, any independent contractor or representative, or (ii) who is, or was within one year of the date upon which this Agreement is terminated, an actual or bona fide prospective licensee, landlord, customer, client, vendor, supplier or manufacturer of the Company (or other person or entity with which the Company had an actual or prospective bona fide relationship). The Executive agrees that the Executive will never, directly or indirectly, make or publish any statement or communication which is false or disparaging with respect to the Company and/or its direct or indirect shareholders, officers, directors, members, managers, employees, contractors, consultants, or agents.

(e) Equitable Consideration. The Executive agrees that the Executive's services hereunder are of a special, unique, extraordinary and intellectual character and the Executive's position with the Company places the Executive in a position of confidence and trust with the customers, suppliers and employees of the Company. The Executive and the Company agree that in the course of employment hereunder, the Executive has and will continue to develop a personal relationship with the Company's customers, and a knowledge of these customers' affairs and requirements as well as confidential and proprietary information developed by the Company after the date of this Agreement. The Executive acknowledges that the Company's relationships with its established clientele may therefore be placed in the Executive's hands in confidence and trust. The Executive consequently agrees that it is reasonable and necessary for the protection of the goodwill, confidential and proprietary information, and legitimate business interests of the Company that the Executive make the covenants contained herein, that the covenants are a material inducement for the Company to employ or continue to employ the Executive and to enter into this Agreement, that the covenants are given as an integral part of and incident to this Agreement, and that the covenants will not prevent the Executive from earning a livelihood in the Executive's chosen business, do not impose an undue hardship on the Executive, and will not injure the public.

(f) References. References to the Company in this Section 8 shall include the Company and any parent, affiliated, related and/or direct or indirect subsidiary entity thereof.

9. Non-Disclosure of Confidential Information.

(a) Confidentiality.

(1) For the purpose of this Agreement, "Confidential Information" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, products, patents, sources of supply, customer dealings, data, source code, business plans, practices, methods, policies, publications, research, operations, strategies, techniques, agreements, transactions, potential transactions, negotiations, know-how, Trade Secrets, computer programs, computer software, applications, operating systems, software design, work-in-process, databases, records, systems, Personally Identifiable Information, supplier information, vendor information, financial information, results, legal information, marketing and advertising information, pricing information, design information, personnel information, developments, reports, internal controls, graphics, drawings, market studies, sales information, revenue, costs, notes, communications, algorithms, product plans, designs, models, ideas, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, distributor lists, and buyer lists of the Company, its businesses, and any existing or prospective customer, vendor, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company in confidence. The Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used. Notwithstanding the foregoing, "Confidential Information" shall not include information that: (A) becomes publicly known without breach of the Executive's obligations under this Section 9(a), or (B) is required to be disclosed by law or by court order or government order; provided, however, that if the Executive is required to disclose any Confidential Information pursuant to any law, court order or government order, (x) the Executive shall promptly notify the Company of any such requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions of this Agreement, (y) the Executive shall reasonably cooperate with the Company to obtain such a protective order at the Company's cost and expense, and (z) if such order is not obtained, or the Company waives compliance with the provisions of this Section 9(a), the Executive shall disclose only that portion of the Confidential Information which the Executive is advised by counsel that the Executive is legally required to so disclose and will exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded the information so disclosed.

(2) For the purpose of this Agreement, “Personally Identifiable Information” means information that, whether maintained or transmitted individually or in the aggregate with other information, allows a natural person to be identified, including, but not limited to, the name, birthday, address, telephone number, social security number, driver’s license number, passport number, credit card number, credit score information, bank information, or other unique identifiers of any natural person that allows for the identification of or contact with such person. The Executive agrees that the Executive will not download, upload, or otherwise transfer copies of Confidential Information to any external storage media or cloud storage (except as authorized by the Company when necessary in the performance of the Executive’s Duties for the Company and for the Company’s sole benefit).

(3) The Executive acknowledges and agrees that: (A) the Executive has had and will continue to have access to Confidential Information regarding the Company, (B) the Confidential Information is being acquired by the Executive in confidence, (C) the Confidential Information is a valuable, special, sensitive and unique asset of the business of the Company, (D) the Confidential Information is and shall at all times remain the sole property of the Company, (E) the continued confidentiality of the Confidential Information is essential to the continuation of the Company’s business; and (F), the improper disclosure of the Confidential Information could severely and irreparably damage the Company and its businesses. In consideration of the obligations undertaken by the Company herein, the Executive will not, at any time, during or after the Executive’s employment hereunder, reveal, divulge or make known to any person, any Confidential Information acquired by the Executive during the course of the Executive’s employment with the Company and for a period of one (1) year thereafter except with the prior written approval of the Company. Notwithstanding the foregoing, subject only to Section 9(a)(1)(B) hereof, the Executive may not disclose, divulge or otherwise make use of any Trade Secret so long as such information remains a Trade Secret under applicable law. The Executive agrees to use the Executive’s best efforts to maintain the confidentiality of the Confidential Information during the course of the Executive’s employment with the Company and thereafter, including adopting and implementing all reasonable procedures prescribed by the Company to prevent unauthorized use of Confidential Information or disclosure of Confidential Information to any unauthorized person. The Executive shall take all necessary and reasonable administrative, technical, and physical safeguards to secure and protect the confidentiality, integrity, and security of the Confidential Information.

(b) References. References to the Company in this Section 9 shall include the Company and any parent, affiliated, related and/or direct or indirect subsidiary entity thereof.

(c) Whistleblowing. Nothing contained in this Agreement shall be construed to prevent the Executive from reporting any act or failure to act to the SEC or other governmental body or prevent the Executive from obtaining a fee as a “whistleblower” under Rule 21F-17(a) under the Securities Exchange Act of 1934 or other rules or regulations implemented under the Dodd-Frank Wall Street Reform Act and Consumer Protection Act.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016. Notwithstanding any other provision of this Agreement, the Executive will not be held criminally or civilly liable under any federal or state Trade Secret law for any disclosure of a Trade Secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed under seal in a lawsuit or other proceeding. If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company’s Trade Secrets to the Executive’s attorney and use the Trade Secret information in the court proceeding if the Executive files any document containing Trade Secrets under seal; and does not disclose Trade Secrets, except pursuant to court order.

10. Equitable Relief. The Company and the Executive recognize that the services to be rendered under this Agreement by the Executive are special, unique and of extraordinary character, and that in the event of the breach by the Executive of the terms and conditions of this Agreement or if the Executive, without the prior express consent of the Board, shall leave the Executive’s employment for any reason and/or take any action in violation of this Agreement, the Company shall be entitled to institute and prosecute proceedings in any court of competent jurisdiction referred to in Section 10(b) below, to enjoin the Executive from breaching the provisions of this Agreement. Any action arising from or under this Agreement must be commenced only in the appropriate

11. Conflicts of Interest. While employed by the Company, the Executive shall not, unless approved by the Board of Directors or its Compensation Committee, directly or indirectly:

(a) participate as an individual in any way in the benefits of transactions with any of the Company’s vendors, clients, customers, suppliers or manufacturers, without limitation, having a financial interest in the Company’s vendors, clients, customers, suppliers or manufacturers or making loans to, or receiving loans, from, the Company’s vendors, clients, customers, suppliers or manufacturers;

(b) realize a personal gain or advantage from a transaction in which the Company has an interest or use information obtained in connection with the Executive’s employment with the Company for the Executive’s personal advantage or gain; or

(c) accept any offer to serve as an officer, director, partner, consultant, manager with, or to be employed in a professional, technical, or managerial capacity by, a person or entity which does business with the Company.

12. Inventions, Ideas, Processes, and Designs. All inventions, ideas, processes, programs, software, and designs (including all improvements) (i) conceived or made by the Executive during the course of the Executive's employment with the Company (whether or not actually conceived during regular business hours) and for a period of six months subsequent to the termination (whether by expiration of the Term or otherwise) of such employment with the Company, and (ii) related to the business of the Company, shall be disclosed in writing promptly to the Company and shall be the sole and exclusive property of the Company, and the Executive hereby irrevocably assigns any such inventions to the Company. An invention, idea, process, program, software, or design (including an improvement) shall be deemed related to the business of the Company if (a) it was made with the Company's funds, personnel, equipment, supplies, facilities, or Confidential Information, (b) results from work performed by the Executive for the Company, or (c) pertains to the current business or demonstrably anticipated business(es), research or development work of the Company. The Executive shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request and at the sole cost and expense of the Company, shall promptly assign all such inventions, ideas, processes, and designs to the Company. The decision to file for patent or copyright protection or to maintain such development as a Trade Secret, or otherwise, shall be in the sole discretion of the Company, and the Executive shall be bound by such decision. The Executive hereby irrevocably assigns to the Company, for no additional consideration, the Executive's entire right, title and interest in and to all work product and intellectual property rights, including the right to sue, counterclaim and recover for all past, present and future infringement, misappropriation or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's rights, title or interest in any work product or intellectual property rights so as to be less in any respect than the Company would have had in the absence of this Agreement. If applicable, the Executive shall provide as a schedule to this Agreement, a complete list of all inventions, ideas, processes, and designs, if any, patented or unpatented, copyrighted or otherwise, or non-copyrighted, including a brief description, which he made or conceived prior to the Executive's employment with the Company and which therefore are excluded from the scope of this Agreement. References to the Company in this Section 12 shall include the Company, its subsidiaries and affiliates.

13. Indebtedness. If, during the course of the Executive's employment under this Agreement, the Executive becomes indebted to the Company for any reason, the Company may, if it so elects, and if permitted by applicable law, set off any sum due to the Company from the Executive and collect any remaining balance from the Executive unless the Executive has entered into a written agreement with the Company.

14. Assignability. The rights and obligations of the Company under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company, provided that such successor or assign shall acquire all or substantially all of the securities or assets and business of the Company. The Executive's obligations hereunder may not be assigned or alienated and any attempt to do so by the Executive will be void.

15. Severability.

(a) The Executive expressly agrees that the character, duration and geographical scope of the covenants set forth in Section 8 of this Agreement are reasonable in light of the circumstances as they exist on the date hereof. Should a decision, however, be made at a later date by a court of competent jurisdiction that the character, duration or geographical scope of such provisions is unreasonable, then it is the intention and the agreement of the Executive and the Company that this Agreement shall be construed by the court in such a manner as to impose only those restrictions on the Executive's conduct that are reasonable in the light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. If, in any judicial proceeding, a court shall refuse to enforce all of the separate covenants deemed included herein because taken together they are more extensive than necessary to assure to the Company the intended benefits of this Agreement, it is expressly understood and agreed by the parties hereto that the provisions of this Agreement that, if eliminated, would permit the remaining separate provisions to be enforced in such proceeding shall be deemed eliminated, for the purposes of such proceeding, from this Agreement.

(b) If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from either of the parties to the other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provisions were not included.

16. Notices and Addresses. All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by FedEx or similar receipted delivery, or next business day delivery to the addresses detailed below (or to such other address, as either of them, by notice to the other may designate from time to time), or by e-mail delivery (in which event a copy shall immediately be sent by FedEx or similar receipted delivery), as follows:

To the Company: Better Choice Company Inc.  
100 Techne Center Drive, #210  
Milford, Ohio 45150  
Attention: Lori Taylor

With a copy to: Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10028

To the Executive: Damian Dalla-Longa  
100 Techne Center Drive, #210  
Milford, Ohio 45150

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be governed or interpreted according to the internal laws of the State of Delaware without regard to choice of law considerations and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, shall also be governed by the laws of the State of Delaware without regard to choice of law considerations.

19. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.

20. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

21. Section 409A Compliance.

(a) The parties hereto acknowledge and agree that, to the extent applicable, this Agreement shall be interpreted, construed and administered in accordance with Section 409A of the Internal Revenue Code of 1986, as amended, and the Department of Treasury regulations and other interpretive guidance issued thereunder (collectively, "Section 409A"). For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made if such termination of employment constitutes a "separation from service" under Section 409A. Notwithstanding any provision of this Agreement to the contrary, in the event that the Company determines that any amounts payable hereunder will be immediately taxable to the Executive under Section 409A, the Company reserves the right (without any obligation to do so or to indemnify the Executive for failure to do so) to (i) adopt such amendments to this Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Company determines to be necessary or appropriate to preserve the intended tax treatment of the benefits provided by this Agreement, to preserve the economic benefits of this Agreement and to avoid less favorable accounting or tax consequences for the Company and/or (ii) take such other actions as the Company determines to be necessary or appropriate to exempt the amounts payable hereunder from Section 409A or to comply with the requirements of Section 409A and thereby avoid the application of penalty taxes thereunder. In no event shall any liability for failure to comply with the requirements of Section 409A be transferred from Executive or any other individual to the Company or any of its affiliates, employees or agents.

(b) To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(1) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(2) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(3) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

(c) In the event the Company determines that the Executive is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code at the time of the Executive’s separation from service, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement on account of the Executive’s separation from service would be considered deferred compensation subject to Section 409A as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six months and one day after the Executive’s separation from service, or (ii) the Executive’s death (the “Six Month Delay Rule”).

(1) For purposes of this subparagraph, amounts payable under the Agreement should not provide for a deferral of compensation subject to Section 409A to the extent provided in Treasury Regulation Section 1.409A-1(b)(4) (e.g., short-term deferrals), Treasury Regulation Section 1.409A-1(b)(9) (e.g., separation pay plans, including the exception under subparagraph (iii)), and other applicable provisions of the Treasury Regulations.

(2) To the extent that the Six Month Delay Rule applies to payments otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of the Six Month Delay Rule, and the balance of the installments shall be payable in accordance with their original schedule.

(d) Notwithstanding anything to the contrary in this Agreement, to the extent that any payments of “nonqualified deferred compensation” (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are subject to the Executive’s execution, delivery and non-revocation of a Release, (i) the Company shall deliver the Release to the Executive within seven (7) days following the date of termination, and (ii) if the Executive fails to execute the Release on or prior to the Release Expiration Date (as defined below) or timely revokes acceptance of the Release thereafter, the Executive shall not be entitled to any payments or benefits otherwise conditioned on the Release. For purposes of this Section 21(d), “Release Expiration Date” shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers the Release to the Executive, or, in the event that the Executive’s termination of employment is “in connection with an exit incentive or other employment termination program” (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is fortyfive (45) days following such delivery date. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are delayed pursuant to Section 6(c) and this Section 21(d), such amounts shall be paid in a lump sum on the first payroll date to occur on or after the 60th day following the date of termination, provided that, as of such 60th day, the Executive has executed and has not revoked the Release (and any applicable revocation period has expired).

22. Compensation Recovery Policy. The Executive acknowledges and agrees that, to the extent the Company adopts any clawback or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, the Executive shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy).

[Signature Page To Follow]



IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date and year first above written.

**COMPANY:**

Better Choice Company Inc.

By:

Name: Lori R Taylor

Title: Co-CEO

**EXECUTIVE:**

/s/

\_\_\_\_\_  
Name: Damian Dalla-Longa

**Exhibit A**  
**Target Bonus**

- A bonus at the discretion of the Board of Directors, but not less than 25% of Executive's Base Salary. The bonus shall be prorated for any period of employment which is less than a full year.

**Exhibit B**  
**Equity Awards**

- On the Effective Date, the Executive will receive an initial grant of 1,200,000 Better Choice Company options at an exercise price of \$5.00/sh. These options will vest monthly over 2 years in equal installments of 1/24 each month. The options will be accelerated upon a Change of Control, as defined in the Plan. Any exercise of options may, at the election of Executive, be exercised with a “cashless exercise” by using shares from any such exercise to pay the exercise price, which shares, for such purpose, being valued at the fair market value, as determined under the Plan, on the date of exercise.
- Pursuant to the Executive’s Employment Agreement with Bona Vida, Inc. dated October 29, 2018, the Executive will also receive 100,000 BTTR common equity shares at \$5.00/sh in lieu of the earned USD \$500,000 Change of Control cash payment. For the avoidance of doubt, these common equity shares will be fully vested immediately. A copy of the relevant section from Executive’s Bona Vida Inc. Employment Agreement is included below for reference
- For the avoidance of doubt, the above 1,200,000 options and 100,000 common equity shares are in addition to the Executive’s 1,667,156 existing common equity shares owned in Better Choice Company as a result of the Merger Agreement with Bona Vida Inc. dated February 28, 2019.

**3.5 Change of Control.**

- a. In the event of a Change of Control, as defined herein, the Executive shall be entitled to a gross lump sum payment equal to \$500,000.00 USD to be paid to Executive upon completion of the Change of Control transaction. For the purposes of this Agreement, a “**Change of Control**” means, directly or indirectly: (i) the sale of, transfer of or other change in, in one or more transactions, the ultimate beneficial ownership of fifty percent (50%) or more, directly or indirectly, of the Company; (ii) the sale, lease, transfer, or other disposition, in one or more transactions, directly or indirectly, of fifty (50%) or more of the gross book value of the assets of the Company considered on a consolidated basis; (iii) the amalgamation, merger, reorganization, arrangement or consolidation of the Company with or into another entity with the effect that immediately after such transaction any of the beneficial shareholders of the Company immediately prior to such transaction cease to hold fifty percent (50%) or more of the total voting power of all securities generally entitled to vote in the election of directors, managers or trustees of the person surviving such amalgamation, merger or consolidation; or (iv) any other situation that the Board of Directors deems, in its sole discretion, to be a Change of Control.

**Exhibit C**  
**Indemnification Agreement**

C-1

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## INDEMNIFICATION AND ADVANCEMENT AGREEMENT

This Indemnification and Advancement Agreement ("Agreement") is made as of [● ], 2019, by and between Better Choice Company Inc., a Delaware corporation (the "Company"), and [name of indemnitee], [a member of the Board of Directors/an officer] of the Company ("Indemnitee"). This Agreement supersedes and replaces any and all previous agreements between the Company and Indemnitee covering indemnification and advancement.

### RECITALS

WHEREAS, the Board of Directors of the Company (the "Board") believes that highly competent persons have become more reluctant to serve as directors, officers, or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification and advancement of expenses against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Company's bylaws (as currently in effect and as may be amended from time to time, the "Bylaws") require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification and advancement of expenses;

WHEREAS, the uncertainties relating to such insurance, to indemnification, and to advancement of expenses may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and any resolutions adopted pursuant thereto, and is not a substitute therefor, nor diminishes or abrogates any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Bylaws, DGCL and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve as an officer or director without adequate additional protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified and be advanced expenses.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as a [director/officer] of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law). This Agreement does not create any obligation on the Company to continue Indemnitee in such position and is not an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

Section 2. Definitions. As used in this Agreement:

(a) “Agent” means any person who is authorized by the Company or an Enterprise to act for or represent the interests of the Company or an Enterprise, respectively.

(b) A “Change in Control” occurs upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing thirty-five percent (35%) or more of the combined voting power of the Company’s then outstanding securities unless the change in relative beneficial ownership of the Company’s securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 51% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

vi. For purposes of this Section 2(b), the following terms have the following meanings:

- 1 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.
- 2 "Person" has the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person excludes (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.
- 3 "Beneficial Owner" has the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner excludes any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(c) "Corporate Status" describes the status of a person who is or was acting as a director, officer, employee, fiduciary, or Agent of the Company or an Enterprise.

(d) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" means any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity for which Indemnitee is or was serving at the request of the Company as a director, officer, employee, or Agent.

(f) “Expenses” includes all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent and, (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise. The parties hereto agree that, for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee’s counsel as being reasonable in the good faith judgment of such counsel will be presumed conclusively to be reasonable. Expenses, however, do not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(h) “Potential Change in Control” means the occurrence of any of the following events: (i) the Company enters into any written or oral agreement, undertaking or arrangement, the consummation of which would result in the occurrence of a Change in Control; (ii) any Person or the Company publicly announces an intention to take or consider taking actions which if consummated would constitute a Change in Control; (iii) any Person who becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 5% or more of the combined voting power of the Company’s then outstanding securities entitled to vote generally in the election of directors increases his beneficial ownership of such securities by 5% or more over the percentage so owned by such Person on the date hereof; or (iv) the Board adopts a resolution to the effect that, for purposes of this Agreement, a Potential Change in Control has occurred

(i) The term “Proceeding” includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee’s Corporate Status or by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee’s part while acting pursuant to Indemnitee’s Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. A Proceeding also includes a situation the Indemnitee believes in good faith may lead to or culminate in the institution of a Proceeding.

Section 3. Indemnity in Third-Party Proceedings. The Company will indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company will indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. The Company will not indemnify Indemnitee for Expenses under this Section 4 related to any claim, issue or matter in a Proceeding for which Indemnitee has been finally adjudged by a court to be liable to the Company, unless, and only to the extent that, the Delaware Court of Chancery or any court in which the Proceeding was brought determines upon application by Indemnitee that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with any Proceeding the extent that Indemnitee is successful, on the merits or otherwise. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding to which Indemnitee is not a party but to which Indemnitee is a witness, deponent, interviewee, or otherwise asked to participate.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses but not, however, for the total amount thereof, the Company will indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification. Notwithstanding any limitation in Sections 3, 4, or 5, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law (including but not limited to, the DGCL and any amendments to or replacements of the DGCL adopted after the date of this Agreement that expand the Company's ability to indemnify its officers and directors) if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor).

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company is not obligated under this Agreement to make any indemnification payment to Indemnitee in connection with any Proceeding:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except to the extent provided in Section 16(b) and except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or a committee thereof, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to indemnification or advancement, of Expenses, including a Proceeding (or any part of any Proceeding) initiated pursuant to Section 14 of this Agreement, (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses.

(a) The Company will advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding (or any part of any Proceeding) initiated by Indemnitee if (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to obtain indemnification or advancement of Expenses from the Company or Enterprise, including a proceeding initiated pursuant to Section 14 or (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation. The Company will advance the Expenses within thirty (30) calendar days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding.

(b) Advances will be unsecured and interest free. Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, thus Indemnitee qualifies for advances upon the execution of this Agreement and delivery to the Company. No other form of undertaking is required other than the execution of this Agreement. The Company will make advances without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

Section 11. Section Procedure for Notification of Claim for Indemnification or Advancement

(a) Indemnitee will notify the Company in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. Indemnitee will include in the written notification to the Company a description of the nature of the Proceeding and the facts underlying the Proceeding and provide such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Indemnitee's failure to notify the Company will not relieve the Company from any obligation it may have to Indemnitee under this Agreement, and any delay in so notifying the Company will not constitute a waiver by Indemnitee of any rights under this Agreement. The secretary of the Company will, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification or advancement.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

(a) Unless a Change of Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made:

- i. by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;
- ii. by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;
- iii. if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by written opinion provided by Independent Counsel selected by the Board; or iv. if so directed by the Board, by the stockholders of the Company.

(b) If a Change in Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made by written opinion provided by Independent Counsel selected by Indemnitee (unless Indemnitee requests such selection be made by the Board)

(c) The party selecting Independent Counsel pursuant to subsection (a)(iii) or (b) of this Section 12 will provide written notice of the selection to the other party. The notified party may, within ten (10) calendar days after receiving written notice of the selection of Independent Counsel, deliver to the selecting party a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within thirty (30) calendar days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, Independent Counsel has not been selected or, if selected, any objection to has not been resolved, either the Company or Indemnitee may petition the Delaware Court for the appointment as Independent Counsel of a person selected by such court or by such other person as such court designates. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company will advance and pay any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making the indemnification determination irrespective of the determination as to Indemnitee's entitlement to indemnification and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing of the determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied and providing a copy of any written opinion provided to the Board by Independent Counsel.

(e) If it is determined that Indemnitee is entitled to indemnification, the Company will make payment to Indemnitee within ten (10) calendar days after such determination.

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination will, to the fullest extent not prohibited by law, presume Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company will, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the determination of the Indemnitee's entitlement to indemnification has not been made pursuant to Section 12 within sixty (60) calendar days after the latter of (i) receipt by the Company of Indemnitee's request for indemnification pursuant to Section 11(a) and (ii) the final disposition of the Proceeding for which Indemnitee requested indemnification (the "Determination Period"), the requisite determination of entitlement to indemnification will, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee will be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law. The Determination Period may be extended for a reasonable time, not to exceed an additional thirty (30) calendar days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, the Determination Period may be extended an additional fifteen (15) calendar days if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a)(iv) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee will be deemed to have acted in good faith if Indemnitee acted based on the records or books of account of the Company, its subsidiaries, or an Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company, its subsidiaries, or an Enterprise in the course of their duties, or on the advice of legal counsel for the Company, its subsidiaries, or an Enterprise or on information or records given or reports made to the Company or an Enterprise by an independent certified public accountant or by an appraiser, financial advisor -10- US-DOCS\106819151.1 or other expert selected with reasonable care by or on behalf of the Company, its subsidiaries, or an Enterprise. Further, Indemnitee will be deemed to have acted in a manner "not opposed to the best interests of the Company," as referred to in this Agreement if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan. The provisions of this Section 13(d) is not exclusive and does not limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise may not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Indemnitee may commence litigation against the Company in the Delaware Court of Chancery to obtain indemnification or advancement of Expenses provided by this Agreement in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) the Company does not advance Expenses pursuant to Section 10 of this Agreement, (iii) the determination of entitlement to indemnification is not made pursuant to Section 12 of this Agreement within the Determination Period, (iv) the Company does not indemnify Indemnitee pursuant to Section 5 or 6 or the second to last sentence of Section 12(d) of this Agreement within ten (10) calendar days after receipt by the Company of a written request therefor, (v) the Company does not indemnify Indemnitee pursuant to Section 3, 4, 7, or 8 of this Agreement within ten (10) calendar days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence such Proceeding seeking an adjudication or an award in arbitration within 180 calendar days following the date on which Indemnitee first has the right to commence such Proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause does not apply in respect of a Proceeding brought by Indemnitee to enforce Indemnitee's rights under Section 5 of this Agreement. The Company will not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 will be conducted in all respects as a *de novo* trial, or arbitration, on the merits and Indemnitee may not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company will have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and will not introduce evidence of the determination made pursuant to Section 12 of this Agreement.

(c) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is entitled to indemnification, the Company will be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company is, to the fullest extent not prohibited by law, precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and will stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company, to the fullest extent permitted by law, will (within ten (10) calendar days after receipt by the Company of a written request therefor) advance to Indemnitee such Expenses which are incurred by Indemnitee in connection with any action concerning this Agreement, Indemnitee's right to indemnification or advancement of Expenses from the Company, or concerning any directors' and officers' liability insurance policies maintained by the Company, and will indemnify Indemnitee against any and all such Expenses unless the court determines that each of the Indemnitee's claims in such Proceeding were made in bad faith or were frivolous or are prohibited by law.

Section 15. Establishment of Trust.

(a) In the event of a Potential Change in Control or a Change in Control, the Company will, upon written request by Indemnitee, create a trust for the benefit of Indemnitee (the "Trust") and from time to time upon written request of Indemnitee will fund such Trust in an amount sufficient to satisfy the reasonably anticipated indemnification and advancement obligations of the Company to the Indemnitee in connection with any Proceeding for which Indemnitee has demanded indemnification and/or advancement prior to the Potential Change in Control or Change in Control (the "Funding Obligation"). The trustee of the Trust (the "Trustee") will be a bank or trust company or other individual or entity chosen by the Indemnitee and reasonably acceptable to the Company. Nothing in this Section 15 relieves the Company of any of its obligations under this Agreement.

(b) The amount or amounts to be deposited in the Trust pursuant to the Funding Obligation will be determined by mutual agreement of the Indemnitee and the Company or, if the Company and the Indemnitee are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement. The terms of the Trust will provide that, except upon the consent of both the Indemnitee and the Company, upon a Change in Control: (i) the Trust may not be revoked, or the principal thereof invaded, without the written consent of the Indemnitee; (ii) the Trustee will advance, to the fullest extent permitted by applicable law, within two (2) business days of a request by the Indemnitee; (iii) the Company will continue to fund the Trust in accordance with the Funding Obligation; (iv) the Trustee will promptly pay to the Indemnitee all amounts for which the Indemnitee is entitled to indemnification pursuant to this Agreement or otherwise; and (v) all unexpended funds in such Trust revert to the Company upon mutual agreement by the Indemnitee and the Company or, if the Indemnitee and the Company are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement, that the Indemnitee has been fully indemnified under the terms of this Agreement. New York law (without regard to its conflicts of laws rules) governs the Trust and the Trustee will consent to the exclusive jurisdiction of Delaware Court of Chancery, in accordance with Section 25 of this Agreement.

Section 16. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The indemnification and advancement of Expenses provided by this Agreement are not exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. The indemnification and advancement of Expenses provided by this Agreement may not be limited or restricted by any amendment, alteration or repeal of this Agreement in any way with respect to any action taken or omitted by Indemnitee in Indemnitee's Corporate Status occurring prior to any amendment, alteration or repeal of this Agreement. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy is cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more Persons with whom or which Indemnitee may be associated.

i. The Company hereby acknowledges and agrees:

1) the Company is the indemnitor of first resort with respect to any request for indemnification or advancement of Expenses made pursuant to this Agreement concerning any Proceeding arising from or related to Indemnitee's Corporate Status with the Company;

2) the Company is primarily liable for all indemnification and indemnification or advancement of Expenses obligations for any Proceeding arising from or related to Indemnitee's Corporate Status, whether created by law, organizational or constituent documents, contract (including this Agreement) or otherwise;

3) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding are secondary to the obligations of the Company's obligations;

4) the Company will indemnify Indemnitee and advance Expenses to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person; and

ii. the Company irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation, reimbursement, exoneration or indemnification, or any other recovery of any kind in respect of amounts paid by the Company to Indemnitee pursuant to this Agreement.

iii. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss for Indemnitee, the payor has a right of subrogation against the Company or its insurers for all amounts so paid which would otherwise be payable by the Company or its insurers under this Agreement. In no event will payment by any other Person with whom or which Indemnitee may be associated (or their insurers affect the obligations of the Company hereunder or shift primary liability for the Company's obligation to indemnify or advance of Expenses to any other Person with whom or which Indemnitee may be associated.

iv. Any indemnification or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated is specifically in excess over the Company's obligation to indemnify and advance Expenses or any valid and collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, the Company will obtain a policy or policies covering Indemnitee to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies, including coverage in the event the Company does not or cannot, for any reason, indemnify or advance Expenses to Indemnitee as required by this Agreement. If, at the time of the receipt of a notice of a claim pursuant to this Agreement, the Company has director and officer liability insurance in effect, the Company will give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company will thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Indemnitee agrees to assist the Company efforts to cause the insurers to pay such amounts and will comply with the terms of such policies, including selection of approved panel counsel, if required.

(d) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee for any Proceeding concerning Indemnitee's Corporate Status with an Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise. The Company and Indemnitee intend that any such Enterprise (and its insurers) be the indemnitor of first resort with respect to indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise. The Company's obligation to indemnify and advance Expenses to Indemnitee is secondary to the obligations the Enterprise or its insurers owe to Indemnitee. Indemnitee agrees to take all reasonably necessary and desirable action to obtain from an Enterprise indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise.

(e) In the event of any payment made by the Company under this Agreement, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any Enterprise or insurance carrier. Indemnitee will execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

Section 17. Duration of Agreement. This Agreement continues until and terminates upon the later of: (a) ten (10) years after the date that Indemnitee ceases to serve as a [director]/[officer] of the Company or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of Expenses rights provided by or granted pursuant to this Agreement are binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 18. Severability. If any provision or provisions of this Agreement is held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby and remain enforceable to the fullest extent permitted by law; (b) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 19. Interpretation. Any ambiguity in the terms of this Agreement will be resolved in favor of Indemnitee and in a manner to provide the maximum indemnification and advancement of Expenses permitted by law. The Company and Indemnitee intend that this Agreement provide to the fullest extent permitted by law for indemnification in excess of that expressly provided, without limitation, by the Certificate of Incorporation, the Bylaws, vote of the Company stockholders or disinterested directors, or applicable law.

Section 20. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and is not a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 21. Modification and Waiver. No supplement, modification or amendment of this Agreement is binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed or constitutes a waiver of any other provisions of this Agreement nor will any waiver constitute a continuing waiver.

Section 22. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company does not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 23. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given if (a) delivered by hand to the other party, (b) sent by reputable overnight courier to the other party or (c) sent by facsimile transmission or electronic mail, with receipt of oral confirmation that such communication has been received:

- (a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee provides to the Company.
- (b) If to the Company to:

or to any other address as may have been furnished to Indemnitee by the Company.

Section 24. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount -16- US-DOCS\106819151.1 incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 25. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties are governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or Proceeding arising out of or in connection with this Agreement may be brought only in the Delaware Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or Proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or Proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or Proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 26. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together constitutes one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 27. Headings. The headings of this Agreement are inserted for convenience only and do not constitute part of this Agreement or affect the construction thereof.

*[Signature Page to Follow]*

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

BETTER CHOICE COMPANY INC.

INDEMNITEE

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of May 6, 2019 (the "Effective Date") by and between Lori Taylor (the "Executive") and Better Choice Company, Inc. (together with any of its Affiliates (as defined in Section 3(a) below) as may employ the Executive from time to time, the "Company").

WHEREAS, the Company desires to employ the Executive upon the terms and conditions set forth herein;

WHEREAS, the Executive desires to be employed by the Company upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Representations and Warranties.** The Executive hereby represents and warrants to the Company that the Executive (i) is not subject to any non-solicitation or non-competition agreement affecting the Executive's employment with the Company, (ii) is not subject to any confidentiality or nonuse/nondisclosure agreement affecting the Executive's employment with the Company, and (iii) will bring to the Company no trade secrets, confidential business information, documents, or other personal property of a prior employer.

2. **Term of Employment.**

(a) **Term.** The Company hereby employs the Executive, and the Executive hereby accepts employment with the Company, for a period of two years commencing as of the Effective Date (such period, as it may be extended or renewed, the "Term"), unless sooner terminated in accordance with the provisions of Section 6. The Term shall be automatically renewed for successive two year terms unless notice of non-renewal is given by either party at least 30 days before the end of the Term.

(b) **Continuing Effect.** Notwithstanding any termination of this Agreement, at the end of the Term or otherwise, the provisions of Sections 6(e), 7, 8, 9, 10, 12 15, 16, 18, and 21 shall remain in full force and effect and the provisions of Section 9 shall be binding upon the legal representatives, successors and assigns of the Executive.

3. **Duties.**

(a) **General Duties.** The Executive shall serve as the Co-Chief Executive Officer of the Company, with customary responsibilities, duties (the "Duties") and authority as may from time to time be assigned to the Executive by the Company's Board of Directors (the "Board") and consistent with those duties normally performed by a Chief Executive Officer, which duties may include services for majority owned subsidiaries and affiliates of the Company (the "Affiliates"). The Executive shall report to the Board. The Executive shall, if requested by the Board, also serve as an officer or director of any Affiliate for no additional compensation. The Executive agrees to observe and comply with the Company's written rules and policies as adopted by the Company from time to time.

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(b) Devotion of Time. Subject to the last sentence of this Section 3(b), the Executive shall devote the Executive's full business time, skill, energy and attention to the business and affairs of the Company and its Affiliates as are necessary to perform the Executive's Duties pursuant to this Agreement. The Executive shall not enter the employ of or serve as a consultant to, or in any way perform any professional services with or without compensation to, any other persons, business, or organization, without the prior consent of the Board. Notwithstanding the above, the Executive shall be permitted to devote a limited amount of the Executive's time to any not-for-profit charity or civic group, provided that such activities do not interfere with, or otherwise create a conflict with, the Executive's performance of the Executive's Duties as provided hereunder.

(c) Location of Office. The Executive's principal business office shall be in Milford, Ohio (the "Principal Office"). However, the Executive's Duties shall include all business travel necessary for the performance of the Executive's Duties.

(d) Adherence to Inside Information Policies. The Executive acknowledges that the Company is publicly-held and, as a result, has implemented inside information policies designed to preclude its executives and those of its subsidiaries from violating the federal securities laws by trading on material, non-public information or passing such information on to others in breach of any duty owed to the Company or any third party. The Executive shall promptly execute any agreements generally distributed by the Company to its employees requiring such employees to abide by its inside information policies.

#### 4. Compensation and Expenses.

(a) Base Salary. For the services of the Executive to be rendered under this Agreement, the Company shall pay the Executive an annual salary of \$300,000 (the "Base Salary"), less such deductions as shall be required to be withheld by applicable law and regulations payable in accordance with the Company's customary payroll practices. The Executive's Base Salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the Base Salary during the Term.

(b) Signing Bonus. The Executive shall be paid a "signing bonus" of USD \$155,000 on May 6, 2019, less such deductions as shall be required to be withheld by applicable law and regulations.

(c) Target Bonus. For each fiscal year of the Company during the Term, the Executive shall have the opportunity to earn a bonus in accordance with the terms and conditions set forth on Exhibit A hereto (an "Annual Bonus"). Any such Annual Bonus shall be payable on, or at such date as is determined by the Board within 120 days following, the last day of the fiscal year with respect to which it relates. Except as provided in Section 6, notwithstanding any other provision of this Section 4(c) or Exhibit A hereto, no Annual Bonus shall be payable with respect to any fiscal year unless the Executive remains continuously employed with the Company during the period beginning on the Effective Date and ending on the last day of the fiscal year to which the Annual Bonus relates.

(d) Equity Compensation. In consideration of the Executive entering into this Agreement and as an inducement to join the Company, on, or as soon as reasonably practicable following, the Effective Date, the Company shall grant to the Executive certain equity compensation rights and awards set forth on Exhibit B hereto (which, together with any other awards granted under this Plan hereafter, the "Equity Awards") pursuant to the Better Choice Company, Inc. 2019 Incentive Award Plan (the "Plan"). The Equity Awards shall be subject to the terms and conditions of the Plan, or any successor plan thereto, which may be modified or revoked at any time in the sole discretion of the Company subject to then outstanding rights thereunder, and applicable award agreements thereunder.

(e) Expenses. In addition to any compensation received pursuant to this Section 4, the Company will reimburse or advance funds to the Executive for all reasonable documented travel (including travel expenses incurred by the Executive related to the Executive's travel to the Company's other offices), entertainment and other business expenses incurred in connection with the performance of the Executive's Duties under this Agreement, provided that the Executive properly provides a written accounting of such expenses to the Company in accordance with the Company's practices. Such reimbursement or advances will be made in accordance with policies and procedures of the Company in effect from time to time relating to reimbursement of, or advances to, its executive officers.

5. Benefits.

(a) Paid Time Off. For each twelve-month period during the Term, the Executive shall be entitled to five weeks of paid time off without loss of compensation or other benefits to which Executive is entitled under this Agreement, to be taken at such times as the Executive may select and the affairs of the Company may permit. The five weeks shall accrue daily and any unused days will be carried over to the next year of the Term and, upon the termination of this Agreement, any accrued and unused paid time-off shall be paid to Executive.

(b) Fringe Benefit and Perquisites. During the Term, the Executive shall be entitled to (i) fringe benefits and perquisites consistent with the practices of the Company, (ii) benefits or perquisites (or both) provided to similarly situated executives of the Company, and (iii) the perquisites set forth on Exhibit D.

(c) Employee Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans, practices and programs maintained by the Company, as in effect from time to time (collectively, "Employee Benefit Plans"), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or cancel any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law. Notwithstanding the foregoing sentence, during the Term, the Company shall provide the Executive with health insurance covering the Executive and family dependents.

6. Termination.

(a) Death or Disability. Except as otherwise provided in this Agreement, this Agreement shall automatically terminate upon the death or disability of the Executive. For purposes of this Section 6(a), "disability" shall mean (i) the Executive is unable to substantially engage in the Executive's Duties by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for a continuous period of not less than 12 months; (ii) the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company; or (iii) the Executive is determined to be totally disabled by the Social Security Administration. Any question as to the existence of a disability shall be determined by the written opinion of the Executive's regularly attending physician (or the Executive's guardian) (or the Social Security Administration, where applicable). In the event that the Executive's employment is terminated by reason of the Executive's death or disability, the Company shall pay the following to the Executive or the Executive's personal representative: (i) any accrued but unpaid Base Salary for services rendered to the date of termination, any accrued but unpaid expenses required to be reimbursed under this Agreement and any accrued paid time off (the "Accrued Payments"), and (ii) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year). The Executive or the Executive's legally appointed guardian, as the case may be, shall have up to 12 months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term. The Executive (or the Executive's estate) shall receive the payments provided herein at such times as the Executive would have received them if there was no death or disability.

(b) Termination by the Company for Cause or by the Executive Without Good Reason. The Company may, upon a unanimous vote by the Board (excluding the Executive), terminate the Executive's employment pursuant to the terms of this Agreement at any time for Cause (as defined below) by giving the Executive written notice of termination. Such termination shall become effective upon the giving of such notice. Upon any such termination for Cause, or in the event the Executive terminates the Executive's employment with the Company without Good Reason (as defined in Section 6(c)), the Executive shall receive the Accrued Payments and shall have no right to any other compensation or reimbursement under Section 4, or to participate in any Executive benefit programs under Section 5, except as may otherwise be provided for by law, for any period subsequent to the effective date of termination. For purposes of this Agreement, "Cause" shall mean: (i) the Executive is convicted of, or pleads guilty or nolo contendere to, a felony related to the business of the Company; (ii) the Executive, in carrying out the Executive's Duties hereunder, has acted with gross negligence or intentional misconduct which results in material harm to the Company; (iii) the Executive misappropriates Company funds or otherwise defrauds the Company involving a material amount of money or property; (iv) the Executive breaches the Executive's fiduciary duty to the Company, resulting in material profit to the Executive personally, directly or indirectly; (v) the Executive materially breaches any term of this Agreement with the Company and fails to cure such breach within 30 days of receipt of notice; (vi) the Executive breaches any provision of Section 8 or Section 9 of this Agreement; (vii) the Executive becomes subject to a preliminary or permanent injunction issued by a United States District Court enjoining the Executive from violating any securities law administered or regulated by the Securities and Exchange Commission; (viii) the Executive becomes subject to a cease and desist order or other order issued by the Securities and Exchange Commission after an opportunity for a hearing; (ix) the Executive refuses to carry out a resolution adopted by the Company's Board at a meeting in which the Executive was offered a reasonable opportunity to argue that the resolution should not be adopted; or (x) the Executive abuses alcohol or drugs in a manner that interferes with the successful performance of the Executive's Duties.

(c) Termination by the Company Without Cause; Termination by the Executive for Good Reason; Termination at the end of a Term after the Company provides notice of Non-Renewal.

(1) This Agreement may be terminated: (i) by the Executive for Good Reason (as defined below), (ii) by the Company without Cause, or (iii) at the end of a Term after the Company provides the Executive with notice of non-renewal.

(2) In the event this Agreement is terminated by the Executive for Good Reason or by the Company without Cause, subject to Section (6)(c)(4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Amounts;

(B) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year);

(C) continued payment of the then Base Salary during the 12 month period following the date of termination (the "Severance Period"), payable in accordance with the Company's regular payroll practices as of the date of such termination;

(D) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term;

(E) all Equity Awards, to the extent not already vested, shall become fully vested on the date of termination; and

(F) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, during the Severance Period, subject to the terms of any applicable plan or insurance contract and applicable law.

(3) In the event this Agreement is terminated at the end of a Term after the Company provides the Executive with notice of non-renewal and the Executive remains employed until the end of the Term, subject to Section 6(c)(4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Amounts;

(B) all Equity Awards, to the extent not already vested, shall become fully vested on the date of termination;

(C) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term; and

(D) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, for 12 months, subject to the terms of any applicable plan or insurance contract and applicable law;

provided, however, that the Executive shall only be entitled to receive the payments or benefits set forth in Section 6(c)(3)(B) and (D) if the Executive is willing and able (i) to execute a new agreement providing terms and conditions substantially similar to those in this Agreement and (ii) to continue providing such services, and therefore, the Company's non-renewal of the Term will be considered an "involuntary separation from service" within the meaning of Treasury Regulation Section 1.409A-1(n).

(4) The payments and benefits provided in Sections 6(c)(2)(B), (C), (E) and (F) and Section 6(c)(3)(B) and (D) shall be conditioned on (i) the Executive's execution and non-revocation of a waiver and release of claims in the Company's customary form (a "Release") as of the Release Expiration Date, in accordance with Section 21(d), and (ii) the Executive's continued compliance with the restrictive covenants set forth in Sections 8 and 9 of this Agreement (the "Restrictive Covenants"). Notwithstanding any other provision of this Agreement, no payments will be made or benefits provided pursuant to such sections prior to the date the Release becomes irrevocable in accordance with its terms or following the date the Executive first breaches any of the Restrictive Covenants.

(5) The term "Good Reason" shall mean: (i) a material diminution in the Executive's authority, duties or responsibilities due to no fault of the Executive other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law; (ii) the Company requires the Executive to permanently change the Executive's principal business office as defined in Section 3(c) to a location that is greater than 30 miles from the Principal Office, (iii) a change in the Executive's overall compensation or bonus structure such that the Executive's overall compensation is materially diminished; or (v) any other action or inaction that constitutes a material breach by the Company under this Agreement. Prior to the Executive terminating the Executive's employment with the Company for Good Reason, the Executive must provide written notice to the Company, within 30 days following the Executive's initial awareness of the existence of such condition, that such Good Reason exists and setting forth in detail the grounds the Executive believes constitutes Good Reason. If the Company does not cure the condition(s) constituting Good Reason within 30 days following receipt of such notice, then the Executive's employment shall be deemed terminated for Good Reason.

(d) Any termination made by the Company under this Agreement shall be approved by the Board as provided herein.

(e) Upon (1) termination of the Executive's employment with the Company for any reason or (2) the Company's request at any time during the Executive's employment (provided it does not interfere with the Executive's ability to perform the Executive's duties and responsibilities hereunder), the Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, security devices, employer credit cards, network access devices, computers, cell phones, smartphones, manuals, work product, thumb drives or other removable information storage devices, and hard drives, and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or work product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with the Executive's employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive's possession or control, including those stored on any non-Company devices, networks, storage locations and media in the Executive's possession or control. The Executive shall confirm the Executive's compliance with this Section 6(e), in writing, at any time within five days of the Executive's receipt of a request for same from the Company.

(f) The provisions of this Section 6 shall supersede in their entirety any severance payment or benefit obligations to the Executive pursuant to the provisions in any severance plan, policy, program or other arrangement maintained by the Company.

7. Indemnification. As provided in an Indemnification Agreement to be entered into between the Company and the Executive, a copy of which is annexed as Exhibit C, the Company shall indemnify the Executive, to the maximum extent permitted by applicable law, against all costs, charges and expenses incurred or sustained by her in connection with any action, suit or proceeding to which the Executive may be made a party by reason of the Executive being an officer, director or employee of the Company or of any subsidiary or affiliate of the Company. The Company shall provide, at its expense, directors and officers insurance for the Executive in amounts and for a term consistent with industry standards.

8. Non-Competition Agreement.

(a) Definitions. For the purpose of this Agreement:

(1) "Restricted Area" means the United States of America;

(2) "Restricted Period" means the period during such time as Executive is an employee of the Company and the one year period immediately following the last day of the Executive's employment with the Company.

(3) "Prohibited Activity" means any activity in which the Executive contributes the Executive's knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, member, advisor, consultant, agent, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar businesses as the Company or any of its affiliates or subsidiaries, including but not limited to those engaged in the Business. For the avoidance of doubt, "Prohibited Activity" includes any activity requiring the disclosure of any Confidential Information.

(4) "Trade Secret" means Confidential Information which meets the additional requirements of the federal Defend Trade Secrets Act, the Uniform Trade Secrets Act, similar state law or applicable common law.

(5) "Trade Secret Prohibited Activity" means any Prohibited Activity that may require or inevitably requires disclosure of any Trade Secret of the Company Group.

(6) "Business" means the sale of pet foods, flea and tick products, pet nutritional products and related pet supplies, and also includes any other product or services which the Company has taken concrete steps to offer for sale, but has not yet commenced selling or marketing, during or prior to the Term, and any products or services disclosed on the Company's website.

(b) Non-Competition. Because of the Company's legitimate business interest as described herein and the good and valuable consideration offered to the Executive, during the Term of this Agreement and during the Restricted Period the Executive agrees and covenants not to engage in any Prohibited Activity within the Restricted Area.

(c) Trade Secrets. Notwithstanding the foregoing or anything contained herein to the contrary, and subject only to Section 9(a)(1)(B) hereof, the Executive acknowledges and agrees that during the Executive's employment with the Company and indefinitely following the cessation of that employment for any reason, the Executive shall not directly or indirectly disclose or divulge any Trade Secret or engage in any Trade Secret Prohibited Activity (so long as the information remains a Trade Secret under applicable law) without the prior written consent of the Company, which may be granted or withheld in the sole discretion of the Company.

(d) Non-Solicitation, Non-Disparagement. During the Restricted Period, the Executive shall not, directly or indirectly, whether for the Executive's own account or for the account of any person or entity, solicit, attempt to solicit, endeavor to entice away from the Company, attempt to hire, hire, deal with, attempt to attract business from, accept business from, or otherwise interfere with (whether by reason of cancellation, withdrawal, modification of relationship or otherwise) any actual or prospective relationship of the Company with any person or entity: (i) who is, or was within one (1) year of the date upon which this Agreement is terminated, employed by or otherwise engaged to perform services for the Company, including, but not limited to, any independent contractor or representative, or (ii) who is, or was within one year of the date upon which this Agreement is terminated, an actual or bona fide prospective licensee, landlord, customer, client, vendor, supplier or manufacturer of the Company (or other person or entity with which the Company had an actual or prospective bona fide relationship). The Executive agrees that the Executive will never, directly or indirectly, make or publish any statement or communication which is false or disparaging with respect to the Company and/or its direct or indirect shareholders, officers, directors, members, managers, employees, contractors, consultants, or agents.

(e) Equitable Consideration. The Executive agrees that the Executive's services hereunder are of a special, unique, extraordinary and intellectual character and the Executive's position with the Company places the Executive in a position of confidence and trust with the customers, suppliers and employees of the Company. The Executive and the Company agree that in the course of employment hereunder, the Executive has and will continue to develop a personal relationship with the Company's customers, and a knowledge of these customers' affairs and requirements as well as confidential and proprietary information developed by the Company after the date of this Agreement. The Executive acknowledges that the Company's relationships with its established clientele may therefore be placed in the Executive's hands in confidence and trust. The Executive consequently agrees that it is reasonable and necessary for the protection of the goodwill, confidential and proprietary information, and legitimate business interests of the Company that the Executive make the covenants contained herein, that the covenants are a material inducement for the Company to employ or continue to employ the Executive and to enter into this Agreement, that the covenants are given as an integral part of and incident to this Agreement, and that the covenants will not prevent the Executive from earning a livelihood in the Executive's chosen business, do not impose an undue hardship on the Executive, and will not injure the public.

(f) References. References to the Company in this Section 8 shall include the Company and any Affiliate.

9. Non-Disclosure of Confidential Information.

(a) Confidentiality.

(1) For the purpose of this Agreement, "Confidential Information" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, products, patents, sources of supply, customer dealings, data, source code, business plans, practices, methods, policies, publications, research, operations, strategies, techniques, agreements, transactions, potential transactions, negotiations, know-how, Trade Secrets, computer programs, computer software, applications, operating systems, software design, work-in-process, databases, records, systems, Personally Identifiable Information, supplier information, vendor information, financial information, results, legal information, marketing and advertising information, pricing information, design information, personnel information, developments, reports, internal controls, graphics, drawings, market studies, sales information, revenue, costs, notes, communications, algorithms, product plans, designs, models, ideas, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, distributor lists, and buyer lists of the Company, its businesses, and any existing or prospective customer, vendor, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company in confidence. The Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used. Notwithstanding the foregoing, "Confidential Information" shall not include information that: (A) becomes publicly known without breach of the Executive's obligations under this Section 9(a), or (B) is required to be disclosed by law or by court order or government order; provided, however, that if the Executive is required to disclose any Confidential Information pursuant to any law, court order or government order, (x) the Executive shall promptly notify the Company of any such requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions of this Agreement, (y) the Executive shall reasonably cooperate with the Company to obtain such a protective order at the Company's cost and expense, and (z) if such order is not obtained, or the Company waives compliance with the provisions of this Section 9(a), the Executive shall disclose only that portion of the Confidential Information which the Executive is advised by counsel that the Executive is legally required to so disclose and will exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded the information so disclosed.

(2) For the purpose of this Agreement, "Personally Identifiable Information" means information that, whether maintained or transmitted individually or in the aggregate with other information, allows a natural person to be identified, including, but not limited to, the name, birthday, address, telephone number, social security number, driver's license number, passport number, credit card number, credit score information, bank information, or other unique identifiers of any natural person that allows for the identification of or contact with such person. The Executive agrees that the Executive will not download, upload, or otherwise transfer copies of Confidential Information to any external storage media or cloud storage (except as authorized by the Company when necessary in the performance of the Executive's Duties for the Company and for the Company's sole benefit).

(3) The Executive acknowledges and agrees that: (A) the Executive has had and will continue to have access to Confidential Information regarding the Company, (B) the Confidential Information is being acquired by the Executive in confidence, (C) the Confidential Information is a valuable, special, sensitive and unique asset of the business of the Company, (D) the Confidential Information is and shall at all times remain the sole property of the Company, (E) the continued confidentiality of the Confidential Information is essential to the continuation of the Company's business; and (F), the improper disclosure of the Confidential Information could severely and irreparably damage the Company and its businesses. In consideration of the obligations undertaken by the Company herein, the Executive will not, at any time, during or after the Executive's employment hereunder, reveal, divulge or make known to any person, any Confidential Information acquired by the Executive during the course of the Executive's employment with the Company and for a period of two (2) years thereafter except with the prior written approval of the Company. Notwithstanding the foregoing, subject only to Section 9(a)(1)(B) hereof, the Executive may not disclose, divulge or otherwise make use of any Trade Secret so long as such information remains a Trade Secret under applicable law. The Executive agrees to use the Executive's best efforts to maintain the confidentiality of the Confidential Information during the course of the Executive's employment with the Company and thereafter, including adopting and implementing all reasonable procedures prescribed by the Company to prevent unauthorized use of Confidential Information or disclosure of Confidential Information to any unauthorized person. The Executive shall take all necessary and reasonable administrative, technical, and physical safeguards to secure and protect the confidentiality, integrity, and security of the Confidential Information.

(b) References. References to the Company in this Section 9 shall include the Company and any Affiliate.

(c) Whistleblowing. Nothing contained in this Agreement shall be construed to prevent the Executive from reporting any act or failure to act to the SEC or other governmental body or prevent the Executive from obtaining a fee as a “whistleblower” under Rule 21F-17(a) under the Securities Exchange Act of 1934 or other rules or regulations implemented under the Dodd-Frank Wall Street Reform Act and Consumer Protection Act.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 Notwithstanding any other provision of this Agreement, the Executive will not be held criminally or civilly liable under any federal or state Trade Secret law for any disclosure of a Trade Secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed under seal in a lawsuit or other proceeding. If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company’s Trade Secrets to the Executive’s attorney and use the Trade Secret information in the court proceeding if the Executive files any document containing Trade Secrets under seal; and does not disclose Trade Secrets, except pursuant to court order.

10. Equitable Relief. The Company and the Executive recognize that the services to be rendered under this Agreement by the Executive are special, unique and of extraordinary character, and that in the event of the breach by the Executive of the terms and conditions of this Agreement or if the Executive, without the prior express consent of the Board, shall leave the Executive’s employment for any reason and/or take any action in violation of this Agreement, the Company shall be entitled to institute and prosecute proceedings in any court of competent jurisdiction referred to in Section 10(b) below, to enjoin the Executive from breaching the provisions of this Agreement. Any action arising from or under this Agreement must be commenced only in the appropriate

11. Conflicts of Interest. While employed by the Company, the Executive shall not, unless approved by the Board of Directors or its Compensation Committee, directly or indirectly:

(a) participate as an individual in any way in the benefits of transactions with any of the Company’s vendors, clients, customers, suppliers or manufacturers, without limitation, having a financial interest in the Company’s vendors, clients, customers, suppliers or manufacturers or making loans to, or receiving loans, from, the Company’s vendors, clients, customers, suppliers or manufacturers;

(b) realize a personal gain or advantage from a transaction in which the Company has an interest or use information obtained in connection with the Executive’s employment with the Company for the Executive’s personal advantage or gain; or

(c) accept any offer to serve as an officer, director, partner, consultant, manager with, or to be employed in a professional, technical, or managerial capacity by, a person or entity which does business with the Company.

12. Inventions, Ideas, Processes, and Designs. All inventions, ideas, processes, programs, software, and designs (including all improvements) (i) conceived or made by the Executive during the course of the Executive's employment with the Company (whether or not actually conceived during regular business hours) and for a period of six months subsequent to the termination (whether by expiration of the Term or otherwise) of such employment with the Company, and (ii) related to the business of the Company, shall be disclosed in writing promptly to the Company and shall be the sole and exclusive property of the Company, and the Executive hereby irrevocably assigns any such inventions to the Company. An invention, idea, process, program, software, or design (including an improvement) shall be deemed related to the business of the Company if (a) it was made with the Company's funds, personnel, equipment, supplies, facilities, or Confidential Information, (b) results from work performed by the Executive for the Company, or (c) pertains to the current business or demonstrably anticipated business(es), research or development work of the Company. The Executive shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request and at the sole cost and expense of the Company, shall promptly assign all such inventions, ideas, processes, and designs to the Company. The decision to file for patent or copyright protection or to maintain such development as a Trade Secret, or otherwise, shall be in the sole discretion of the Company, and the Executive shall be bound by such decision. The Executive hereby irrevocably assigns to the Company, for no additional consideration, the Executive's entire right, title and interest in and to all work product and intellectual property rights, including the right to sue, counterclaim and recover for all past, present and future infringement, misappropriation or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's rights, title or interest in any work product or intellectual property rights so as to be less in any respect than the Company would have had in the absence of this Agreement. If applicable, the Executive shall provide as a schedule to this Agreement, a complete list of all inventions, ideas, processes, and designs, if any, patented or unpatented, copyrighted or otherwise, or non-copyrighted, including a brief description, which she made or conceived prior to the Executive's employment with the Company and which therefore are excluded from the scope of this Agreement. References to the Company in this Section 12 shall include the Company, its subsidiaries and affiliates.

13. Indebtedness. If, during the course of the Executive's employment under this Agreement, the Executive becomes indebted to the Company for any reason, the Company may, if it so elects, and if permitted by applicable law, set off any sum due to the Company from the Executive and collect any remaining balance from the Executive unless the Executive has entered into a written agreement with the Company.

14. Assignability. The rights and obligations of the Company under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company, provided that such successor or assign shall acquire all or substantially all of the securities or assets and business of the Company. The Executive's obligations hereunder may not be assigned or alienated and any attempt to do so by the Executive will be void.

15. Severability.

(a) The Executive expressly agrees that the character, duration and geographical scope of the covenants set forth in Section 8 of this Agreement are reasonable in light of the circumstances as they exist on the date hereof. Should a decision, however, be made at a later date by a court of competent jurisdiction that the character, duration or geographical scope of such provisions is unreasonable, then it is the intention and the agreement of the Executive and the Company that this Agreement shall be construed by the court in such a manner as to impose only those restrictions on the Executive's conduct that are reasonable in the light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. If, in any judicial proceeding, a court shall refuse to enforce all of the separate covenants deemed included herein because taken together they are more extensive than necessary to assure to the Company the intended benefits of this Agreement, it is expressly understood and agreed by the parties hereto that the provisions of this Agreement that, if eliminated, would permit the remaining separate provisions to be enforced in such proceeding shall be deemed eliminated, for the purposes of such proceeding, from this Agreement.

(b) If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from either of the parties to the other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provisions were not included.

16. Notices and Addresses. All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by FedEx or similar receipted delivery, or next business day delivery to the addresses detailed below (or to such other address, as either of them, by notice to the other may designate from time to time), or by e-mail delivery (in which event a copy shall immediately be sent by FedEx or similar receipted delivery), as follows:

To the Company:	Better Choice Company Inc. 100 Techne Center Drive, #210 Milford, Ohio 45150 Attention: Damian Dalla-Longa
With a copy to:	Latham & Watkins LLP 885 Third Avenue New York, New York 10028
To the Executive:	Lori Taylor 100 Techne Center Drive, #210 Milford, Ohio 45150

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be governed or interpreted according to the internal laws of the State of Delaware without regard to choice of law considerations and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, shall also be governed by the laws of the State of Delaware without regard to choice of law considerations.

19. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.

20. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

21. Section 409A Compliance.

(a) The parties hereto acknowledge and agree that, to the extent applicable, this Agreement shall be interpreted, construed and administered in accordance with Section 409A of the Internal Revenue Code of 1986, as amended, and the Department of Treasury regulations and other interpretive guidance issued thereunder (collectively, "Section 409A"). For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made if such termination of employment constitutes a "separation from service" under Section 409A. Notwithstanding any provision of this Agreement to the contrary, in the event that the Company determines that any amounts payable hereunder will be immediately taxable to the Executive under Section 409A, the Company reserves the right (without any obligation to do so or to indemnify the Executive for failure to do so) to (i) adopt such amendments to this Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Company determines to be necessary or appropriate to preserve the intended tax treatment of the benefits provided by this Agreement, to preserve the economic benefits of this Agreement and to avoid less favorable accounting or tax consequences for the Company and/or (ii) take such other actions as the Company determines to be necessary or appropriate to exempt the amounts payable hereunder from Section 409A or to comply with the requirements of Section 409A and thereby avoid the application of penalty taxes thereunder. In no event shall any liability for failure to comply with the requirements of Section 409A be transferred from Executive or any other individual to the Company or any of its affiliates, employees or agents.

(b) To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(1) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(2) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(3) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

(c) In the event the Company determines that the Executive is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code at the time of the Executive’s separation from service, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement on account of the Executive’s separation from service would be considered deferred compensation subject to Section 409A as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six months and one day after the Executive’s separation from service, or (ii) the Executive’s death (the “Six Month Delay Rule”).

(1) For purposes of this subparagraph, amounts payable under the Agreement should not provide for a deferral of compensation subject to Section 409A to the extent provided in Treasury Regulation Section 1.409A-1(b)(4) (e.g., short-term deferrals), Treasury Regulation Section 1.409A-1(b)(9) (e.g., separation pay plans, including the exception under subparagraph (iii)), and other applicable provisions of the Treasury Regulations.

(2) To the extent that the Six Month Delay Rule applies to payments otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of the Six Month Delay Rule, and the balance of the installments shall be payable in accordance with their original schedule.

(d) Notwithstanding anything to the contrary in this Agreement, to the extent that any payments of “nonqualified deferred compensation” (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are subject to the Executive’s execution, delivery and non-revocation of a Release, (i) the Company shall deliver the Release to the Executive within seven (7) days following the date of termination, and (ii) if the Executive fails to execute the Release on or prior to the Release Expiration Date (as defined below) or timely revokes acceptance of the Release thereafter, the Executive shall not be entitled to any payments or benefits otherwise conditioned on the Release. For purposes of this Section 21(d), “Release Expiration Date” shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers the Release to the Executive, or, in the event that the Executive’s termination of employment is “in connection with an exit incentive or other employment termination program” (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty-five (45) days following such delivery date. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are delayed pursuant to Section 6(c) and this Section 21(d), such amounts shall be paid in a lump sum on the first payroll date to occur on or after the 60th day following the date of termination, provided that, as of such 60th day, the Executive has executed and has not revoked the Release (and any applicable revocation period has expired).

22. Compensation Recovery Policy. The Executive acknowledges and agrees that, to the extent the Company adopts any clawback or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, the Executive shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy).

[Signature Page To Follow]

IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date and year first above written.

**COMPANY:**

Better Choice Company Inc.

By: /s/ \_\_\_\_\_

Name: Damian Dalla-Longa

Title: Co-Chief Executive Officer

**EXECUTIVE:**

By: /s/ \_\_\_\_\_

Lori R. Taylor

**Exhibit A**

**Target Bonus**

A bonus at the discretion of the Board of Directors, but not less than 25% of Executive's Base Salary. The bonus shall be prorated for any period of employment which is less than a full year.

**Exhibit B**

**Equity Awards**

On the Effective Date the Executive shall receive an award under the Plan of options for 1,150,000 shares with an exercise price of \$5.00 per share. The award shall (i) vest in equal installments monthly over two years, with the first monthly vesting on May 31, 2019, (ii) accelerate as to all unvested options upon a Change in Control, as defined in the Plan and (iii) accelerate as provided in this Agreement. Any exercise may, at the election of Executive, be exercised with a “cashless exercise” by using shares from any such exercise to pay the exercise price, which shares, for such purpose, being valued at the fair market value, as determined under the Plan, on the date of exercise.

**Exhibit C**  
**Indemnification Agreement**

## INDEMNIFICATION AND ADVANCEMENT AGREEMENT

This Indemnification and Advancement Agreement ("Agreement") is made as of [ • ], 2019, by and between Better Choice Company Inc., a Delaware corporation (the "Company"), and [name of indemnitee], [a member of the Board of Directors/an officer] of the Company ("Indemnitee"). This Agreement supersedes and replaces any and all previous agreements between the Company and Indemnitee covering indemnification and advancement.

### RECITALS

WHEREAS, the Board of Directors of the Company (the "Board") believes that highly competent persons have become more reluctant to serve as directors, officers, or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification and advancement of expenses against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Company's bylaws (as currently in effect and as may be amended from time to time, the "Bylaws") require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification and advancement of expenses;

WHEREAS, the uncertainties relating to such insurance, to indemnification, and to advancement of expenses may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and any resolutions adopted pursuant thereto, and is not a substitute therefor, nor diminishes or abrogates any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Bylaws, DGCL and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve as an officer or director without adequate additional protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified and be advanced expenses.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as a [director/officer] of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law). This Agreement does not create any obligation on the Company to continue Indemnitee in such position and is not an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

Section 2. Definitions. As used in this Agreement:

(a) "Agent" means any person who is authorized by the Company or an Enterprise to act for or represent the interests of the Company or an Enterprise, respectively.

(b) A "Change in Control" occurs upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing thirty-five percent (35%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative beneficial ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 51% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

vi. For purposes of this Section 2(b), the following terms have the following meanings:

1. "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.
2. "Person" has the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person excludes (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.
3. "Beneficial Owner" has the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner excludes any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(c) "Corporate Status" describes the status of a person who is or was acting as a director, officer, employee, fiduciary, or Agent of the Company or an Enterprise.

(d) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" means any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity for which Indemnitee is or was serving at the request of the Company as a director, officer, employee, or Agent.

(f) “Expenses” includes all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnatee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent and, (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnatee in connection with the interpretation, enforcement or defense of Indemnatee’s rights under this Agreement, by litigation or otherwise. The parties hereto agree that, for the purposes of any advancement of Expenses for which Indemnatee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnatee’s counsel as being reasonable in the good faith judgment of such counsel will be presumed conclusively to be reasonable. Expenses, however, do not include amounts paid in settlement by Indemnatee or the amount of judgments or fines against Indemnatee.

(g) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnatee in any matter material to either such party (other than with respect to matters concerning the Indemnatee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnatee in an action to determine Indemnatee’s rights under this Agreement.

(h) “Potential Change in Control” means the occurrence of any of the following events: (i) the Company enters into any written or oral agreement, undertaking or arrangement, the consummation of which would result in the occurrence of a Change in Control; (ii) any Person or the Company publicly announces an intention to take or consider taking actions which if consummated would constitute a Change in Control; (iii) any Person who becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 5% or more of the combined voting power of the Company’s then outstanding securities entitled to vote generally in the election of directors increases his beneficial ownership of such securities by 5% or more over the percentage so owned by such Person on the date hereof; or (iv) the Board adopts a resolution to the effect that, for purposes of this Agreement, a Potential Change in Control has occurred.

(i) The term “Proceeding” includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee’s Corporate Status or by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee’s part while acting pursuant to Indemnitee’s Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. A Proceeding also includes a situation the Indemnitee believes in good faith may lead to or culminate in the institution of a Proceeding.

Section 3. Indemnity in Third-Party Proceedings The Company will indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee’s conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company will indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. The Company will not indemnify Indemnitee for Expenses under this Section 4 related to any claim, issue or matter in a Proceeding for which Indemnitee has been finally adjudged by a court to be liable to the Company, unless, and only to the extent that, the Delaware Court of Chancery or any court in which the Proceeding was brought determines upon application by Indemnitee that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with any Proceeding the extent that Indemnitee is successful, on the merits or otherwise. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding to which Indemnitee is not a party but to which Indemnitee is a witness, deponent, interviewee, or otherwise asked to participate.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses but not, however, for the total amount thereof, the Company will indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification. Notwithstanding any limitation in Sections 3, 4, or 5, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law (including but not limited to, the DGCL and any amendments to or replacements of the DGCL adopted after the date of this Agreement that expand the Company's ability to indemnify its officers and directors) if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor).

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company is not obligated under this Agreement to make any indemnification payment to Indemnitee in connection with any Proceeding:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except to the extent provided in Section 16(b) and except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or a committee thereof, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to indemnification or advancement, of Expenses, including a Proceeding (or any part of any Proceeding) initiated pursuant to Section 14 of this Agreement, (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses.

(a) The Company will advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding (or any part of any Proceeding) initiated by Indemnitee if (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to obtain indemnification or advancement of Expenses from the Company or Enterprise, including a proceeding initiated pursuant to Section 14 or (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation. The Company will advance the Expenses within thirty (30) calendar days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding.

(b) Advances will be unsecured and interest free. Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, thus Indemnitee qualifies for advances upon the execution of this Agreement and delivery to the Company. No other form of undertaking is required other than the execution of this Agreement. The Company will make advances without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

Section 11. Procedure for Notification of Claim for Indemnification or Advancement

(a) Indemnitee will notify the Company in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. Indemnitee will include in the written notification to the Company a description of the nature of the Proceeding and the facts underlying the Proceeding and provide such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Indemnitee's failure to notify the Company will not relieve the Company from any obligation it may have to Indemnitee under this Agreement, and any delay in so notifying the Company will not constitute a waiver by Indemnitee of any rights under this Agreement. The secretary of the Company will, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification or advancement.

- (b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

- (a) Unless a Change of Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made:

- i. by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;
- ii. by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;
- iii. if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by written opinion provided by Independent Counsel selected by the Board; or
- iv. if so directed by the Board, by the stockholders of the Company.

- (b) If a Change in Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made by written opinion provided by Independent Counsel selected by Indemnitee (unless Indemnitee requests such selection be made by the Board)

(c) The party selecting Independent Counsel pursuant to subsection (a)(iii) or (b) of this Section 12 will provide written notice of the selection to the other party. The notified party may, within ten (10) calendar days after receiving written notice of the selection of Independent Counsel, deliver to the selecting party a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within thirty (30) calendar days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, Independent Counsel has not been selected or, if selected, any objection to has not been resolved, either the Company or Indemnitee may petition the Delaware Court for the appointment as Independent Counsel of a person selected by such court or by such other person as such court designates. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company will advance and pay any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making the indemnification determination irrespective of the determination as to Indemnitee's entitlement to indemnification and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing of the determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied and providing a copy of any written opinion provided to the Board by Independent Counsel.

(e) If it is determined that Indemnitee is entitled to indemnification, the Company will make payment to Indemnitee within ten (10) calendar days after such determination.

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination will, to the fullest extent not prohibited by law, presume Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company will, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the determination of the Indemnitee's entitlement to indemnification has not been made pursuant to Section 12 within sixty (60) calendar days after the latter of (i) receipt by the Company of Indemnitee's request for indemnification pursuant to Section 11(a) and (ii) the final disposition of the Proceeding for which Indemnitee requested indemnification (the "Determination Period"), the requisite determination of entitlement to indemnification will, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee will be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law. The Determination Period may be extended for a reasonable time, not to exceed an additional thirty (30) calendar days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, the Determination Period may be extended an additional fifteen (15) calendar days if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a)(iv) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee will be deemed to have acted in good faith if Indemnitee acted based on the records or books of account of the Company, its subsidiaries, or an Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company, its subsidiaries, or an Enterprise in the course of their duties, or on the advice of legal counsel for the Company, its subsidiaries, or an Enterprise or on information or records given or reports made to the Company or an Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Company, its subsidiaries, or an Enterprise. Further, Indemnitee will be deemed to have acted in a manner "not opposed to the best interests of the Company," as referred to in this Agreement if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan. The provisions of this Section 13(d) is not exclusive and does not limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise may not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Indemnitee may commence litigation against the Company in the Delaware Court of Chancery to obtain indemnification or advancement of Expenses provided by this Agreement in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) the Company does not advance Expenses pursuant to Section 10 of this Agreement, (iii) the determination of entitlement to indemnification is not made pursuant to Section 12 of this Agreement within the Determination Period, (iv) the Company does not indemnify Indemnitee pursuant to Section 5 or 6 or the second to last sentence of Section 12(d) of this Agreement within ten (10) calendar days after receipt by the Company of a written request therefor, (v) the Company does not indemnify Indemnitee pursuant to Section 3, 4, 7, or 8 of this Agreement within ten (10) calendar days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence such Proceeding seeking an adjudication or an award in arbitration within 180 calendar days following the date on which Indemnitee first has the right to commence such Proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause does not apply in respect of a Proceeding brought by Indemnitee to enforce Indemnitee's rights under Section 5 of this Agreement. The Company will not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 will be conducted in all respects as a *de novo* trial, or arbitration, on the merits and Indemnitee may not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company will have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and will not introduce evidence of the determination made pursuant to Section 12 of this Agreement.

(c) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is entitled to indemnification, the Company will be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company is, to the fullest extent not prohibited by law, precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and will stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company, to the fullest extent permitted by law, will (within ten (10) calendar days after receipt by the Company of a written request therefor) advance to Indemnitee such Expenses which are incurred by Indemnitee in connection with any action concerning this Agreement, Indemnitee's right to indemnification or advancement of Expenses from the Company, or concerning any directors' and officers' liability insurance policies maintained by the Company, and will indemnify Indemnitee against any and all such Expenses unless the court determines that each of the Indemnitee's claims in such Proceeding were made in bad faith or were frivolous or are prohibited by law.

Section 15. Establishment of Trust.

(a) In the event of a Potential Change in Control or a Change in Control, the Company will, upon written request by Indemnitee, create a trust for the benefit of Indemnitee (the "Trust") and from time to time upon written request of Indemnitee will fund such Trust in an amount sufficient to satisfy the reasonably anticipated indemnification and advancement obligations of the Company to the Indemnitee in connection with any Proceeding for which Indemnitee has demanded indemnification and/or advancement prior to the Potential Change in Control or Change in Control (the "Funding Obligation"). The trustee of the Trust (the "Trustee") will be a bank or trust company or other individual or entity chosen by the Indemnitee and reasonably acceptable to the Company. Nothing in this Section 15 relieves the Company of any of its obligations under this Agreement.

(b) The amount or amounts to be deposited in the Trust pursuant to the Funding Obligation will be determined by mutual agreement of the Indemnitee and the Company or, if the Company and the Indemnitee are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement. The terms of the Trust will provide that, except upon the consent of both the Indemnitee and the Company, upon a Change in Control: (i) the Trust may not be revoked, or the principal thereof invaded, without the written consent of the Indemnitee; (ii) the Trustee will advance, to the fullest extent permitted by applicable law, within two (2) business days of a request by the Indemnitee; (iii) the Company will continue to fund the Trust in accordance with the Funding Obligation; (iv) the Trustee will promptly pay to the Indemnitee all amounts for which the Indemnitee is entitled to indemnification pursuant to this Agreement or otherwise; and (v) all unexpended funds in such Trust revert to the Company upon mutual agreement by the Indemnitee and the Company or, if the Indemnitee and the Company are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement, that the Indemnitee has been fully indemnified under the terms of this Agreement. New York law (without regard to its conflicts of laws rules) governs the Trust and the Trustee will consent to the exclusive jurisdiction of Delaware Court of Chancery, in accordance with Section 25 of this Agreement.

Section 16. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The indemnification and advancement of Expenses provided by this Agreement are not exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. The indemnification and advancement of Expenses provided by this Agreement may not be limited or restricted by any amendment, alteration or repeal of this Agreement in any way with respect to any action taken or omitted by Indemnitee in Indemnitee's Corporate Status occurring prior to any amendment, alteration or repeal of this Agreement. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy is cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more Persons with whom or which Indemnitee may be associated.

i. The Company hereby acknowledges and agrees:

1) the Company is the indemnitor of first resort with respect to any request for indemnification or advancement of Expenses made pursuant to this Agreement concerning any Proceeding arising from or related to Indemnitee's Corporate Status with the Company;

2) the Company is primarily liable for all indemnification and advancement of Expenses obligations for any Proceeding arising from or related to Indemnitee's Corporate Status, whether created by law, organizational or constituent documents, contract (including this Agreement) or otherwise;

3) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding are secondary to the obligations of the Company's obligations;

4) the Company will indemnify Indemnitee and advance Expenses to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person; and

ii. the Company irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation, reimbursement, exoneration or indemnification, or any other recovery of any kind in respect of amounts paid by the Company to Indemnitee pursuant to this Agreement.

iii. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss for Indemnitee, the payor has a right of subrogation against the Company or its insurers for all amounts so paid which would otherwise be payable by the Company or its insurers under this Agreement. In no event will payment by any other Person with whom or which Indemnitee may be associated (or their insurers affect the obligations of the Company hereunder or shift primary liability for the Company's obligation to indemnify or advance of Expenses to any other Person with whom or which Indemnitee may be associated.

iv. Any indemnification or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated is specifically in excess over the Company's obligation to indemnify and advance Expenses or any valid and collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, the Company will obtain a policy or policies covering Indemnitee to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies, including coverage in the event the Company does not or cannot, for any reason, indemnify or advance Expenses to Indemnitee as required by this Agreement. If, at the time of the receipt of a notice of a claim pursuant to this Agreement, the Company has director and officer liability insurance in effect, the Company will give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company will thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Indemnitee agrees to assist the Company efforts to cause the insurers to pay such amounts and will comply with the terms of such policies, including selection of approved panel counsel, if required.

(d) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee for any Proceeding concerning Indemnitee's Corporate Status with an Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise. The Company and Indemnitee intend that any such Enterprise (and its insurers) be the indemnitor of first resort with respect to indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise. The Company's obligation to indemnify and advance Expenses to Indemnitee is secondary to the obligations the Enterprise or its insurers owe to Indemnitee. Indemnitee agrees to take all reasonably necessary and desirable action to obtain from an Enterprise indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise.

(e) In the event of any payment made by the Company under this Agreement, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any Enterprise or insurance carrier. Indemnitee will execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

Section 17. Duration of Agreement. This Agreement continues until and terminates upon the later of: (a) ten (10) years after the date that Indemnitee ceases to serve as a [director]/[officer] of the Company or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of Expenses rights provided by or granted pursuant to this Agreement are binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 18. Severability. If any provision or provisions of this Agreement is held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby and remain enforceable to the fullest extent permitted by law; (b) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 19. Interpretation. Any ambiguity in the terms of this Agreement will be resolved in favor of Indemnitee and in a manner to provide the maximum indemnification and advancement of Expenses permitted by law. The Company and Indemnitee intend that this Agreement provide to the fullest extent permitted by law for indemnification in excess of that expressly provided, without limitation, by the Certificate of Incorporation, the Bylaws, vote of the Company stockholders or disinterested directors, or applicable law.

Section 20. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and is not a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 21. Modification and Waiver. No supplement, modification or amendment of this Agreement is binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed or constitutes a waiver of any other provisions of this Agreement nor will any waiver constitute a continuing waiver.

Section 22. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company does not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 23. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given if (a) delivered by hand to the other party, (b) sent by reputable overnight courier to the other party or (c) sent by facsimile transmission or electronic mail, with receipt of oral confirmation that such communication has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee provides to the Company.

(b) If to the Company to:

[ • ]

or to any other address as may have been furnished to Indemnitee by the Company.

Section 24. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 25. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties are governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or Proceeding arising out of or in connection with this Agreement may be brought only in the Delaware Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or Proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or Proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or Proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 26. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together constitutes one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 27. Headings. The headings of this Agreement are inserted for convenience only and do not constitute part of this Agreement or affect the construction thereof.

*[Signature Page to Follow]*

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

BETTER CHOICE COMPANY INC.

INDEMNITEE

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Exhibit D**

**Perquisites**

1. All air travel commercial first or business class.
2. A monthly car allowance of \$2,000.

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of May 6, 2019 (the "Effective Date") by and between Anthony Santarsiero (the "Executive") and Better Choice Company, Inc. (together with any of its Affiliates (as defined in Section 3(a) below) as may employ the Executive from time to time, the "Company").

WHEREAS, the Company desires to employ the Executive upon the terms and conditions set forth herein;

WHEREAS, the Executive desires to be employed by the Company upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Representations and Warranties.** The Executive hereby represents and warrants to the Company that the Executive (i) is not subject to any non-solicitation or non-competition agreement affecting the Executive's employment with the Company, (ii) is not subject to any confidentiality or nonuse/nondisclosure agreement affecting the Executive's employment with the Company, and (iii) will bring to the Company no trade secrets, confidential business information, documents, or other personal property of a prior employer.

2. **Term of Employment.**

(a) **Term.** The Company hereby employs the Executive, and the Executive hereby accepts employment with the Company, for a period of two years commencing as of the Effective Date (such period, as it may be extended or renewed, the "Term"), unless sooner terminated in accordance with the provisions of Section 6. The Term shall be automatically renewed for successive two year terms unless notice of non-renewal is given by either party at least 30 days before the end of the Term.

(b) **Continuing Effect.** Notwithstanding any termination of this Agreement, at the end of the Term or otherwise, the provisions of Sections 6(e), 7, 8, 9, 10, 12 15, 16, 18, and 21 shall remain in full force and effect and the provisions of Section 9 shall be binding upon the legal representatives, successors and assigns of the Executive.

3. **Duties.**

(a) **General Duties.** The Executive shall serve as the President and Director of Operations, with customary duties, responsibilities and authority as may from time to time be assigned to the Executive by the Company's Board of Directors (the "Board") and consistent with those duties normally performed by a President, which duties and responsibilities (the "Duties") may include services for majority owned subsidiaries and affiliates of the Company (the "Affiliates"). The Executive shall report to the operational Co-Chief Executive Officer. The Executive shall, if requested by the Board, also serve as an officer or director of any Affiliate for no additional compensation. The Executive agrees to observe and comply with the Company's written rules and policies as adopted by the Company from time to time.

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(b) Devotion of Time. Subject to the last sentence of this Section 3(b), the Executive shall devote the Executive's full business time, skill, energy and attention to the business and affairs of the Company and its Affiliates as are necessary to perform the Executive's Duties pursuant to this Agreement. The Executive shall not enter the employ of or serve as a consultant to, or in any way perform any professional services with or without compensation to, any other persons, business, or organization, without the prior consent of the Board. Notwithstanding the above, the Executive shall be permitted to devote a limited amount of the Executive's time to any not-for-profit charity or civic group, provided that such activities do not interfere with, or otherwise create a conflict with, the Executive's performance of the Executive's Duties as provided hereunder.

(c) Location of Office. The Executive's principal business office shall be in Tampa, Florida (the "Principal Office"). However, the Executive's Duties shall include all business travel necessary for the performance of the Executive's Duties.

(d) Adherence to Inside Information Policies. The Executive acknowledges that the Company is publicly-held and, as a result, has implemented inside information policies designed to preclude its executives and those of its subsidiaries from violating the federal securities laws by trading on material, non-public information or passing such information on to others in breach of any duty owed to the Company or any third party. The Executive shall promptly execute any agreements generally distributed by the Company to its employees requiring such employees to abide by its inside information policies.

#### 4. Compensation and Expenses.

(a) Base Salary. For the services of the Executive to be rendered under this Agreement, the Company shall pay the Executive an annual salary of \$250,000 (the "Base Salary"), less such deductions as shall be required to be withheld by applicable law and regulations payable in accordance with the Company's customary payroll practices. The Executive's Base Salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the Base Salary during the Term.

(b) Signing Bonus. The Executive shall be paid a "signing bonus" of USD \$25,000 on May 6, 2019, less such deductions as shall be required to be withheld by applicable law and regulations.

(c) Target Bonus. For each fiscal year of the Company, the Executive shall have the opportunity to earn a bonus in accordance with the terms and conditions set forth on Exhibit A hereto (an "Annual Bonus"). Any such Annual Bonus shall be payable on, or at such date as is determined by the Board within 120 days following, the last day of the fiscal year with respect to which it relates. Except as provided in Section 6, notwithstanding any other provision of this Section 4(c) or Exhibit A hereto, no Annual Bonus shall be payable with respect to any fiscal year unless the Executive remains continuously employed with the Company during the period beginning on the Effective Date and ending on the last day of the fiscal year to which the Annual Bonus relates.

(d) Equity Compensation. In consideration of the Executive entering into this Agreement and as an inducement to join the Company, on, or as soon as reasonably practicable following, the Effective Date, the Company shall grant to the Executive certain equity compensation rights and awards set forth on Exhibit B hereto (which, together with any other awards granted under this Plan hereafter, the “Equity Awards”) pursuant to the Better Choice Company, Inc. 2019 Incentive Award Plan (the “Plan”). The Equity Awards shall be subject to the terms and conditions of the Plan, or any successor plan thereto, which may be modified or revoked at any time in the sole discretion of the Company subject to then outstanding rights thereunder, and applicable award agreements thereunder.

(e) Expenses. In addition to any compensation received pursuant to this Section 4, the Company will reimburse or advance funds to the Executive for all reasonable documented travel (including travel expenses incurred by the Executive related to the Executive’s travel to the Company’s other offices), entertainment and other business expenses incurred in connection with the performance of the Executive’s Duties under this Agreement, provided that the Executive properly provides a written accounting of such expenses to the Company in accordance with the Company’s practices. Such reimbursement or advances will be made in accordance with policies and procedures of the Company in effect from time to time relating to reimbursement of, or advances to, its executive officers.

5. Benefits.

(a) Paid Time Off. For each twelve-month period during the Term, the Executive shall be entitled to four weeks of paid time off without loss of compensation or other benefits to which Executive is entitled under this Agreement, to be taken at such times as the Executive may select and the affairs of the Company may permit. The four weeks shall accrue daily and any unused days will be carried over to the next year of the Term and, upon the termination of this Agreement, any accrued and unused paid time-off shall be paid to Executive.

(b) Fringe Benefit and Perquisites. During the Term, the Executive shall be entitled to fringe benefits and perquisites consistent with the practices of the Company, and to the extent the Company provides similar benefits or perquisites (or both) to similarly situated executives of the Company.

(c) Employee Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans, practices and programs maintained by the Company, as in effect from time to time (collectively, “Employee Benefit Plans”), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or cancel any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law. Notwithstanding the foregoing sentence, during the Term, the Company shall provide the Executive with health insurance covering the Executive and family dependents.

6. Termination.

(a) Death or Disability. Except as otherwise provided in this Agreement, this Agreement shall automatically terminate upon the death or disability of the Executive. For purposes of this Section 6(a), "disability" shall mean (i) the Executive is unable to substantially engage in the Executive's Duties by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for a continuous period of not less than 12 months; (ii) the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company; or (iii) the Executive is determined to be totally disabled by the Social Security Administration. Any question as to the existence of a disability shall be determined by the written opinion of the Executive's regularly attending physician (or the Executive's guardian) (or the Social Security Administration, where applicable). In the event that the Executive's employment is terminated by reason of the Executive's death or disability, the Company shall pay the following to the Executive or the Executive's personal representative: (i) any accrued but unpaid Base Salary for services rendered to the date of termination, any accrued but unpaid expenses required to be reimbursed under this Agreement and any accrued paid time off (the "Accrued Payments"), and (ii) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year). The Executive or the Executive's legally appointed guardian, as the case may be, shall have up to 12 months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term. The Executive (or the Executive's estate) shall receive the payments provided herein at such times as the Executive would have received them if there was no death or disability.

(b) Termination by the Company for Cause or by the Executive Without Good Reason. The Company may, upon a unanimous vote by the Board (excluding the Executive), terminate the Executive's employment pursuant to the terms of this Agreement at any time for Cause (as defined below) by giving the Executive written notice of termination. Such termination shall become effective upon the giving of such notice. Upon any such termination for Cause, or in the event the Executive terminates the Executive's employment with the Company without Good Reason (as defined in Section 6(c)), the Executive shall receive the Accrued Payments and shall have no right to any other compensation or reimbursement under Section 4, or to participate in any Executive benefit programs under Section 5, except as may otherwise be provided for by law, for any period subsequent to the effective date of termination. For purposes of this Agreement, "Cause" shall mean: (i) the Executive is convicted of, or pleads guilty or nolo contendere to, a felony related to the business of the Company; (ii) the Executive, in carrying out the Executive's Duties hereunder, has acted with gross negligence or intentional misconduct which results in material harm to the Company; (iii) the Executive misappropriates Company funds or otherwise defrauds the Company involving a material amount of money or property; (iv) the Executive breaches the Executive's fiduciary duty to the Company, resulting in material profit to the Executive personally, directly or indirectly; (v) the Executive materially breaches any term of this Agreement with the Company and fails to cure such breach within 30 days of receipt of notice; (vi) the Executive breaches any provision of Section 8 or Section 9 of this Agreement; (vii) the Executive becomes subject to a preliminary or permanent injunction issued by a United States District Court enjoining the Executive from violating any securities law administered or regulated by the Securities and Exchange Commission; (viii) the Executive becomes subject to a cease and desist order or other order issued by the Securities and Exchange Commission after an opportunity for a hearing; (ix) the Executive refuses to carry out a resolution adopted by the Company's Board at a meeting in which the Executive was offered a reasonable opportunity to argue that the resolution should not be adopted; or (x) the Executive abuses alcohol or drugs in a manner that interferes with the successful performance of the Executive's Duties.

(c) Termination by the Company Without Cause; Termination by the Executive for Good Reason; Termination at the end of a Term after the Company provides notice of Non-Renewal.

(1) This Agreement may be terminated: (i) by the Executive for Good Reason (as defined below), (ii) by the Company without Cause, or (iii) at the end of a Term after the Company provides the Executive with notice of non-renewal.

(2) In the event this Agreement is terminated by the Executive for Good Reason or by the Company without Cause, subject to Section (6)(c) (4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Amounts;

(B) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year);

(C) continued payment of the then Base Salary during the 12 month period following the date of termination (the "Severance Period"), payable in accordance with the Company's regular payroll practices as of the date of such termination;

(D) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term;

(E) all Equity Awards, to the extent not already vested, shall become fully vested on the date of termination; and

(F) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, during the Severance Period, subject to the terms of any applicable plan or insurance contract and applicable law.

(3) In the event this Agreement is terminated at the end of a Term after the Company provides the Executive with notice of non-renewal and the Executive remains employed until the end of the Term, subject to Section 6(c)(4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Amounts;

(B) all Equity Awards, to the extent not already vested, shall become fully vested on the date of termination;

(C) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term; and

(D) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, for 12 months, subject to the terms of any applicable plan or insurance contract and applicable law;

provided, however, that the Executive shall only be entitled to receive the payments or benefits set forth in Section 6(c)(3)(B) and (D) if the Executive is willing and able (i) to execute a new agreement providing terms and conditions substantially similar to those in this Agreement and (ii) to continue providing such services, and therefore, the Company's non-renewal of the Term will be considered an "involuntary separation from service" within the meaning of Treasury Regulation Section 1.409A-1(n).

(4) The payments and benefits provided in Sections 6(c)(2)(B), (C), (E) and (F) and Section 6(c)(3)(B) and (D) shall be conditioned on (i) the Executive's execution and nonrevocation of a waiver and release of claims in the Company's customary form (a "Release") as of the Release Expiration Date, in accordance with Section 21(d), and (ii) the Executive's continued compliance with the restrictive covenants set forth in Sections 8 and 9 of this Agreement (the "Restrictive Covenants"). Notwithstanding any other provision of this Agreement, no payments will be made or benefits provided pursuant to such sections prior to the date the Release becomes irrevocable in accordance with its terms or following the date the Executive first breaches any of the Restrictive Covenants.

(5) The term "Good Reason" shall mean: (i) a material diminution in the Executive's authority, duties or responsibilities due to no fault of the Executive other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law; (ii) the Company requires the Executive to permanently change the Executive's principal business office as defined in Section 3(c) to a location that is greater than 30 miles from the Principal Office, (iii) a change in the Executive's overall compensation or bonus structure such that the Executive's overall compensation is materially diminished; or (v) any other action or inaction that constitutes a material breach by the Company under this Agreement. Prior to the Executive terminating the Executive's employment with the Company for Good Reason, the Executive must provide written notice to the Company, within 30 days following the Executive's initial awareness of the existence of such condition, that such Good Reason exists and setting forth in detail the grounds the Executive believes constitutes Good Reason. If the Company does not cure the condition(s) constituting Good Reason within 30 days following receipt of such notice, then the Executive's employment shall be deemed terminated for Good Reason.

(d) Any termination made by the Company under this Agreement shall be approved by the Board as provided herein.

(e) Upon (1) termination of the Executive's employment with the Company for any reason or (2) the Company's request at any time during the Executive's employment (provided it does not interfere with the Executive's ability to perform the Executive's duties and responsibilities hereunder), the Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, security devices, employer credit cards, network access devices, computers, cell phones, smartphones, manuals, work product, thumb drives or other removable information storage devices, and hard drives, and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or work product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with the Executive's employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive's possession or control, including those stored on any non- Company devices, networks, storage locations and media in the Executive's possession or control. The Executive shall confirm the Executive's compliance with this Section 6(e), in writing, at any time within five days of the Executive's receipt of a request for same from the Company.

(f) The provisions of this Section 6 shall supersede in their entirety any severance payment or benefit obligations to the Executive pursuant to the provisions in any severance plan, policy, program or other arrangement maintained by the Company.

7. Indemnification. As provided in an Indemnification Agreement to be entered into between the Company and the Executive, a copy of which is annexed as Exhibit C, the Company shall indemnify the Executive, to the maximum extent permitted by applicable law, against all costs, charges and expenses incurred or sustained by him in connection with any action, suit or proceeding to which the Executive may be made a party by reason of the Executive being an officer, director or employee of the Company or of any subsidiary or affiliate of the Company. The Company shall provide, at its expense, directors and officers insurance for the Executive in amounts and for a term consistent with industry standards.

8. Non-Competition Agreement.

(a) Definitions. For the purpose of this Agreement:

(1) "Restricted Area" means the United States of America;

(2) "Restricted Period" means the period during such time as Executive is an employee of the Company and the one year period immediately following the last day of the Executive's employment with the Company.

(3) “Prohibited Activity” means any activity in which the Executive contributes the Executive’s knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, member, advisor, consultant, agent, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar businesses as the Company or any of its affiliates or subsidiaries, including but not limited to those engaged in the Business. For the avoidance of doubt, “Prohibited Activity” includes any activity requiring the disclosure of any Confidential Information.

(4) “Trade Secret” means Confidential Information which meets the additional requirements of the federal Defend Trade Secrets Act, the Uniform Trade Secrets Act, similar state law or applicable common law.

(5) “Trade Secret Prohibited Activity” means any Prohibited Activity that may require or inevitably requires disclosure of any Trade Secret of the Company Group.

(6) “Business” means the sale of pet foods, flea and tick products, pet nutritional products and related pet supplies, and also includes any other product or services which the Company has taken concrete steps to offer for sale, but has not yet commenced selling or marketing, during or prior to the Term, and any products or services disclosed on the Company’s website.

(b) Non-Competition. Because of the Company’s legitimate business interest as described herein and the good and valuable consideration offered to the Executive, during the Term of this Agreement and during the Restricted Period the Executive agrees and covenants not to engage in any Prohibited Activity within the Restricted Area.

(c) Trade Secrets. Notwithstanding the foregoing or anything contained herein to the contrary, and subject only to Section 9(a)(1)(B) hereof, the Executive acknowledges and agrees that during the Executive’s employment with the Company and indefinitely following the cessation of that employment for any reason, the Executive shall not directly or indirectly disclose or divulge any Trade Secret or engage in any Trade Secret Prohibited Activity (so long as the information remains a Trade Secret under applicable law) without the prior written consent of the Company, which may be granted or withheld in the sole discretion of the Company.

(d) Non-Solicitation, Non-Disparagement. During the Restricted Period, the Executive shall not, directly or indirectly, whether for the Executive’s own account or for the account of any person or entity, solicit, attempt to solicit, endeavor to entice away from the Company, attempt to hire, hire, deal with, attempt to attract business from, accept business from, or otherwise interfere with (whether by reason of cancellation, withdrawal, modification of relationship or otherwise) any actual or prospective relationship of the Company with any person or entity: (i) who is, or was within one (1) year of the date upon which this Agreement is terminated, employed by or otherwise engaged to perform services for the Company, including, but not limited to, any independent contractor or representative, or (ii) who is, or was within one year of the date upon which this Agreement is terminated, an actual or bona fide prospective licensee, landlord, customer, client, vendor, supplier or manufacturer of the Company (or other person or entity with which the Company had an actual or prospective bona fide relationship). The Executive agrees that the Executive will never, directly or indirectly, make or publish any statement or communication which is false or disparaging with respect to the Company and/or its direct or indirect shareholders, officers, directors, members, managers, employees, contractors, consultants, or agents.

(e) Equitable Consideration. The Executive agrees that the Executive's services hereunder are of a special, unique, extraordinary and intellectual character and the Executive's position with the Company places the Executive in a position of confidence and trust with the customers, suppliers and employees of the Company. The Executive and the Company agree that in the course of employment hereunder, the Executive has and will continue to develop a personal relationship with the Company's customers, and a knowledge of these customers' affairs and requirements as well as confidential and proprietary information developed by the Company after the date of this Agreement. The Executive acknowledges that the Company's relationships with its established clientele may therefore be placed in the Executive's hands in confidence and trust. The Executive consequently agrees that it is reasonable and necessary for the protection of the goodwill, confidential and proprietary information, and legitimate business interests of the Company that the Executive make the covenants contained herein, that the covenants are a material inducement for the Company to employ or continue to employ the Executive and to enter into this Agreement, that the covenants are given as an integral part of and incident to this Agreement, and that the covenants will not prevent the Executive from earning a livelihood in the Executive's chosen business, do not impose an undue hardship on the Executive, and will not injure the public.

(f) References. References to the Company in this Section 8 shall include the Company and any Affiliate.

9. Non-Disclosure of Confidential Information.

(a) Confidentiality.

(1) For the purpose of this Agreement, "Confidential Information" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, products, patents, sources of supply, customer dealings, data, source code, business plans, practices, methods, policies, publications, research, operations, strategies, techniques, agreements, transactions, potential transactions, negotiations, know-how, Trade Secrets, computer programs, computer software, applications, operating systems, software design, work-in-process, databases, records, systems, Personally Identifiable Information, supplier information, vendor information, financial information, results, legal information, marketing and advertising information, pricing information, design information, personnel information, developments, reports, internal controls, graphics, drawings, market studies, sales information, revenue, costs, notes, communications, algorithms, product plans, designs, models, ideas, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, distributor lists, and buyer lists of the Company, its businesses, and any existing or prospective customer, vendor, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company in confidence. The Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used. Notwithstanding the foregoing, "Confidential Information" shall not include information that: (A) becomes publicly known without breach of the Executive's obligations under this Section 9(a), or (B) is required to be disclosed by law or by court order or government order; provided, however, that if the Executive is required to disclose any Confidential Information pursuant to any law, court order or government order, (x) the Executive shall promptly notify the Company of any such requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions of this Agreement, (y) the Executive shall reasonably cooperate with the Company to obtain such a protective order at the Company's cost and expense, and (z) if such order is not obtained, or the Company waives compliance with the provisions of this Section 9(a), the Executive shall disclose only that portion of the Confidential Information which the Executive is advised by counsel that the Executive is legally required to so disclose and will exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded the information so disclosed.

(2) For the purpose of this Agreement, “Personally Identifiable Information” means information that, whether maintained or transmitted individually or in the aggregate with other information, allows a natural person to be identified, including, but not limited to, the name, birthday, address, telephone number, social security number, driver’s license number, passport number, credit card number, credit score information, bank information, or other unique identifiers of any natural person that allows for the identification of or contact with such person. The Executive agrees that the Executive will not download, upload, or otherwise transfer copies of Confidential Information to any external storage media or cloud storage (except as authorized by the Company when necessary in the performance of the Executive’s Duties for the Company and for the Company’s sole benefit).

(3) The Executive acknowledges and agrees that: (A) the Executive has had and will continue to have access to Confidential Information regarding the Company, (B) the Confidential Information is being acquired by the Executive in confidence, (C) the Confidential Information is a valuable, special, sensitive and unique asset of the business of the Company, (D) the Confidential Information is and shall at all times remain the sole property of the Company, (E) the continued confidentiality of the Confidential Information is essential to the continuation of the Company’s business; and (F), the improper disclosure of the Confidential Information could severely and irreparably damage the Company and its businesses. In consideration of the obligations undertaken by the Company herein, the Executive will not, at any time, during or after the Executive’s employment hereunder, reveal, divulge or make known to any person, any Confidential Information acquired by the Executive during the course of the Executive’s employment with the Company and for a period of two (2) years thereafter except with the prior written approval of the Company. Notwithstanding the foregoing, subject only to Section 9(a)(1)(B) hereof, the Executive may not disclose, divulge or otherwise make use of any Trade Secret so long as such information remains a Trade Secret under applicable law. The Executive agrees to use the Executive’s best efforts to maintain the confidentiality of the Confidential Information during the course of the Executive’s employment with the Company and thereafter, including adopting and implementing all reasonable procedures prescribed by the Company to prevent unauthorized use of Confidential Information or disclosure of Confidential Information to any unauthorized person. The Executive shall take all necessary and reasonable administrative, technical, and physical safeguards to secure and protect the confidentiality, integrity, and security of the Confidential Information.

(b) References. References to the Company in this Section 9 shall include the Company and any Affiliate.

(c) Whistleblowing. Nothing contained in this Agreement shall be construed to prevent the Executive from reporting any act or failure to act to the SEC or other governmental body or prevent the Executive from obtaining a fee as a “whistleblower” under Rule 21F-17(a) under the Securities Exchange Act of 1934 or other rules or regulations implemented under the Dodd-Frank Wall Street Reform Act and Consumer Protection Act.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016. Notwithstanding any other provision of this Agreement, the Executive will not be held criminally or civilly liable under any federal or state Trade Secret law for any disclosure of a Trade Secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed under seal in a lawsuit or other proceeding. If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company’s Trade Secrets to the Executive’s attorney and use the Trade Secret information in the court proceeding if the Executive files any document containing Trade Secrets under seal; and does not disclose Trade Secrets, except pursuant to court order.

10. Equitable Relief. The Company and the Executive recognize that the services to be rendered under this Agreement by the Executive are special, unique and of extraordinary character, and that in the event of the breach by the Executive of the terms and conditions of this Agreement or if the Executive, without the prior express consent of the Board, shall leave the Executive’s employment for any reason and/or take any action in violation of this Agreement, the Company shall be entitled to institute and prosecute proceedings in any court of competent jurisdiction referred to in Section 10(b) below, to enjoin the Executive from breaching the provisions of this Agreement. Any action arising from or under this Agreement must be commenced only in the appropriate

11. Conflicts of Interest. While employed by the Company, the Executive shall not, unless approved by the Board of Directors or its Compensation Committee, directly or indirectly:

(a) participate as an individual in any way in the benefits of transactions with any of the Company’s vendors, clients, customers, suppliers or manufacturers, without limitation, having a financial interest in the Company’s vendors, clients, customers, suppliers or manufacturers or making loans to, or receiving loans, from, the Company’s vendors, clients, customers, suppliers or manufacturers;

(b) realize a personal gain or advantage from a transaction in which the Company has an interest or use information obtained in connection with the Executive’s employment with the Company for the Executive’s personal advantage or gain; or

(c) accept any offer to serve as an officer, director, partner, consultant, manager with, or to be employed in a professional, technical, or managerial capacity by, a person or entity which does business with the Company.

12. Inventions, Ideas, Processes, and Designs. All inventions, ideas, processes, programs, software, and designs (including all improvements) (i) conceived or made by the Executive during the course of the Executive's employment with the Company (whether or not actually conceived during regular business hours) and for a period of six months subsequent to the termination (whether by expiration of the Term or otherwise) of such employment with the Company, and (ii) related to the business of the Company, shall be disclosed in writing promptly to the Company and shall be the sole and exclusive property of the Company, and the Executive hereby irrevocably assigns any such inventions to the Company. An invention, idea, process, program, software, or design (including an improvement) shall be deemed related to the business of the Company if (a) it was made with the Company's funds, personnel, equipment, supplies, facilities, or Confidential Information, (b) results from work performed by the Executive for the Company, or (c) pertains to the current business or demonstrably anticipated business(es), research or development work of the Company. The Executive shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request and at the sole cost and expense of the Company, shall promptly assign all such inventions, ideas, processes, and designs to the Company. The decision to file for patent or copyright protection or to maintain such development as a Trade Secret, or otherwise, shall be in the sole discretion of the Company, and the Executive shall be bound by such decision. The Executive hereby irrevocably assigns to the Company, for no additional consideration, the Executive's entire right, title and interest in and to all work product and intellectual property rights, including the right to sue, counterclaim and recover for all past, present and future infringement, misappropriation or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's rights, title or interest in any work product or intellectual property rights so as to be less in any respect than the Company would have had in the absence of this Agreement. If applicable, the Executive shall provide as a schedule to this Agreement, a complete list of all inventions, ideas, processes, and designs, if any, patented or unpatented, copyrighted or otherwise, or non-copyrighted, including a brief description, which he made or conceived prior to the Executive's employment with the Company and which therefore are excluded from the scope of this Agreement. References to the Company in this Section 12 shall include the Company, its subsidiaries and affiliates.

13. Indebtedness. If, during the course of the Executive's employment under this Agreement, the Executive becomes indebted to the Company for any reason, the Company may, if it so elects, and if permitted by applicable law, set off any sum due to the Company from the Executive and collect any remaining balance from the Executive unless the Executive has entered into a written agreement with the Company.

14. Assignability. The rights and obligations of the Company under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company, provided that such successor or assign shall acquire all or substantially all of the securities or assets and business of the Company. The Executive's obligations hereunder may not be assigned or alienated and any attempt to do so by the Executive will be void.

15. Severability.

(a) The Executive expressly agrees that the character, duration and geographical scope of the covenants set forth in Section 8 of this Agreement are reasonable in light of the circumstances as they exist on the date hereof. Should a decision, however, be made at a later date by a court of competent jurisdiction that the character, duration or geographical scope of such provisions is unreasonable, then it is the intention and the agreement of the Executive and the Company that this Agreement shall be construed by the court in such a manner as to impose only those restrictions on the Executive's conduct that are reasonable in the light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. If, in any judicial proceeding, a court shall refuse to enforce all of the separate covenants deemed included herein because taken together they are more extensive than necessary to assure to the Company the intended benefits of this Agreement, it is expressly understood and agreed by the parties hereto that the provisions of this Agreement that, if eliminated, would permit the remaining separate provisions to be enforced in such proceeding shall be deemed eliminated, for the purposes of such proceeding, from this Agreement.

(b) If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from either of the parties to the other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provisions were not included.

16. Notices and Addresses. All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by FedEx or similar receipted delivery, or next business day delivery to the addresses detailed below (or to such other address, as either of them, by notice to the other may designate from time to time), or by e-mail delivery (in which event a copy shall immediately be sent by FedEx or similar receipted delivery), as follows:

To the Company:	Better Choice Company Inc. 100 Techne Center Drive, #210 Milford, Ohio 45150 Attention: Damian Dalla-Longa
With a copy to:	Latham & Watkins LLP 885 Third Avenue New York, New York 10028
To the Executive:	Anthony Santarsiero 100 Techne Center Drive, #210 Milford, Ohio 45150

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be governed or interpreted according to the internal laws of the State of Delaware without regard to choice of law considerations and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, shall also be governed by the laws of the State of Delaware without regard to choice of law considerations.

19. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.

20. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

21. Section 409A Compliance.

(a) The parties hereto acknowledge and agree that, to the extent applicable, this Agreement shall be interpreted, construed and administered in accordance with Section 409A of the Internal Revenue Code of 1986, as amended, and the Department of Treasury regulations and other interpretive guidance issued thereunder (collectively, "Section 409A"). For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made if such termination of employment constitutes a "separation from service" under Section 409A. Notwithstanding any provision of this Agreement to the contrary, in the event that the Company determines that any amounts payable hereunder will be immediately taxable to the Executive under Section 409A, the Company reserves the right (without any obligation to do so or to indemnify the Executive for failure to do so) to (i) adopt such amendments to this Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Company determines to be necessary or appropriate to preserve the intended tax treatment of the benefits provided by this Agreement, to preserve the economic benefits of this Agreement and to avoid less favorable accounting or tax consequences for the Company and/or (ii) take such other actions as the Company determines to be necessary or appropriate to exempt the amounts payable hereunder from Section 409A or to comply with the requirements of Section 409A and thereby avoid the application of penalty taxes thereunder. In no event shall any liability for failure to comply with the requirements of Section 409A be transferred from Executive or any other individual to the Company or any of its affiliates, employees or agents.

(b) To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(1) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(2) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(3) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

(c) In the event the Company determines that the Executive is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code at the time of the Executive’s separation from service, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement on account of the Executive’s separation from service would be considered deferred compensation subject to Section 409A as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six months and one day after the Executive’s separation from service, or (ii) the Executive’s death (the “Six Month Delay Rule”).

(1) For purposes of this subparagraph, amounts payable under the Agreement should not provide for a deferral of compensation subject to Section 409A to the extent provided in Treasury Regulation Section 1.409A-1(b)(4) (e.g., short-term deferrals), Treasury Regulation Section 1.409A-1(b)(9) (e.g., separation pay plans, including the exception under subparagraph (iii)), and other applicable provisions of the Treasury Regulations.

(2) To the extent that the Six Month Delay Rule applies to payments otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of the Six Month Delay Rule, and the balance of the installments shall be payable in accordance with their original schedule.

(d) Notwithstanding anything to the contrary in this Agreement, to the extent that any payments of “nonqualified deferred compensation” (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are subject to the Executive’s execution, delivery and non-revocation of a Release, (i) the Company shall deliver the Release to the Executive within seven (7) days following the date of termination, and (ii) if the Executive fails to execute the Release on or prior to the Release Expiration Date (as defined below) or timely revokes acceptance of the Release thereafter, the Executive shall not be entitled to any payments or benefits otherwise conditioned on the Release. For purposes of this Section 21(d), “Release Expiration Date” shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers the Release to the Executive, or, in the event that the Executive’s termination of employment is “in connection with an exit incentive or other employment termination program” (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is fortyfive (45) days following such delivery date. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are delayed pursuant to Section 6(c) and this Section 21(d), such amounts shall be paid in a lump sum on the first payroll date to occur on or after the 60th day following the date of termination, provided that, as of such 60th day, the Executive has executed and has not revoked the Release (and any applicable revocation period has expired).

22. Compensation Recovery Policy. The Executive acknowledges and agrees that, to the extent the Company adopts any clawback or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, the Executive shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy).

[Signature Page To Follow]

IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date and year first above written.

**COMPANY:**

Better Choice Company Inc.

By: /s/

Name: Damian Dalla-Longa

Title: Co-Chief Executive Officer

**EXECUTIVE:**

\_\_\_\_\_

\_\_\_\_\_

IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date and year first above written.

**COMPANY:**

Better Choice Company Inc.

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

Name:

Title:

**EXECUTIVE:**

*/s/* \_\_\_\_\_

Name: Anthony Santarsiero

**Exhibit A**  
**Target Bonus**

A bonus at the discretion of the Board of Directors, but not less than 25% of Executive's Base Salary. The bonus shall be prorated for any period of employment which is less than a full year.

**Exhibit B**  
**Equity Awards**

On the Effective Date the Executive shall receive an award under the Plan of options for 1,000,000 shares with an exercise price of \$5.00 per share. The award shall (i) vest in equal installments monthly over two years, with the first monthly vesting on May 31, 2019, (ii) accelerate as to all unvested options upon a Change in Control, as defined in the Plan and (iii) accelerate as provided in this Agreement. Any exercise may, at the election of Executive, be exercised with a "cashless exercise" by using shares from any such exercise to pay the exercise price, which shares, for such purpose, being valued at the fair market value, as determined under the Plan, on the date of exercise.

**Exhibit C**  
**Indemnification Agreement**

C-1

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**INDEMNIFICATION AND ADVANCEMENT AGREEMENT**

This Indemnification and Advancement Agreement (“Agreement”) is made as of [ ] , 2019, by and between Better Choice Company Inc., a Delaware corporation (the “Company”), and [name of indemnitee], [a member of the Board of Directors/an officer] of the Company (“Indemnitee”). This Agreement supersedes and replaces any and all previous agreements between the Company and Indemnitee covering indemnification and advancement.

**RECITALS**

WHEREAS, the Board of Directors of the Company (the “Board”) believes that highly competent persons have become more reluctant to serve as directors, officers, or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification and advancement of expenses against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities.

Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Company’s bylaws (as currently in effect and as may be amended from time to time, the “Bylaws”) require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the “DGCL”). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification and advancement of expenses;

WHEREAS, the uncertainties relating to such insurance, to indemnification, and to advancement of expenses may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and any resolutions adopted pursuant thereto, and is not a substitute therefor, nor diminishes or abrogates any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Bylaws, DGCL and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve as an officer or director without adequate additional protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified and be advanced expenses.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as a [director/officer] of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law). This Agreement does not create any obligation on the Company to continue Indemnitee in such position and is not an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

Section 2. Definitions. As used in this Agreement:

(a) "Agent" means any person who is authorized by the Company or an Enterprise to act for or represent the interests of the Company or an Enterprise, respectively.

(b) A "Change in Control" occurs upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing thirty-five percent (35%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative beneficial ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 51% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

vi. For purposes of this Section 2(b), the following terms have the following meanings:

- 1 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.
- 2 "Person" has the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person excludes (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.
- 3 "Beneficial Owner" has the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner excludes any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(c) "Corporate Status" describes the status of a person who is or was acting as a director, officer, employee, fiduciary, or Agent of the Company or an Enterprise.

(d) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" means any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity for which Indemnitee is or was serving at the request of the Company as a director, officer, employee, or Agent.

(f) “Expenses” includes all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent and, (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise. The parties hereto agree that, for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee’s counsel as being reasonable in the good faith judgment of such counsel will be presumed conclusively to be reasonable. Expenses, however, do not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(h) “Potential Change in Control” means the occurrence of any of the following events: (i) the Company enters into any written or oral agreement, undertaking or arrangement, the consummation of which would result in the occurrence of a Change in Control; (ii) any Person or the Company publicly announces an intention to take or consider taking actions which if consummated would constitute a Change in Control; (iii) any Person who becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 5% or more of the combined voting power of the Company’s then outstanding securities entitled to vote generally in the election of directors increases his beneficial ownership of such securities by 5% or more over the percentage so owned by such Person on the date hereof; or (iv) the Board adopts a resolution to the effect that, for purposes of this Agreement, a Potential Change in Control has occurred

(i) The term “Proceeding” includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee’s Corporate Status or by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee’s part while acting pursuant to Indemnitee’s Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. A Proceeding also includes a situation the Indemnitee believes in good faith may lead to or culminate in the institution of a Proceeding.

Section 3. Indemnity in Third-Party Proceedings. The Company will indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company will indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. The Company will not indemnify Indemnitee for Expenses under this Section 4 related to any claim, issue or matter in a Proceeding for which Indemnitee has been finally adjudged by a court to be liable to the Company, unless, and only to the extent that, the Delaware Court of Chancery or any court in which the Proceeding was brought determines upon application by Indemnitee that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with any Proceeding the extent that Indemnitee is successful, on the merits or otherwise. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding to which Indemnitee is not a party but to which Indemnitee is a witness, deponent, interviewee, or otherwise asked to participate.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses but not, however, for the total amount thereof, the Company will indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification. Notwithstanding any limitation in Sections 3, 4, or 5, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law (including but not limited to, the DGCL and any amendments to or replacements of the DGCL adopted after the date of this Agreement that expand the Company's ability to indemnify its officers and directors) if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor).

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company is not obligated under this Agreement to make any indemnification payment to Indemnitee in connection with any Proceeding:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except to the extent provided in Section 16(b) and except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or a committee thereof, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to indemnification or advancement, of Expenses, including a Proceeding (or any part of any Proceeding) initiated pursuant to Section 14 of this Agreement, (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses.

(a) The Company will advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding (or any part of any Proceeding) initiated by Indemnitee if (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to obtain indemnification or advancement of Expenses from the Company or Enterprise, including a proceeding initiated pursuant to Section 14 or (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation. The Company will advance the Expenses within thirty (30) calendar days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding.

(b) Advances will be unsecured and interest free. Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, thus Indemnitee qualifies for advances upon the execution of this Agreement and delivery to the Company. No other form of undertaking is required other than the execution of this Agreement. The Company will make advances without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

Section 11. Procedure for Notification of Claim for Indemnification or Advancement

(a) Indemnitee will notify the Company in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. Indemnitee will include in the written notification to the Company a description of the nature of the Proceeding and the facts underlying the Proceeding and provide such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Indemnitee's failure to notify the Company will not relieve the Company from any obligation it may have to Indemnitee under this Agreement, and any delay in so notifying the Company will not constitute a waiver by Indemnitee of any rights under this Agreement. The secretary of the Company will, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification or advancement.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

(a) Unless a Change of Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made:

i. by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;

ii. by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;

iii. if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by written opinion provided by Independent Counsel selected by the Board; or iv. if so directed by the Board, by the stockholders of the Company.

(b) If a Change in Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made by written opinion provided by Independent Counsel selected by Indemnitee (unless Indemnitee requests such selection be made by the Board)

(c) The party selecting Independent Counsel pursuant to subsection (a)(iii) or (b) of this Section 12 will provide written notice of the selection to the other party. The notified party may, within ten (10) calendar days after receiving written notice of the selection of Independent Counsel, deliver to the selecting party a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within thirty (30) calendar days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, Independent Counsel has not been selected or, if selected, any objection to has not been resolved, either the Company or Indemnitee may petition the Delaware Court for the appointment as Independent Counsel of a person selected by such court or by such other person as such court designates. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company will advance and pay any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making the indemnification determination irrespective of the determination as to Indemnitee's entitlement to indemnification and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing of the determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied and providing a copy of any written opinion provided to the Board by Independent Counsel.

(e) If it is determined that Indemnitee is entitled to indemnification, the Company will make payment to Indemnitee within ten (10) calendar days after such determination.

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination will, to the fullest extent not prohibited by law, presume Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company will, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the determination of the Indemnitee's entitlement to indemnification has not been made pursuant to Section 12 within sixty (60) calendar days after the latter of (i) receipt by the Company of Indemnitee's request for indemnification pursuant to Section 11(a) and (ii) the final disposition of the Proceeding for which Indemnitee requested indemnification (the "Determination Period"), the requisite determination of entitlement to indemnification will, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee will be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law. The Determination Period may be extended for a reasonable time, not to exceed an additional thirty (30) calendar days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, the Determination Period may be extended an additional fifteen (15) calendar days if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a)(iv) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee will be deemed to have acted in good faith if Indemnitee acted based on the records or books of account of the Company, its subsidiaries, or an Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company, its subsidiaries, or an Enterprise in the course of their duties, or on the advice of legal counsel for the Company, its subsidiaries, or an Enterprise or on information or records given or reports made to the Company or an Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Company, its subsidiaries, or an Enterprise. Further, Indemnitee will be deemed to have acted in a manner “not opposed to the best interests of the Company,” as referred to in this Agreement if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan. The provisions of this Section 13(d) is not exclusive and does not limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise may not be imputed to Indemnitee for purposes of determining Indemnitee’s right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Indemnitee may commence litigation against the Company in the Delaware Court of Chancery to obtain indemnification or advancement of Expenses provided by this Agreement in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) the Company does not advance Expenses pursuant to Section 10 of this Agreement, (iii) the determination of entitlement to indemnification is not made pursuant to Section 12 of this Agreement within the Determination Period, (iv) the Company does not indemnify Indemnitee pursuant to Section 5 or 6 or the second to last sentence of Section 12(d) of this Agreement within ten (10) calendar days after receipt by the Company of a written request therefor, (v) the Company does not indemnify Indemnitee pursuant to Section 3, 4, 7, or 8 of this Agreement within ten (10) calendar days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder. Alternatively, Indemnitee, at Indemnitee’s option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence such Proceeding seeking an adjudication or an award in arbitration within 180 calendar days following the date on which Indemnitee first has the right to commence such Proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause does not apply in respect of a Proceeding brought by Indemnitee to enforce Indemnitee’s rights under Section 5 of this Agreement. The Company will not oppose Indemnitee’s right to seek any such adjudication or award in arbitration.

(b) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 will be conducted in all respects as a *de novo* trial, or arbitration, on the merits and Indemnitee may not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company will have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and will not introduce evidence of the determination made pursuant to Section 12 of this Agreement.

(c) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is entitled to indemnification, the Company will be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company is, to the fullest extent not prohibited by law, precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and will stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company, to the fullest extent permitted by law, will (within ten (10) calendar days after receipt by the Company of a written request therefor) advance to Indemnitee such Expenses which are incurred by Indemnitee in connection with any action concerning this Agreement, Indemnitee's right to indemnification or advancement of Expenses from the Company, or concerning any directors' and officers' liability insurance policies maintained by the Company, and will indemnify Indemnitee against any and all such Expenses unless the court determines that each of the Indemnitee's claims in such Proceeding were made in bad faith or were frivolous or are prohibited by law.

Section 15. Establishment of Trust.

(a) In the event of a Potential Change in Control or a Change in Control, the Company will, upon written request by Indemnitee, create a trust for the benefit of Indemnitee (the "Trust") and from time to time upon written request of Indemnitee will fund such Trust in an amount sufficient to satisfy the reasonably anticipated indemnification and advancement obligations of the Company to the Indemnitee in connection with any Proceeding for which Indemnitee has demanded indemnification and/or advancement prior to the Potential Change in Control or Change in Control (the "Funding Obligation"). The trustee of the Trust (the "Trustee") will be a bank or trust company or other individual or entity chosen by the Indemnitee and reasonably acceptable to the Company. Nothing in this Section 15 relieves the Company of any of its obligations under this Agreement.

(b) The amount or amounts to be deposited in the Trust pursuant to the Funding Obligation will be determined by mutual agreement of the Indemnitee and the Company or, if the Company and the Indemnitee are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement. The terms of the Trust will provide that, except upon the consent of both the Indemnitee and the Company, upon a Change in Control: (i) the Trust may not be revoked, or the principal thereof invaded, without the written consent of the Indemnitee; (ii) the Trustee will advance, to the fullest extent permitted by applicable law, within two (2) business days of a request by the Indemnitee; (iii) the Company will continue to fund the Trust in accordance with the Funding Obligation; (iv) the Trustee will promptly pay to the Indemnitee all amounts for which the Indemnitee is entitled to indemnification pursuant to this Agreement or otherwise; and (v) all unexpended funds in such Trust revert to the Company upon mutual agreement by the Indemnitee and the Company or, if the Indemnitee and the Company are unable to reach such an agreement, by Independent Counsel selected in accordance with Section 12(b) of this Agreement, that the Indemnitee has been fully indemnified under the terms of this Agreement. New York law (without regard to its conflicts of laws rules) governs the Trust and the Trustee will consent to the exclusive jurisdiction of Delaware Court of Chancery, in accordance with Section 25 of this Agreement.

Section 16. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The indemnification and advancement of Expenses provided by this Agreement are not exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. The indemnification and advancement of Expenses provided by this Agreement may not be limited or restricted by any amendment, alteration or repeal of this Agreement in any way with respect to any action taken or omitted by Indemnitee in Indemnitee's Corporate Status occurring prior to any amendment, alteration or repeal of this Agreement. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy is cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more Persons with whom or which Indemnitee may be associated.

i. The Company hereby acknowledges and agrees:

1) the Company is the indemnitor of first resort with respect to any request for indemnification or advancement of Expenses made pursuant to this Agreement concerning any Proceeding arising from or related to Indemnitee's Corporate Status with the Company;

2) the Company is primarily liable for all indemnification and indemnification or advancement of Expenses obligations for any Proceeding arising from or related to Indemnitee's Corporate Status, whether created by law, organizational or constituent documents, contract (including this Agreement) or otherwise;

3) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding are secondary to the obligations of the Company's obligations;

4) the Company will indemnify Indemnitee and advance Expenses to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person; and

ii. the Company irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation, reimbursement, exoneration or indemnification, or any other recovery of any kind in respect of amounts paid by the Company to Indemnitee pursuant to this Agreement.

iii. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss for Indemnitee, the payor has a right of subrogation against the Company or its insurers for all amounts so paid which would otherwise be payable by the Company or its insurers under this Agreement. In no event will payment by any other Person with whom or which Indemnitee may be associated (or their insurers affect the obligations of the Company hereunder or shift primary liability for the Company's obligation to indemnify or advance of Expenses to any other Person with whom or which Indemnitee may be associated.

iv. Any indemnification or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated is specifically in excess over the Company's obligation to indemnify and advance Expenses or any valid and collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, the Company will obtain a policy or policies covering Indemnitee to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies, including coverage in the event the Company does not or cannot, for any reason, indemnify or advance Expenses to Indemnitee as required by this Agreement. If, at the time of the receipt of a notice of a claim pursuant to this Agreement, the Company has director and officer liability insurance in effect, the Company will give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company will thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Indemnitee agrees to assist the Company efforts to cause the insurers to pay such amounts and will comply with the terms of such policies, including selection of approved panel counsel, if required.

(d) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee for any Proceeding concerning Indemnitee's Corporate Status with an Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise. The Company and Indemnitee intend that any such Enterprise (and its insurers) be the indemnitor of first resort with respect to indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise. The Company's obligation to indemnify and advance Expenses to Indemnitee is secondary to the obligations the Enterprise or its insurers owe to Indemnitee. Indemnitee agrees to take all reasonably necessary and desirable action to obtain from an Enterprise indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise.

(e) In the event of any payment made by the Company under this Agreement, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any Enterprise or insurance carrier. Indemnitee will execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

Section 17. Duration of Agreement. This Agreement continues until and terminates upon the later of: (a) ten (10) years after the date that Indemnitee ceases to serve as a [director]/[officer] of the Company or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of Expenses rights provided by or granted pursuant to this Agreement are binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 18. Severability. If any provision or provisions of this Agreement is held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby and remain enforceable to the fullest extent permitted by law; (b) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 19. Interpretation. Any ambiguity in the terms of this Agreement will be resolved in favor of Indemnitee and in a manner to provide the maximum indemnification and advancement of Expenses permitted by law. The Company and Indemnitee intend that this Agreement provide to the fullest extent permitted by law for indemnification in excess of that expressly provided, without limitation, by the Certificate of Incorporation, the Bylaws, vote of the Company stockholders or disinterested directors, or applicable law.

Section 20. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and is not a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 21. Modification and Waiver. No supplement, modification or amendment of this Agreement is binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed or constitutes a waiver of any other provisions of this Agreement nor will any waiver constitute a continuing waiver.

Section 22. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company does not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 23. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given if (a) delivered by hand to the other party, (b) sent by reputable overnight courier to the other party or (c) sent by facsimile transmission or electronic mail, with receipt of oral confirmation that such communication has been received:

- (a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee provides to the Company.

(b) If to the Company to:

[ • ]

or to any other address as may have been furnished to Indemnitee by the Company.

Section 24. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 25. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties are governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or Proceeding arising out of or in connection with this Agreement may be brought only in the Delaware Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or Proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or Proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or Proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 26. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together constitutes one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 27. Headings. The headings of this Agreement are inserted for convenience only and do not constitute part of this Agreement or affect the construction thereof.

*[Signature Page to Follow]*

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

BETTER CHOICE COMPANY INC.

INDEMNITTEE

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of June 29, 2019 by and between Andreas Schulmeyer (the "Executive") and Better Choice Company, Inc. (together with any of its Affiliates (as defined in Section 3(a) below) as may employ the Executive from time to time, the "Company").

WHEREAS, on June 29, 2019 (the "Appointment Date"), the Board of Directors of the Company (the "Board") appointed the Executive as the Company's Chief Financial Officer;

WHEREAS, the parties have agreed that the Executive will commence full-time employment with the Company on July 29, 2019 (the "Effective Date")

WHEREAS, during the period beginning on the Appointment Date and ending on the Effective Date (the "Consulting Period"), the Executive will provide consulting services to the Company, as reasonably requested by the Board from time to time, in accordance with the terms set forth in Section 4(a);

WHEREAS, the Company desires to employ the Executive upon the terms and conditions set forth herein, effective as of the Effective Date;

WHEREAS, the Executive desires to be employed by the Company upon the terms and conditions set forth herein, effective as of the Effective Date.

NOW, THEREFORE, in consideration of the foregoing premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Representations and Warranties. The Executive hereby represents and warrants to the Company that the Executive (i) is not subject to any non-solicitation or non-competition agreement affecting the Executive's employment with the Company, (ii) is not subject to any confidentiality or nonuse/nondisclosure agreement affecting the Executive's employment with the Company, and (iii) will bring to the Company no trade secrets, confidential business information, documents, or other personal property of a prior employer.

2. Term of Employment.

(a) Term. The Company hereby employs the Executive, and the Executive hereby accepts employment with the Company, for a period of two years commencing as of the Effective Date (such period, as it may be extended or renewed, (the "Term")), unless sooner terminated in accordance with the provisions of Section 6. The Term shall be automatically renewed for successive two year terms unless notice of non-renewal is given by either party at least 90 days before the end of the Term.

(b) Continuing Effect. Notwithstanding any termination of this Agreement, at the end of the Term or otherwise, the provisions of Sections 6(e), 7, 8, 9, 10, 12 15, 16, 18, and 21 shall remain in full force and effect and the provisions of Section 9 shall be binding upon the legal representatives, successors and assigns of the Executive.

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3. Duties.

(a) General Duties. The Executive shall serve as the Chief Financial Officer of the Company, with customary duties, responsibilities, and authority as may from time to time be assigned to the Executive by the Company's Co-Chief Executive Officers and the Board and consistent with those duties normally performed by a Chief Financial Officer, which duties and responsibilities (the "Duties") may include services for majority owned subsidiaries and affiliates of the Company (the "Affiliates"). The Executive shall report to the Company's Co-Chief Executive Officers. The Executive shall, if requested by the Board, also serve as an officer or director of any Affiliate for no additional compensation. The Executive agrees to observe and comply with the Company's written rules and policies as adopted by the Company from time to time.

(b) Devotion of Time. Subject to the last sentence of this Section 3(b), during the Term, the Executive shall devote the Executive's full business time, skill, energy and attention to the business and affairs of the Company and its Affiliates as are necessary to perform the Executive's Duties pursuant to this Agreement. The Executive shall not enter the employ of or serve as a consultant to, or in any way perform any professional services with or without compensation to, any other persons, business, or organization, without the prior consent of the Board. Notwithstanding the above, the Executive shall be permitted to (i) devote a limited amount of the Executive's time to any not-for-profit charity or civic group, (ii) continue Executive's service on the board of directors of KEH Camera, and (iii) with the consent of the Board, serve on other board of directors; provided that such activities do not interfere with, or otherwise create a conflict with, the Executive's performance of the Executive's Duties as provided hereunder.

(c) Location of Office. The Executive's principal business office shall be in New York City, NY (the "Principal Office"). However, the Executive's Duties shall include all business travel necessary for the performance of the Executive's Duties.

(d) Adherence to Inside Information Policies. The Executive acknowledges that the Company is publicly-held and, as a result, has implemented inside information policies designed to preclude its executives and those of its subsidiaries from violating the federal securities laws by trading on material, non-public information or passing such information on to others in breach of any duty owed to the Company or any third party. The Executive shall promptly execute any agreements generally distributed by the Company to its employees requiring such employees to abide by its inside information policies.

4. Compensation and Expenses.

(a) Consulting Fees. During the Consulting Period, the Executive will serve as the Company's Chief Financial Officer as an independent contractor, and will provide consulting services to the Company on key priorities for the Company, as reasonably requested by the Board from time to time. In consideration for the Executive's services during the Consulting Period and the Executive's agreement to commence full-time employment on the Effective Date, as soon as reasonably practicable following the execution of this Agreement by the Executive, the Company shall grant to the Executive shares of Company common stock ("Shares") valued at \$32,876 (with the number of Shares determined based on the volume weighted average price of a Share during the five-day business week in which Executive signs this Agreement (rounded up to the nearest whole share)). Such Shares will initially be unvested, but shall vest in full on the Effective Date, subject to Executive's commencement of full-time employment with the Company, in accordance with the terms of this Agreement, on such date. If the Executive does not commence full-time employment with the Company, in accordance with the terms of this Agreement, on the Effective Date, such Shares shall automatically be forfeited and the Company shall pay the Executive \$26,300.80 in a lump-sum cash payment in full satisfaction of all services provided during the Consulting Period, which amount shall be payable within thirty (30) days following the end of the Consulting Period and in any event no later than August 30, 2019. The Executive acknowledges and agrees that, except as set forth in this Section 4(a), no payments or benefits will be payable or provided to the Executive with respect to the Consulting Period.

(b) Signing Bonus. As an additional incentive to the Executive to enter into this Agreement, and in order to defray office expenses, the Executive shall be eligible to receive a bonus (a "Signing Bonus") in the form of stock options covering Shares valued at \$55,000 as of the grant date of such stock options (determined in accordance with the terms of the Company's 2019 Incentive Award Plan (the "Plan")), which will vest on the same basis as the initial equity grant.

(c) Base Salary. For the services of the Executive to be rendered under this Agreement during the Term, the Company shall pay the Executive an annual salary of \$250,000 (the "Base Salary"), less such deductions as shall be required to be withheld by applicable law and regulations payable in accordance with the Company's customary payroll practices. The Executive's Base Salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the Base Salary during the Term. For the avoidance of doubt, the Executive's Base Salary shall be subject to review and adjustment by the Board in a manner consistent with the Board's review and adjustment of the base salaries of other executive officers of the Company.

(d) Target Bonus. For each fiscal year of the Company that ends during the Term, the Executive shall have the opportunity to earn a bonus in accordance with the terms and conditions set forth on Exhibit A hereto (an "Annual Bonus"). Any such Annual Bonus shall be payable on, or at such date as is determined by the Board within 120 days following, the last day of the fiscal year with respect to which it relates. Except as provided in Section 6, notwithstanding any other provision of this Section 4(c) or Exhibit A hereto, no Annual Bonus shall be payable with respect to any fiscal year unless the Executive remains continuously employed with the Company during the period beginning on the Effective Date and ending on the last day of the fiscal year to which the Annual Bonus relates.

(e) Equity Compensation. In consideration of the Executive's agreement to enter into this Agreement and as an inducement to join the Company, on the Appointment Date, the Company granted to the Executive certain equity compensation rights and awards set forth on Exhibit B hereto (which, together with any other awards granted under the Plan hereafter, the "Equity Awards") pursuant to the Plan. The Equity Awards shall be subject to the terms and conditions of the Plan, or any successor plan thereto, which may be modified or revoked at any time in the sole discretion of the Company subject to then outstanding rights thereunder, and applicable award agreements thereunder.

(f) Expenses. In addition to any compensation received pursuant to this Section 4, the Company will reimburse or advance funds to the Executive for all reasonable documented travel (including travel expenses incurred by the Executive related to the Executive's travel to the Company's other offices), entertainment and other business expenses incurred in connection with the performance of the Executive's Duties under this Agreement, provided that the Executive properly provides a written accounting of such expenses to the Company in accordance with the Company's practices. Such reimbursement or advances will be made in accordance with policies and procedures of the Company in effect from time to time relating to reimbursement of, or advances to, its executive officers.

5. Benefits.

(a) Paid Time Off. For each twelve-month period during the Term, the Executive shall be entitled to four weeks of paid time off without loss of compensation or other benefits to which Executive is entitled under this Agreement, to be taken at such times as the Executive may select and the affairs of the Company may permit. The four weeks shall accrue daily and any unused days will be carried over to the next year of the Term and, upon the termination of this Agreement, any accrued and unused paid time-off shall be paid to Executive.

(b) Fringe Benefit and Perquisites. During the Term, the Executive shall be entitled to fringe benefits and perquisites consistent with the practices of the Company, and to the extent the Company provides similar benefits or perquisites (or both) to similarly situated executives of the Company.

(c) Employee Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans, practices and programs maintained by the Company, as in effect from time to time (collectively, "Employee Benefit Plans"), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or cancel any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law. Notwithstanding the foregoing sentence, during the Term, the Company shall provide the Executive with health insurance covering the Executive and family dependents; provided, however, that, upon the Executive's request, with respect to the period beginning on the Effective Date and ending on December 31, 2019, in lieu of providing health insurance coverage under the Company's plan, the Company shall reimburse the Executive for the premiums paid by the Executive for coverage of the Executive and family dependents under the Executive's existing health insurance plan, reduced by the amount of the employee portion of such premiums that would otherwise be payable by the Executive under the applicable Company plan. For the avoidance of doubt, any such reimbursement shall be taxable and subject to deductions for withholding.

6. Termination.

(a) Death or Disability. Except as otherwise provided in this Agreement, this Agreement shall automatically terminate upon the death or disability of the Executive. For purposes of this Section 6(a), "disability" shall mean (i) the Executive is unable to substantially engage in the Executive's Duties by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for a continuous period of not less than 12 months; (ii) the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death, or last for continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company; or (iii) the Executive is determined to be totally disabled by the Social Security Administration. Any question as to the existence of a disability shall be determined by the written opinion of the Executive's regularly attending physician (or the Executive's guardian) (or the Social Security Administration, where applicable). In the event that the Executive's employment is terminated by reason of the Executive's death or disability, the Company shall pay the following to the Executive or the Executive's personal representative: (i) any accrued but unpaid Base Salary for services rendered to the date of termination, any accrued but unpaid expenses required to be reimbursed under this Agreement and any accrued paid time off (the "Accrued Payments"), and (ii) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year). The Executive or the Executive's legally appointed guardian, as the case may be, shall have up to 12 months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term. The Executive (or the Executive's estate) shall receive the payments provided herein at such times as the Executive would have received them if there was no death or disability.

(b) Termination by the Company for Cause or by the Executive Without Good Reason. The Company may, upon a majority vote by the Board, terminate the Executive's employment pursuant to the terms of this Agreement at any time for Cause (as defined below) by giving the Executive written notice of termination. Such termination shall become effective upon the giving of such notice. Upon any such termination for Cause, or in the event the Executive terminates the Executive's employment with the Company without Good Reason (as defined in Section 6(c)), the Executive shall receive the Accrued Payments and shall have no right to any other compensation or reimbursement under Section 4, or to participate in any Executive benefit programs under Section 5, except as may otherwise be provided for by law, for any period subsequent to the effective date of termination. For purposes of this Agreement, "Cause" shall mean: (i) the Executive is convicted of, or pleads guilty or nolo contendere to, a felony related to the business of the Company; (ii) the Executive, in carrying out the Executive's Duties hereunder, has acted with gross negligence or intentional misconduct which results in material harm to the Company; (iii) the Executive misappropriates Company funds or otherwise defrauds the Company involving a material amount of money or property; (iv) the Executive breaches the Executive's fiduciary duty to the Company, resulting in material profit to the Executive personally, directly or indirectly; (v) the Executive materially breaches any term of this Agreement with the Company and fails to cure such breach within 30 days of receipt of notice; (vi) the Executive breaches any provision of Section 8 or Section 9 of this Agreement; (vii) the Executive becomes subject to a preliminary or permanent injunction issued by a United States District Court enjoining the Executive from violating any securities law administered or regulated by the Securities and Exchange Commission; (viii) the Executive becomes subject to a cease and desist order or other order issued by the Securities and Exchange Commission after an opportunity for a hearing; (ix) the Executive refuses to carry out a resolution adopted by the Company's Board at a meeting in which the Executive was offered a reasonable opportunity to argue that the resolution should not be adopted; or (x) the Executive abuses alcohol or drugs in a manner that interferes with the successful performance of the Executive's Duties.

(c) Termination by the Company Without Cause; Termination by the Executive for Good Reason; Termination at the end of a Term after the Company provides notice of Non-Renewal.

(1) This Agreement may be terminated: (i) by the Executive for Good Reason (as defined below), (ii) by the Company without Cause, or (iii) at the end of a Term after the Company provides the Executive with notice of non-renewal.

(2) In the event this Agreement is terminated by the Executive for Good Reason or by the Company without Cause, subject to Section (6)(c)(4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Payments;

(B) any earned but unpaid Annual Bonus for any prior period and the Annual Bonus for the year of such termination, prorated to the date of termination (determined based on actual performance for such year and payable when bonuses are paid to all Company executives for such year);

(C) continued payment of the then Base Salary during the 12 month period following the date of termination (the "Severance Period"), payable in accordance with the Company's regular payroll practices as of the date of such termination;

(D) continued vesting of the Equity Awards during the Severance Period;

(E) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term; and

(F) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, during the Severance Period, subject to the terms of any applicable plan or insurance contract and applicable law.

(3) In the event this Agreement is terminated at the end of a Term after the Company provides the Executive with notice of non-renewal and the Executive remains employed until the end of the Term, subject to Section 6(c)(4) and Section 21, the Executive shall be entitled to the following:

(A) The Accrued Payments;

(B) the Executive or the Executive's legally appointed guardian, as the case may be, shall have up to three (3) months from the date of termination to exercise all vested stock options held by the Executive as of the date of termination, provided that in no event shall any option be exercisable beyond its term; and

(C) any benefits (except perquisites) to which the Executive was entitled pursuant to Section 5(b) hereof shall continue to be paid or provided by the Company, as the case may be, for 12 months, subject to the terms of any applicable plan or insurance contract and applicable law;

provided, however, that the Executive shall only be entitled to receive the payments or benefits set forth in Section 6(c)(3)(B) and (D) if the Executive is willing and able (i) to execute a new agreement providing terms and conditions substantially similar to those in this Agreement and (ii) to continue providing such services, and therefore, the Company's non-renewal of the Term will be considered an "involuntary separation from service" within the meaning of Treasury Regulation Section 1.409A-1(n).

(4) The payments and benefits provided in Sections 6(c)(2)(B), (C), (E) and (F) and Section 6(c)(3)(B) and (D) shall be conditioned on (i) the Executive's execution and non-revocation of a waiver and release of claims in the Company's customary form (a "Release") as of the Release Expiration Date, in accordance with Section 21(d), and (ii) the Executive's continued compliance with the restrictive covenants set forth in Sections 8 and 9 of this Agreement (the "Restrictive Covenants"). Notwithstanding any other provision of this Agreement, no payments will be made or benefits provided pursuant to such sections prior to the date the Release becomes irrevocable in accordance with its terms or following the date the Executive first breaches any of the Restrictive Covenants.

(5) The term "Good Reason" shall mean: (i) a material diminution in the Executive's authority, duties or responsibilities due to no fault of the Executive other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law; (ii) the Company requires the Executive to permanently change the Executive's principal business office as defined in Section 3(c) to a location that is greater than 30 miles from the Principal Office, (iii) a change in the Executive's overall compensation or bonus structure such that the Executive's overall compensation is materially diminished; or (v) any other action or inaction that constitutes a material breach by the Company under this Agreement. Prior to the Executive terminating the Executive's employment with the Company for Good Reason, the Executive must provide written notice to the Company, within 30 days following the Executive's initial awareness of the existence of such condition, that such Good Reason exists and setting forth in detail the grounds the Executive believes constitutes Good Reason. If the Company does not cure the condition(s) constituting Good Reason within 30 days following receipt of such notice, then the Executive's employment shall be deemed terminated for Good Reason.

(d) Any termination made by the Company under this Agreement shall be approved by the Board as provided herein.

(e) Upon (1) termination of the Executive's employment with the Company for any reason or (2) the Company's request at any time during the Executive's employment (provided it does not interfere with the Executive's ability to perform the Executive's duties and responsibilities hereunder), the Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, security devices, employer credit cards, network access devices, computers, cell phones, smartphones, manuals, work product, thumb drives or other removable information storage devices, and hard drives, and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or work product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with the Executive's employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive's possession or control, including those stored on any non-Company devices, networks, storage locations and media in the Executive's possession or control. The Executive shall confirm the Executive's compliance with this Section 6(e), in writing, at any time within five days of the Executive's receipt of a request for same from the Company.

(f) The provisions of this Section 6 shall supersede in their entirety any severance payment or benefit obligations to the Executive pursuant to the provisions in any severance plan, policy, program or other arrangement maintained by the Company.

7. Indemnification. As provided in an Indemnification Agreement to be entered into between the Company and the Executive, a copy of which is annexed as Exhibit C, the Company shall indemnify the Executive, to the maximum extent permitted by applicable law, against all costs, charges and expenses incurred or sustained by him in connection with any action, suit or proceeding to which the Executive may be made a party by reason of the Executive being an officer, director or employee of the Company or of any subsidiary or affiliate of the Company. The Company shall provide, at its expense, directors and officers insurance for the Executive in amounts and for a term consistent with industry standards.

8. Non-Competition Agreement.

(a) Definitions. For the purpose of this Agreement:

(1) "Restricted Area" means North America and each other continent in which the Company derives ten percent (10%) or more of its total revenue at any time during the Term;

(2) "Restricted Period" means the period during such time as Executive is an employee of the Company and the one year period immediately following the last day of the Executive's employment with the Company.

(3) "Prohibited Activity" means any activity in which the Executive contributes the Executive's knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, member, advisor, consultant, agent, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar businesses as the Company or any of its affiliates or subsidiaries, including but not limited to those engaged in the Business. For the avoidance of doubt, "Prohibited Activity" includes any activity requiring the disclosure of any Confidential Information.

(4) "Trade Secret" means Confidential Information which meets the additional requirements of the federal Defend Trade Secrets Act, the Uniform Trade Secrets Act, similar state law or applicable common law.

(5) "Trade Secret Prohibited Activity" means any Prohibited Activity that may require or inevitably requires disclosure of any Trade Secret of the Company Group.

(6) "Business" means the sale of pet foods, flea and tick products, pet nutritional products, related pet supplies and cannabidiol-based ("CBD") products for humans and animals, and also includes any other product or services which the Company has taken concrete steps to offer for sale, but has not yet commenced selling or marketing, during or prior to the Term, and any products or services disclosed on the Company's website.

(b) Non-Competition. Because of the Company's legitimate business interest as described herein and the good and valuable consideration offered to the Executive, during the Term of this Agreement and during the Restricted Period the Executive agrees and covenants not to engage in any Prohibited Activity within the Restricted Area.

(c) Trade Secrets. Notwithstanding the foregoing or anything contained herein to the contrary, and subject only to Section 9(a)(1)(B) hereof, the Executive acknowledges and agrees that during the Executive's employment with the Company and indefinitely following the cessation of that employment for any reason, the Executive shall not directly or indirectly disclose or divulge any Trade Secret or engage in any Trade Secret Prohibited Activity (so long as the information remains a Trade Secret under applicable law) without the prior written consent of the Company, which may be granted or withheld in the sole discretion of the Company.

(d) Non-Solicitation, Non-Disparagement. During the Restricted Period, the Executive shall not, directly or indirectly, whether for the Executive's own account or for the account of any person or entity, solicit, attempt to solicit, endeavor to entice away from the Company, attempt to hire, deal with, attempt to attract business from, accept business from, or otherwise interfere with (whether by reason of cancellation, withdrawal, modification of relationship or otherwise) any actual or prospective relationship of the Company with any person or entity: (i) who is, or was within one (1) year of the date upon which this Agreement is terminated, employed by or otherwise engaged to perform services for the Company, including, but not limited to, any independent contractor or representative, or (ii) who is, or was within one year of the date upon which this Agreement is terminated, an actual or bona fide prospective licensee, landlord, customer, client, vendor, supplier or manufacturer of the Company (or other person or entity with which the Company had an actual or prospective bona fide relationship). The Executive agrees that the Executive will never, directly or indirectly, make or publish any statement or communication which is false or disparaging with respect to the Company and/or its direct or indirect shareholders, officers, directors, members, managers, employees, contractors, consultants, or agents. For the avoidance of doubt, nothing herein shall deprive the Executive of the meaningful right to provide his reasoned business opinion when asked for same; provided that such opinion is provided in a manner that does not disparage the Company or otherwise violate any of the covenants set forth in this Agreement (including in this Section 8(d)).

(e) Equitable Consideration. The Executive agrees that the Executive's services hereunder are of a special, unique, extraordinary and intellectual character and the Executive's position with the Company places the Executive in a position of confidence and trust with the customers, suppliers and employees of the Company. The Executive and the Company agree that in the course of employment hereunder, the Executive has and will continue to develop a personal relationship with the Company's customers, and a knowledge of these customers' affairs and requirements as well as confidential and proprietary information developed by the Company after the date of this Agreement. The Executive acknowledges that the Company's relationships with its established clientele may therefore be placed in the Executive's hands in confidence and trust. The Executive consequently agrees that it is reasonable and necessary for the protection of the goodwill, confidential and proprietary information, and legitimate business interests of the Company that the Executive make the covenants contained herein, that the covenants are a material inducement for the Company to employ or continue to employ the Executive and to enter into this Agreement, that the covenants are given as an integral part of and incident to this Agreement, and that the covenants will not prevent the Executive from earning a livelihood in the Executive's chosen business, do not impose an undue hardship on the Executive, and will not injure the public.

(f) References. References to the Company in this Section 8 shall include the Company and any Affiliate.

9. Non-Disclosure of Confidential Information.

(a) Confidentiality.

(1) For the purpose of this Agreement, "Confidential Information" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, products, patents, sources of supply, customer dealings, data, source code, business plans, practices, methods, policies, publications, research, operations, strategies, techniques, agreements, transactions, potential transactions, negotiations, know-how, Trade Secrets, computer programs, computer software, applications, operating systems, software design, work-in-process, databases, records, systems, Personally Identifiable Information, supplier information, vendor information, financial information, results, legal information, marketing and advertising information, pricing information, design information, personnel information, developments, reports, internal controls, graphics, drawings, market studies, sales information, revenue, costs, notes, communications, algorithms, product plans, designs, models, ideas, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, distributor lists, and buyer lists of the Company, its businesses, and any existing or prospective customer, vendor, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company in confidence. The Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used. Notwithstanding the foregoing, "Confidential Information" shall not include information that: (A) becomes publicly known without breach of the Executive's obligations under this Section 9(a), or (B) is required to be disclosed by law or by court order or government order; provided, however, that if the Executive is required to disclose any Confidential Information pursuant to any law, court order or government order, (x) the Executive shall promptly notify the Company of any such requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions of this Agreement, (y) the Executive shall reasonably cooperate with the Company to obtain such a protective order at the Company's cost and expense, and (z) if such order is not obtained, or the Company waives compliance with the provisions of this Section 9(a), the Executive shall disclose only that portion of the Confidential Information which the Executive is advised by counsel that the Executive is legally required to so disclose and will exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded the information so disclosed.

(2) For the purpose of this Agreement, "Personally Identifiable Information" means information that, whether maintained or transmitted individually or in the aggregate with other information, allows a natural person to be identified, including, but not limited to, the name, birthday, address, telephone number, social security number, driver's license number, passport number, credit card number, credit score information, bank information, or other unique identifiers of any natural person that allows for the identification of or contact with such person.

(3) The Executive acknowledges and agrees that: (A) the Executive has had and will continue to have access to Confidential Information regarding the Company, (B) the Confidential Information is being acquired by the Executive in confidence, (C) the Confidential Information is a valuable, special, sensitive and unique asset of the business of the Company, (D) the Confidential Information is and shall at all times remain the sole property of the Company, (E) the continued confidentiality of the Confidential Information is essential to the continuation of the Company's business; and (F), the improper disclosure of the Confidential Information could severely and irreparably damage the Company and its businesses. In consideration of the obligations undertaken by the Company herein, the Executive will not, at any time, during or after the Executive's employment hereunder, reveal, divulge or make known to any person, any Confidential Information acquired by the Executive during the course of the Executive's employment with the Company and for a period of two (2) years thereafter except with the prior written approval of the Company. Notwithstanding the foregoing, subject only to Section 9(a)(1)(B) hereof, the Executive may not disclose, divulge or otherwise make use of any Trade Secret so long as such information remains a Trade Secret under applicable law. The Executive agrees to use the Executive's best efforts to maintain the confidentiality of the Confidential Information during the course of the Executive's employment with the Company and thereafter, including adopting and implementing all reasonable procedures prescribed by the Company to prevent unauthorized use of Confidential Information or disclosure of Confidential Information to any unauthorized person. The Executive shall take all necessary and reasonable administrative, technical, and physical safeguards to secure and protect the confidentiality, integrity, and security of the Confidential Information.

(b) References. References to the Company in this Section 9 shall include the Company and any Affiliate.

(c) Whistleblowing. Nothing contained in this Agreement shall be construed to prevent the Executive from reporting any act or failure to act to the SEC or other governmental body or prevent the Executive from obtaining a fee as a “whistleblower” under Rule 21F-17(a) under the Securities Exchange Act of 1934 or other rules or regulations implemented under the Dodd-Frank Wall Street Reform Act and Consumer Protection Act.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016. Notwithstanding any other provision of this Agreement, the Executive will not be held criminally or civilly liable under any federal or state Trade Secret law for any disclosure of a Trade Secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed under seal in a lawsuit or other proceeding. If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company’s Trade Secrets to the Executive’s attorney and use the Trade Secret information in the court proceeding if the Executive files any document containing Trade Secrets under seal; and does not disclose Trade Secrets, except pursuant to court order.

10. Equitable Relief. The Company and the Executive recognize that the services to be rendered under this Agreement by the Executive are special, unique and of extraordinary character, and that in the event of the breach by the Executive of the terms and conditions of this Agreement or if the Executive, without the prior express consent of the Board, shall leave the Executive’s employment for any reason and/or take any action in violation of this Agreement, the Company shall be entitled to institute and prosecute proceedings in any court of competent jurisdiction referred to in Section 10(b) below, to enjoin the Executive from breaching the provisions of this Agreement. Any action arising from or under this Agreement must be commenced only in the appropriate

11. Conflicts of Interest. While employed by the Company, the Executive shall not, unless approved by the Board of Directors or its Compensation Committee, directly or indirectly:

(a) participate as an individual in any way in the benefits of transactions with any of the Company’s vendors, clients, customers, suppliers or manufacturers, without limitation, having a financial interest in the Company’s vendors, clients, customers, suppliers or manufacturers or making loans to, or receiving loans, from, the Company’s vendors, clients, customers, suppliers or manufacturers;

(b) realize a personal gain or advantage from a transaction in which the Company has an interest or use information obtained in connection with the Executive’s employment with the Company for the Executive’s personal advantage or gain; or

(c) accept any offer to serve as an officer, director, partner, consultant, manager with, or to be employed in a professional, technical, or managerial capacity by, a person or entity which does business with the Company.

12. Inventions, Ideas, Processes, and Designs. All inventions, ideas, processes, programs, software, and designs (including all improvements) (i) conceived or made by the Executive during the course of the Executive's employment with the Company (whether or not actually conceived during regular business hours) and for a period of six months subsequent to the termination (whether by expiration of the Term or otherwise) of such employment with the Company, and (ii) related to the business of the Company, shall be disclosed in writing promptly to the Company and shall be the sole and exclusive property of the Company, and the Executive hereby irrevocably assigns any such inventions to the Company. An invention, idea, process, program, software, or design (including an improvement) shall be deemed related to the business of the Company if (a) it was made with the Company's funds, personnel, equipment, supplies, facilities, or Confidential Information, (b) results from work performed by the Executive for the Company, or (c) pertains to the current business or demonstrably anticipated business(es), research or development work of the Company. The Executive shall cooperate with the Company and its attorneys in the preparation of patent and copyright applications for such developments and, upon request and at the sole cost and expense of the Company, shall promptly assign all such inventions, ideas, processes, and designs to the Company. The decision to file for patent or copyright protection or to maintain such development as a Trade Secret, or otherwise, shall be in the sole discretion of the Company, and the Executive shall be bound by such decision. The Executive hereby irrevocably assigns to the Company, for no additional consideration, the Executive's entire right, title and interest in and to all work product and intellectual property rights, including the right to sue, counterclaim and recover for all past, present and future infringement, misappropriation or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's rights, title or interest in any work product or intellectual property rights so as to be less in any respect than the Company would have had in the absence of this Agreement. If applicable, the Executive shall provide as a schedule to this Agreement, a complete list of all inventions, ideas, processes, and designs, if any, patented or unpatented, copyrighted or otherwise, or non-copyrighted, including a brief description, which he made or conceived prior to the Executive's employment with the Company and which therefore are excluded from the scope of this Agreement. References to the Company in this Section 12 shall include the Company, its subsidiaries and affiliates.

13. Indebtedness. If, during the course of the Executive's employment under this Agreement, the Executive becomes indebted to the Company for any reason, the Company may, if it so elects, and if permitted by applicable law, set off any sum due to the Company from the Executive and collect any remaining balance from the Executive unless the Executive has entered into a written agreement with the Company.

14. Assignability. The rights and obligations of the Company under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company, provided that such successor or assign shall acquire all or substantially all of the securities or assets and business of the Company. The Executive's obligations hereunder may not be assigned or alienated and any attempt to do so by the Executive will be void.

15. Severability.

(a) The Executive expressly agrees that the character, duration and geographical scope of the covenants set forth in Section 8 of this Agreement are reasonable in light of the circumstances as they exist on the date hereof. Should a decision, however, be made at a later date by a court of competent jurisdiction that the character, duration or geographical scope of such provisions is unreasonable, then it is the intention and the agreement of the Executive and the Company that this Agreement shall be construed by the court in such a manner as to impose only those restrictions on the Executive's conduct that are reasonable in the light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. If, in any judicial proceeding, a court shall refuse to enforce all of the separate covenants deemed included herein because taken together they are more extensive than necessary to assure to the Company the intended benefits of this Agreement, it is expressly understood and agreed by the parties hereto that the provisions of this Agreement that, if eliminated, would permit the remaining separate provisions to be enforced in such proceeding shall be deemed eliminated, for the purposes of such proceeding, from this Agreement.

(b) If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from either of the parties to the other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provisions were not included.

16. Notices and Addresses. All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by FedEx or similar receipted delivery, or next business day delivery to the addresses detailed below (or to such other address, as either of them, by notice to the other may designate from time to time), or by e-mail delivery (in which event a copy shall immediately be sent by FedEx or similar receipted delivery), as follows:

To the Company:	Better Choice Company Inc. 100 Techne Center Drive, #210 Milford, Ohio 45150 Attention: Damian Dalla-Longa
With a copy to:	Latham & Watkins LLP 885 Third Avenue New York, New York 10028
To the Executive:	Andreas Schulmeyer [* * *]

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be governed or interpreted according to the internal laws of the State of Delaware without regard to choice of law considerations and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, shall also be governed by the laws of the State of Delaware without regard to choice of law considerations.

19. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof (including, without limitation, that certain employment offer term sheet dated as of June 4, 2019). Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.

20. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

21. Section 409A Compliance.

(a) The parties hereto acknowledge and agree that, to the extent applicable, this Agreement shall be interpreted, construed and administered in accordance with Section 409A of the Internal Revenue Code of 1986, as amended, and the Department of Treasury regulations and other interpretive guidance issued thereunder (collectively, "Section 409A"). For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made if such termination of employment constitutes a "separation from service" under Section 409A. Notwithstanding any provision of this Agreement to the contrary, in the event that the Company determines that any amounts payable hereunder will be immediately taxable to the Executive under Section 409A, the Company reserves the right (without any obligation to do so or to indemnify the Executive for failure to do so) to (i) adopt such amendments to this Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Company determines to be necessary or appropriate to preserve the intended tax treatment of the benefits provided by this Agreement, to preserve the economic benefits of this Agreement and to avoid less favorable accounting or tax consequences for the Company and/or (ii) take such other actions as the Company determines to be necessary or appropriate to exempt the amounts payable hereunder from Section 409A or to comply with the requirements of Section 409A and thereby avoid the application of penalty taxes thereunder. In no event shall any liability for failure to comply with the requirements of Section 409A be transferred from Executive or any other individual to the Company or any of its affiliates, employees or agents.

(b) To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(1) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(2) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(3) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

(c) In the event the Company determines that the Executive is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code at the time of the Executive’s separation from service, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement on account of the Executive’s separation from service would be considered deferred compensation subject to Section 409A as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six months and one day after the Executive’s separation from service, or (ii) the Executive’s death (the “Six Month Delay Rule”).

(1) For purposes of this subparagraph, amounts payable under the Agreement should not provide for a deferral of compensation subject to Section 409A to the extent provided in Treasury Regulation Section 1.409A-1(b)(4) (e.g., short-term deferrals), Treasury Regulation Section 1.409A-1(b)(9) (e.g., separation pay plans, including the exception under subparagraph (iii)), and other applicable provisions of the Treasury Regulations.

(2) To the extent that the Six Month Delay Rule applies to payments otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of the Six Month Delay Rule, and the balance of the installments shall be payable in accordance with their original schedule.

(d) Notwithstanding anything to the contrary in this Agreement, to the extent that any payments of “nonqualified deferred compensation” (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are subject to the Executive’s execution, delivery and non-revocation of a Release, (i) the Company shall deliver the Release to the Executive within seven (7) days following the date of termination, and (ii) if the Executive fails to execute the Release on or prior to the Release Expiration Date (as defined below) or timely revokes acceptance of the Release thereafter, the Executive shall not be entitled to any payments or benefits otherwise conditioned on the Release. For purposes of this Section 21(d), “Release Expiration Date” shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers the Release to the Executive, or, in the event that the Executive’s termination of employment is “in connection with an exit incentive or other employment termination program” (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty- five (45) days following such delivery date. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of the Executive’s termination of employment are delayed pursuant to Section 6(c) and this Section 21(d), such amounts shall be paid in a lump sum on the first payroll date to occur on or after the 60th day following the date of termination, provided that, as of such 60th day, the Executive has executed and has not revoked the Release (and any applicable revocation period has expired).

22. Compensation Recovery Policy. The Executive acknowledges and agrees that, to the extent the Company adopts any clawback or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, the Executive shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy).

[Signature Page To Follow]

IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date and year first above written.

**COMPANY:**

Better Choice Company Inc.

By: /s/Damian Dalla-Longa

Name: Damian Dalla-Longa

Title: Co-Chief Executive Officer

**EXECUTIVE:**

By: /s/Andreas Schulmeyer

Name: Andreas Schulmeyer

**Exhibit A**  
**Target Bonus**

A bonus at the discretion of the Board of Directors, but not less than 25% of Executive's Base Salary. The bonus shall be prorated for any period of employment which is less than a full year.

For the avoidance of doubt, the Executive's target bonus shall be subject to review and adjustment by the Board in a manner consistent with the Board's review and adjustment of the target bonuses of other executive officers of the Company.

**Exhibit B**  
**Equity Awards**

On the day after the date the Executive signs this Agreement, the Executive shall receive an award under the Plan of options for 500,000 shares with an exercise price equal to the closing price per share on the applicable grant date. The award shall vest in equal installments monthly over two years, with the first monthly vesting on July 29, 2019, with such first installment subject to the Executive's commencement of full-time employment with the Company as of the Effective Date and all subsequent installments subject to the Executive's continued employment with the Company through the applicable vesting date. Any exercise may, at the election of Executive, be exercised with a "cashless exercise" by using shares from any such exercise to pay the exercise price, which shares, for such purpose, being valued at the fair market value, as determined under the Plan, on the date of exercise.

For the avoidance of doubt, it is understood by the Executive that any future Equity Awards will be in accordance with the Company's post-IPO Management Incentive Plan, to be adopted in connection with the initial offering of Shares by the Company to the public pursuant to a listing on a national securities exchange. For the avoidance of doubt, any future Equity Awards shall be determined by the Board in a manner consistent with the Board's determination of future equity awards to other executive officers of the Company.

**Exhibit C**  
**Indemnification Agreement**

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**LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "Agreement") is made and entered into by and between BETTER CHOICE COMPANY INC., a Delaware corporation ("Borrower"), and FRANKLIN SYNERGY BANK, a Tennessee banking corporation ("Lender"), as of this 6<sup>th</sup> day of May, 2019 (the "Closing Date").

WITNESSETH:

WHEREAS, Borrower has requested that Lender extend the credit facility to Borrower described herein; and

WHEREAS, subject to the terms and conditions hereof, Lender has agreed to extend such credit facility to Borrower conditioned upon Borrower entering into this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS AND USAGE

Section 1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings, unless the context expressly requires otherwise:

(a) "Advance" means any advance or other extension of credit made by Lender to Borrower pursuant to this Agreement and the Promissory Note.

(b) "Assignment of Deposit Account" means that certain Assignment of Deposit Account executed by Borrower in favor of Lender with respect to the Money Market Account and dated as of even date herewith.

(c) "Authorized Representative" means the following, each of whom must be satisfactory to Lender for the specific purposes involved and appropriate to the type of person involved: (a) with respect to a corporation, the officer or officers of the corporation that are duly authorized to act for the corporation in the specified capacity under the Organizational Documents of the corporation or applicable law; (b) with respect to a partnership, the general partner or general partners of the partnership that are duly authorized to act for the partnership in the specified capacity under the Organizational Documents of the partnership or applicable law; (c) with respect to a limited liability company, the manager or members of the limited liability company that are duly authorized to act for the limited liability company in the specified capacity under the Organizational Documents of the limited liability company or applicable law; (d) with respect to a natural person, the natural person if competent and authorized to act for himself or herself in the specified capacity under applicable law, or if not, any guardian, custodian, personal representative or other person that is authorized to act for such natural person in the specified capacity under applicable law; (e) with respect to a trust, the trustee or trustees of the trust who are duly authorized to act for the trust in the specified capacity under the Organizational Documents of the trust or applicable law; and (f) with respect to any other type of organization, the officers, directors, managers, officials or other representatives of the organization that are duly authorized to act for the organization in the specified capacity under the Organizational Documents of the organization or applicable law.

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(d) “Business Day” means any day other than a Saturday, Sunday or day on which commercial banks are authorized to close under the laws of the state in which notices are to be sent to Lender under Section 10.1 hereof.

(e) “Code” means the Internal Revenue Code of 1986, as amended from time to time.

(f) “Collateral” means any and all collateral securing or intended to secure the Obligations, as described in Article III hereof.

(g) “Commitment Fee” means an amount equal to TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00).

(h) “Conditions Precedent” means those matters or events that by the terms of the Loan Documents must be completed or must occur or exist before Lender would become obligated to fund any Advance, including those matters described in Article IV hereof.

(i) “Debt” means all of a Person’s obligations, contingent or otherwise, that would be classified on its balance sheet as its liabilities in accordance with GAAP, including, in any event and without limitation, (a) liabilities secured by any mortgage, pledge or lien existing on Property owned by such Person, whether or not the liability secured thereby has been assumed by such Person; (b) all indebtedness and other similar monetary obligations of such Person; (c) all guaranties, obligations in respect of letters of credit, endorsements (other than endorsements of negotiable instruments for purposes of collection in the ordinary course of business), obligations to purchase goods or services for the purpose of supplying funds for the purchase or payment of Debt of others and other contingent obligations in respect of, or to purchase, or otherwise acquire, or advance funds for the purchase of, Debt of others; (d) all obligations of such Person to indemnify another Person to the extent of the amount of indemnity, if any, that would be payable by such Person at the time of determination; (e) the principal portion of all obligations of such Person under capital leases (specifically excluding obligations under operating leases), (f) all obligations of such Person to purchase or repurchase any accounts, instruments, chattel paper or general intangibles and (g) all obligations of such Person under any Hedging Agreement.

(j) “Default” means the occurrence of any Event of Default specified in Article 8 hereof, even though any requirement for notice or lapse of time or other condition precedent has not been satisfied.

(k) “Default Rate” means the lesser of (a) five percent (5%) above the Effective Rate, or (b) the highest interest rate permitted by applicable law.

(l) “Dollar(s)” and the sign “\$” shall mean lawful money of the United States of America.

(m) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

(n) “Effective Rate” has the meaning ascribed to that term in the Note.

(o) “Event of Default” means the occurrence of any of the events specified in Article 8 hereof, provided that any requirement in Article 8 for notice or lapse of time or other condition precedent has been satisfied.

(p) “Financial Statements” means those financial statements of Borrower heretofore or hereafter delivered to Lender meeting the requirements in Section 6.11 hereof.

(q) “GAAP” means generally accepted accounting principles as in effect from time to time.

(r) “Governmental Authority” means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(s) “Governmental Requirements” means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices, determination, award, franchises, permits, licenses, authorizations, and demand letters of any Governmental Authority.

(t) “Guarantor” means, collectively, TruPet, LLC, a Delaware limited liability company, and Bona Vida Inc., a Delaware corporation.

(u) “Lender’s Office” means the office location of Lender where notices are to be sent as set forth in Section 10.1 hereof.

(v) “Lien” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute, or contract, and including the lien or security interest arising from a mortgage, encumbrance, pledge, security agreement, conditional sale, sale of accounts or general intangibles, trust receipt or a lease, consignment, or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting any Property. For the purposes of this Agreement, Borrower shall be deemed to be the owner of any Property that it has acquired or holds subject to a conditional sale agreement, financing lease, or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

(w) “Loan” means the loan facility described in Section 2.1 hereof and evidenced by this Agreement and the Note.

(x) “Loan Amount” means an amount equal to SIX MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,200,000.00); provided, however, that in the event Borrower desires to decrease amount on deposit in the Money Market Account, as a condition to such withdrawal the Loan Amount shall likewise be reduced and Borrower shall execute such documents as Lender may require to evidence such reduced Loan Amount.

(y) “Loan Documents” means, collectively, all of the agreements, documents, papers and certificates executed, furnished or delivered in connection with this Agreement (whether before, at, or after the Closing Date) or at any time evidencing or securing any of the Obligations, including this Agreement, the Note, the Security Documents and all other documents, certificates, reports, and instruments that this Agreement requires or that were executed or delivered (or both) at Lender’s request.

(z) “Material Adverse Effect” or “Material Adverse Change” means, as applicable, a material adverse effect on, or material adverse change in, (a) the business, operations or financial condition of Borrower, (b) the ability of Borrower to perform its obligations under the Loan Documents, or (c) Lender’s ability to enforce the rights and remedies granted under the Loan Documents, in all cases whether attributable to a single circumstance or event or an aggregation of circumstances or events.

(aa) “Maturity Date” has the meaning ascribed to that term in the Note.

(bb) “Money Market Account” means that certain Money Market Account Number 3048303 owned by Borrower and held by Lender.

(cc) “Note” means that certain Revolving Promissory Note made by Borrower payable to the order of Lender and dated as of even date herewith.

(dd) “Obligations” means any and all amounts and liabilities of any nature owing or to be owing by Borrower to Lender from time to time in respect of the Loan, whether now existing or hereafter incurred, and all of Borrower’s undertakings in and under the Loan Documents including all agreements, representations, warranties, and covenants therein and all renewals, extensions, modifications, increases, restatements and amendments of any of the foregoing.

(ee) “Obligors” means any and all accommodation parties, endorsers, surety, guarantors and other parties liable on the Note (and, if applicable, any and all general partners of Borrower), including without limitation, subject to the completion of the mergers set forth in Section 2.2, Guarantor.

(ff) “Organizational Documents” means with respect to a corporation, its charter and bylaws, with respect to a limited liability company, its articles of organization and operating agreement, with respect to a limited partnership, its certificate of limited partnership and limited partnership agreement, with respect to a general partnership, its partnership agreement and with respect to a trust, its trust agreement, indenture of trust or other document establishing the trust, together with any and all amendments to any of the foregoing.

(gg) “PBGC” means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

(hh) “Person” (whether or not capitalized) means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof, or any other form of entity.

(ii) "Plan" means any employee benefit or other plan established or maintained, or to which contributions have been made, by Borrower and covered by Title IV of ERISA or to which Section 412 of the Code applies.

(jj) "Property" or "Properties" means any interest in any kind of property or asset, whether real, personal, mixed, tangible or intangible.

(kk) "Security Agreement" means that certain Assignment and Security Agreement dated of even date herewith executed by Borrower (as Debtor) in favor of Lender (as Secured Party).

(ll) "Security Documents" means any and all agreements or instruments creating, evidencing or providing security at any time for the Obligations, including the Security Agreement and appropriate UCC-1 financing statements identifying Borrower as debtor and Lender as secured party.

(mm) "Service Contract" means a written contract pursuant to which Borrower is to provide equipment and services to third party customers, in each case to be evidenced by a written contract satisfactory to Lender.

(nn) "Solvent" means, with respect to any Person on a particular date, that as of such date (a) the fair value of the Property of such Person is greater than the total amount of Debt of such Person, (b) the present fair salable value of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its Debts as they become absolute and matured, (c) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which the Property of such Person would constitute an unreasonably small capital, and (d) such Person does not intend to, or believe or reasonably should have believed that it will, incur Debts beyond its ability to repay as they become due.

(oo) "State" means the state of Borrower's incorporation, organization or formation, as the case may be, which is described in the preamble of this Agreement.

(pp) "Transfer" means any voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

(qq) "UCC" means the Uniform Commercial Code as in effect in the State, or, with respect to any particular matter, the Uniform Commercial Code as in effect in such other jurisdiction as may be required by law to govern such matter.

Section 1.2 Rules of Construction. For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.
- (b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits or numbered Schedules are to the designated Articles, Sections and subdivisions hereof and the Exhibits and Schedules attached hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit and Schedule captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this Agreement.
- (c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."
- (d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, other subdivision, Exhibit or Schedule.
- (e) All Recitals set forth in, and all Exhibits and Schedules to, this Agreement are hereby incorporated into this Agreement by this reference except that in the event of any conflict between an Exhibit and/or Schedule and this Agreement or another Loan Document, the provisions of this Agreement or the Loan Document, as the case may be, shall prevail over such Exhibit and/or Schedule. Terms otherwise defined in the preamble or recitals hereof are incorporated into Section 1.1 hereof by this reference.
- (f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.
- (g) All references in this Agreement to a separate promissory note, deed of trust, instrument or other type of agreement are to such separate document as the same may be amended, restated, modified and/or supplemented from time to time pursuant to the applicable provisions thereof. Unless otherwise provided, all references to statutes and related regulations shall include any amendments thereof and any successor statutes and regulations.
- (h) The words "Borrower" and "Lender" whenever used herein shall include the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under any of them.
- (i) Any appointment of Lender as Borrower's attorney-in-fact hereunder shall be deemed irrevocable and coupled with an interest.
- (j) Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, such determination or calculation, to the extent applicable and except as otherwise specified in this Agreement, shall be made in accordance with GAAP consistent with those in effect at the Closing Date.
- (k) Terms used in this Agreement and defined in the UCC shall have the same meanings herein, except as otherwise expressly provided or amplified (but not limited) herein.

(l) The terms of this Agreement shall govern if determined to be in conflict with the terms or provisions in any other Loan Document.

ARTICLE 2  
LOAN FACILITY

Section 2.1 Loan Facility. Subject to the conditions and pursuant to the terms of the Loan Documents and in reliance upon the representations, warranties, and covenants set forth in the Loan Documents, and provided no Default or Event of Default has occurred, Lender agrees to make Advances under the Note from time to time in an aggregate amount less than or equal to the Loan Amount.

Section 2.2 Purpose. The proceeds of the Loan shall be used by Borrower refinancing of certain debt of the Guarantor entities in conjunction with a merger of the Guarantor entities into Borrower and other business purposes of Borrower.

Section 2.3 Interest; Repayment. The Loan shall bear interest at the Effective Rate and shall be repaid in accordance with the terms of the Note, provided, that all Obligations shall be due and payable in full on the Maturity Date.

Section 2.4 Borrowing Procedures. An Authorized Representative of Borrower shall request Advances be made to an operating account maintained with Lender. Upon satisfaction of the Conditions Precedent, Lender shall make the Advance by depositing the funds being advanced into Borrower's operating account with Lender on the date specified in such request, provided that if a request for an Advance is received by Lender later than 12:00 p.m. on a business day, Lender shall not be obligated to make such Advance until the next Business Day. Each request verbal or written by Borrower for any Advance shall constitute a representation and warranty by Borrower, as of the date the request or notice is given and as of the date of the Advance, that (i) such Authorized Representative of Borrower does not have knowledge of any Event of Default; and (ii) the representations and warranties contained herein are and will be true and correct, except as to changes occurring after the date of this Agreement caused by events, actions or transactions permitted under this Agreement.

Section 2.5 Payments; Debit Authority. Each payment under the Note (including any prepayment and payment of interest) shall be made to Lender at Lender's Office in Dollars and in immediately available funds on the date required by the Loan Documents. Lender may, but shall not be obligated to, debit the amount of any such payment which is not made by such time to any ordinary deposit account of Borrower with Lender. Any payment received by Lender after 2:00 p.m. at Lender's Office on a Business Day (or at any time on a day that is not a Business Day) shall be deemed made by Borrower and received by Lender on the following Business Day. Payments that are due on a day that is not a Business Day shall be payable on the next succeeding Business Day, and any interest payable thereon shall be payable for such extended time at the interest rate specified in the Loan Documents.

Section 2.6 Commitment Fee. Borrower shall pay to Lender the Commitment Fee on the Closing Date in consideration of Lender's reserving and making available the money to fund the Note, and is payable by Borrower as compensation for Lender's standing ready to lend pursuant to this Agreement. This fee shall be deemed to have been unconditionally earned by Lender upon the closing of the Loan, whether or not any proceeds of the Note are thereafter requested by Borrower or advanced by Lender.

Section 2.7 Required Prepayment. Upon the occurrence of an Event of Default, at Lender's option, all of the Obligations shall be payable immediately in cash or on such other terms as Lender may require.

Section 2.8 Optional Prepayment. Borrower may prepay the Loan in whole or in part without premium or penalty.

Section 2.9 Usury. The parties to this Agreement intend to conform strictly to applicable usury laws as presently in effect. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the United States of America and the state in which Lender's Office is located), then, in that event, notwithstanding anything to the contrary in any Loan Document or agreement executed in connection with or as security for the Obligations, Borrower and Lender agree as follows: (i) the aggregate of all consideration that constitutes interest under applicable law which is contracted for, charged, or received under any of the Loan Documents or agreements, or otherwise in connection with the Obligations, shall under no circumstance exceed the maximum lawful rate of interest permitted by applicable law, and any excess shall be credited on the Obligations by the holder thereof (or, if the Obligations shall have been paid and performed in full, refunded to Borrower); and (ii) in the event that the maturity of the Obligations is accelerated by reason of an election of the holder resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount of interest permitted by applicable law, and excess interest, if any, for which this Agreement provides, or otherwise, shall be canceled automatically as of the date of such acceleration or prepayment and, if previously paid, shall be credited on the Obligations (or, if the Obligations have been paid and performed in full, refunded to Borrower).

### ARTICLE 3 COLLATERAL

Section 3.1 Collateral. The Obligations shall be secured by the following "Collateral," all of which shall be in such form and upon such terms and conditions satisfactory to Lender:

- (a) Security Agreement. A first perfected security interest in all of Borrower's present and hereafter interest in the Property described in the Security Agreement.
- (b) Assignment of Deposit Account. A collateral assignment of the Money Market Account pursuant to the Assignment of Deposit Account.
- (c) Accounts. A first perfected security interest in all of Borrower's operating and deposit accounts held with Lender.
- (d) Guaranties. Subject to the completion of the mergers set forth in Section 2.2, fully executed Guaranty Agreements executed by Guarantor.

(e) Other Documents. Such other documents, agreements, financing statements, affidavits, approvals, consents, opinions and other documents as Lender and its legal counsel deem necessary to adequately secure the Obligations.

Section 3.2 Release of Collateral. Provided no Default or Event of Default has occurred and is continuing, Lender shall release its lien against the Collateral upon Borrower's satisfaction and payment in full of the Obligations.

#### ARTICLE 4 CONDITIONS PRECEDENT

Lender's obligation to make the initial Advance on the Closing Date and each subsequent Advance is subject to the Conditions Precedent that Lender shall have received (or agreed in writing to waive or defer receipt of) all of the following, each duly executed, dated and delivered as of the Closing Date or the date of each Equipment Loan, in form and substance satisfactory to Lender and its legal counsel:

Section 4.1 Loan Documents. The Loan Documents, all duly executed and delivered by Borrower, and/or the other parties thereto, as applicable, and, in the case of each subsequent Advance subject to the completion of the mergers set forth in Section 2.2, each Guarantor, in such form as is satisfactory to Lender and its legal counsel.

Section 4.2 Organizational Documents. Copies of the Organizational Documents of Borrower, as amended to the Closing Date, certified by an Authorized Representative of Borrower and, in the case of each subsequent Advance subject to the completion of the mergers set forth in Section 2.2, copies of the Organizational Documents of each Guarantor certified by an Authorized Representative of each Guarantor.

Section 4.3 Resolutions. Certified copies of resolutions of the governing bodies of Borrower and, in the case of each subsequent Advance subject to the completion of the mergers set forth in Section 2.2, each Guarantor, authorizing the execution, delivery, and performance of all Loan Documents to which each is a party.

Section 4.4 Related Entity Documents. If Borrower has, directly or indirectly, any general partner, member, director, shareholder or other affiliated or related entity that is not a natural person and that is required to take any action or give any consent or approval (in the opinion of Lender or its legal counsel) in connection with the Loan, Borrower shall furnish to Lender appropriate certificates, Organizational Documents, resolutions and other documents for such related entity similar to those required of Borrower in this Article IV.

Section 4.5 Certificate of Existence. A certificate of existence regarding Borrower certified by the Secretary of State of the State, containing no facts objectionable to Lender.

Section 4.6 Intentionally Deleted.

Section 4.7 Financial Statements. The respective Financial Statements of, all containing no matters objectionable to Lender.

Section 4.8 Insurance. Evidence that Borrower has obtained policies of insurance as required by this Agreement and the Security Documents.

Section 4.9 Identification. The taxpayer identification number of.

Section 4.10 Patriot Act. Evidence as satisfactory to Lender that Borrower is in compliance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as such may be amended from time to time.

Section 4.11 UCC Searches. Lender shall have received, at Borrower's expense, reports of searches of the central and local UCC records indicating no liens for Borrower objectionable to Lender.

Section 4.12 Other. Such other evidence, documents, certificates and items requested by Lender that are customarily provided in loan transactions of this type or necessary in connection with any other requirement hereof.

Section 4.13 Adverse Change. There shall not have occurred, in the opinion of Lender, any Material Adverse Change regarding any facts submitted to Lender in connection with the Loan from that which existed at the time Lender considered the issuance of the commitment letter for the Loan. In addition, Borrower shall not be involved in any litigation threatened or existing against Lender or any affiliate of Lender.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

As an inducement to Lender to enter this Agreement and make the Loan, Borrower represents and warrants to Lender that as of the Closing Date, and again as of the date of any Equipment Loan:

Section 5.1 Existence; Qualification. The entity type of Borrower is correctly described in the preamble hereof, and Borrower is duly organized, legally existing and in good standing under the laws of the State.

Section 5.2 Power and Authorization. (a) Borrower has the requisite power and authority to own its Properties and to transact the business in which it is now engaged or proposed to be engaged in; (b) Borrower is duly authorized and empowered to execute and deliver, and to perform and observe the terms and provisions of the Loan Documents to which it is a party and to carry out the transactions contemplated hereby and thereby; (c) all action on Borrower's part required to be taken for the due execution, delivery and performance of the Loan Documents has been duly and effectively taken; and (d) Borrower is duly qualified to do business in every jurisdiction where the character of its Properties or the nature of its activities makes such qualification necessary.

Section 5.3 Binding Obligations. This Agreement is, and the other Loan Documents, when executed and delivered in accordance with this Agreement, will be, legal, valid and binding obligations upon and against Borrower enforceable in accordance with their respective terms, subject to no defense, counterclaim, set off, or objection of any kind. Lender has taken no action nor has it failed to take any action that subjects Lender to any liability to Borrower.

Section 5.4 No Consent. The execution, delivery or performance of the Loan Documents by Borrower to which it is a party does not and will not require any registration with, consent or approval of, or notice to, or action by, any other Person.

Section 5.5 Location. Borrower's jurisdiction of organization is as set forth herein. Borrower shall notify Lender within at least thirty (30) days following any change in the location of its jurisdiction of organization.

Section 5.6 Financial Condition. The Financial Statements of Borrower heretofore delivered to Lender have been prepared in accordance with the accounting standards required by this Agreement, and present fairly in all material respects the financial condition of Borrower, as of the date or dates and for the period or periods stated therein, subject to finalizing adjustments determined not to be material. No Material Adverse Change has occurred since the date of such Financial Statements.

Section 5.7 Title. Borrower has good and marketable title to its Properties, free and clear of all Liens except those referenced or reflected in the Financial Statements of Borrower or those Liens securing the Obligations.

Section 5.8 Intellectual Property. Borrower possesses or has the right to use all trademarks, service marks, copyrights, trade names, patents, licenses, and other intellectual property, and rights therein, as are necessary for the conduct of its business as now conducted and presently proposed to be conducted, without conflict with the rights or claimed rights of others.

Section 5.9 Priority. The Loan Documents, when executed, acknowledged and delivered, and filed and recorded, as appropriate, grant to Lender a valid, enforceable and perfected first priority Lien in all Property in which such documents purport to convey or grant to Lender a lien or security interest. No chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement, except those executed in favor of or with the prior written consent of Lender, has been or will be executed with respect to such Property, and no Lien has attached or will attach with respect to such Property.

Section 5.10 No Legal Bar or Resultant Lien. Borrower's execution, delivery and performance of this Agreement and the other Loan Documents and the consummation of the transactions contemplated herein and therein, does not and will not: (a) contravene or breach any provisions of its Organizational Documents; (b) cause Borrower to be in default under, and will not violate any provisions of any Governmental Requirement presently in effect having application to Borrower or to the Property of Borrower; (c) result in any breach of, or constitute any default under, any indenture, mortgage, deed of trust, loan or credit agreement, or any other agreement, contract, lease or instrument to which Borrower is a party or by which Borrower may be bound or affected; or (d) result in, or require, the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by Borrower other than Permitted Encumbrances, Liens contemplated by the Loan Documents or Liens otherwise disclosed to, and approved by, Lender in the Financial Statements of Borrower, and Borrower is not in violation of, has not breached, or is in default under any of the foregoing.

Section 5.11 Investments, Advances, and Guaranties. Borrower has not made investments in, advances to, or guaranties of the obligations of any Person, or committed or agreed to undertake any of these actions or obligations, except as referred to or reflected in the Financial Statements of Borrower.

Section 5.12 Liabilities; Litigation; Labor Disputes; Etc. Borrower has no material liabilities (individually or in the aggregate) direct or contingent, except as reflected in the Financial Statements of Borrower. Except as reflected in such Financial Statements, there is no litigation, legal or administrative proceeding, investigation, or other action of any nature pending or, to the best knowledge of Borrower, threatened against or affecting Borrower that involves the possibility of any judgment or liability not fully covered by insurance. In addition, Borrower is not involved in any litigation threatened or existing against Lender or any affiliate of Lender. Borrower has not recently experienced and is not now experiencing any strike, labor dispute, slowdown, or work stoppage due to labor disagreements, and no such strike, dispute, slowdown, or work stoppage is threatened against Borrower.

Section 5.13 Compliance with Laws, Etc. Borrower is not in violation of, nor has Borrower received notice of any violation of, any Governmental Regulation to which Borrower or any of its Properties are subject. Borrower has not failed to obtain any license, permit, franchise, or other governmental authorization necessary to the ownership of any of its Properties or to the conduct of its business.

Section 5.14 Taxes; Governmental Charges. Borrower has filed or caused to be filed all tax returns and reports required to be filed with any Governmental Authority and Borrower has paid all due and payable taxes, assessments, fees, and other governmental charges levied upon it or upon any of its Properties or income, including interest and penalties, required to be paid to any Governmental Authority. Borrower has made all required withholding deposits.

Section 5.15 No Default. Borrower is not in default in any respect that affects its business, Properties, operations, or condition, financial or otherwise, under any indenture, mortgage, deed of trust, credit agreement, note, agreement, or other instrument to which Borrower is a party or by which it or its Properties are bound. Borrower is not in violation of its Organizational Documents. No Default or Event of Default has occurred as of the Closing Date.

Section 5.16 ERISA. Borrower is in compliance in all material respects with the applicable provisions of ERISA. Borrower has not incurred any material "accumulated funding deficiency" within the meaning of ERISA, and has not incurred any material liability to PBGC in connection with any Plan.

Section 5.17 Casualties; Taking of Collateral, Etc. Neither the business of Borrower nor the Collateral has been affected as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labor disturbance, embargo, cancellation of contracts, permits, concessions by any domestic or foreign government or any agency thereof, riot, activities of armed forces or Acts of God or of any public enemy.

Section 5.18 No Material Misstatements. No information, exhibit, or report furnished or to be furnished by Borrower to Lender in connection with this Agreement contain, as of the date thereof, or will contain as of the Closing Date, any material misstatement of fact or failed or will fail to state any material fact, the omission of which would render the statements therein materially false or misleading.

Section 5.19 Regulation U. Borrower does not intend to use any part of the proceeds of the Loan, and has not incurred any indebtedness to be reduced, retired or purchased by it out of such proceeds, for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, and it does not own and has no intention of acquiring any such margin stock.

Section 5.20 Solvency. Borrower is Solvent as of the Closing Date.

#### ARTICLE 6 AFFIRMATIVE COVENANTS

Borrower covenants that, during the term of this Agreement and until all Obligations shall have been paid and performed in full, unless Lender shall otherwise first consent in writing, Borrower shall:

Section 6.1 Payment and Performance. Pay and perform the Obligations according to the terms of the Loan Documents and do and perform, and cause to be done and to be performed, every act and discharge all of the Obligations provided to be performed and discharged by Borrower under the Loan Documents, at the time or times and in the manner specified.

Section 6.2 Expenses. Borrower agrees to pay on demand all out of pocket costs and expenses of Lender (including the reasonable fees and out of pocket expenses of Lender's attorneys, paralegals, accountants, auditors, and consultants) incurred by Lender in connection with the preparation, execution, delivery, administration, interpretation, amendment, waiver or enforcement of this Agreement or the other Loan Documents, or in the protection of Lender's rights under the Loan Documents (including any suit for declaratory judgment or interpretation of the provisions hereof and any bankruptcy, insolvency or condemnation proceedings involving Borrower, its Property, and/or any Collateral). In addition, Borrower agrees to pay, and to hold Lender harmless from all liability for, any stamp, recording, intangibles or other taxes payable in connection with the execution or delivery of this Agreement, the Advances, the Collateral, or the issuance or delivery of the Note or any other Loan Documents, excluding, however, taxes based upon the income or assets of Lender. Upon Lender's request, Borrower shall promptly reimburse Lender for all amounts expended, advanced, or incurred by Lender in endeavoring to satisfy any obligation of Borrower under this Agreement or any other Loan Documents, or to perfect a Lien in favor of Lender, or to protect the Property or to collect the Obligations, or to enforce or protect the rights of Lender under this Agreement or any other Loan Document, including all court costs, attorney's and paralegal's fees, fees of auditors and accountants, and investigation expenses reasonably incurred by Lender in connection with any such matters, and all such amounts shall bear interest at the Default Rate until paid in full. All obligations of Borrower under this Section shall be part of the Obligations and shall survive any termination of this Agreement.

Section 6.3 ERISA Information and Compliance. Comply with ERISA and all other applicable laws governing any pension or profit sharing plan or arrangement to which Borrower is a party. Borrower shall provide Lender with notice of any "reportable event" or "prohibited transaction" or the imposition of a "withdrawal liability" within the meaning of ERISA.

Section 6.4 Taxes and Other Liens. Promptly pay and discharge (in any event, prior to delinquency) all taxes, assessments, and governmental charges or levies imposed upon it or upon any of its Properties by any Governmental Authority as well as all claims of any kind (including claims for labor, materials, supplies, and rent) which, if unpaid, might become a Lien upon any or all of its Properties; provided, however, that Borrower shall not be required to pay any such tax, assessment, charge, levy, or claim if the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings diligently conducted and if Borrower shall establish reserves therefor adequate under GAAP.

Section 6.5 Maintenance. (a) Do or cause to be done all things necessary to preserve and keep in full force and effect Borrower's entity existence, name, rights, and franchises; (b) maintain the Property in good and workable condition at all times and continue its ownership in the same, and make all repairs, replacements, additions, and improvements thereto reasonably necessary and; and (c) maintain capital sufficient to operate its business and to perform and/or pay all Obligations as they become due.

Section 6.6 Further Assurances. Promptly cure any defects in the creation, issuance, and delivery of the Loan Documents at Borrower's expense. Borrower, at Borrower's expense, will promptly execute and deliver to Lender upon request all such other and further agreements and instruments in compliance with or accomplishment of the covenants and agreements of Borrower in the Loan Documents, or to evidence further and to describe more fully any Collateral, or to correct any omissions in the Loan Documents, or to state more fully the Obligations and agreements set out in any of the Loan Documents, or to perfect, protect, or preserve any Liens created pursuant to any of the Loan Documents, or to make any recordings, to file any notices, or to obtain any consents, all as may be reasonably necessary or appropriate in connection therewith for so long as those "further assurances" advance the spirit and letter of this Agreement.

Section 6.7 Compliance with Laws. Observe and comply with all applicable Governmental Regulations, including all labor laws, to which Borrower, or any of Borrower's Properties are subject, and will promptly pay when due all taxes and assessments upon Borrower's Properties, and all claims for labor or materials, rents, and other obligations that, if unpaid, will or might become a Lien against Borrower's Properties. In the event any such liability or obligation is contested by Borrower in good faith, Borrower shall establish reserves with Lender and/or obtain a bond in amount, form and substance satisfactory to Lender to meet such liabilities or obligations.

Section 6.8 Books and Records. Keep books of record and account, in which full, true, and correct entries will be made of all dealings or transactions in accordance with sound accounting principles consistently applied, except only for changes in accounting principles or practices with which Borrower's certified public accountants concur and which changes have been reported to Lender in writing and with an explanation thereof. Borrower's books and records shall at all times be maintained at the address for Borrower set forth in this Agreement. Lender, or any of its agents, employees, or representatives, at Lender's expense shall have the right to visit Borrower's place or places of business, at intervals determined by Lender, and, without hindrance or delay, to inspect, audit, check, and make extracts from the books, records, journals, orders, receipts, correspondence, and other data relating to Borrower's operations; provided that upon the occurrence and during the continuance of an Event of Default and after the expiration of any applicable notice and cure periods, the cost of such review shall be at Borrower's expense. Lender shall have the right to discuss such matters with Borrower's Authorized Representatives and accountants at all times.

Section 6.9 Notice of Certain Events. Promptly give to Lender, if Borrower learns of the occurrence of any of the following events, notice of (a) any event that constitutes a Default or Event of Default, together with a detailed statement by a responsible officer of Borrower of the steps being taken as a result thereof; (b) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture, or other evidence of Debt of Borrower or of any security (as defined under the Securities Act of 1933, as amended) of Borrower with respect to a claimed default, together with a detailed statement by a responsible officer of Borrower specifying the notice given or other action taken by such holder and the nature of the claimed default and what action Borrower is taking or proposes to take with respect thereto; (c) any legal, judicial, or regulatory proceedings affecting Borrower in which the amount involved is material and is not covered by insurance or which, if adversely determined, would have a Material Adverse Effect; (d) any dispute between Borrower and any Governmental Authority or any other Person which, if adversely determined, might interfere with the normal business operations of Borrower; or (e) any Material Adverse Changes from any facts reflected in the financial statements of Borrower delivered to Lender pursuant to this Agreement or from the facts warranted or represented in any Loan Document.

Section 6.10 Insurance. Obtain and maintain, in amount, form and substance, and with insurers satisfactory to Lender, and shall provide to Lender evidence of, the following insurance in connection with the Loan and the Property:

(a) General Liability. Commercial general liability insurance in an amount not less than \$1,000,000.00 on an "occurrence basis" and \$2,000,000.00 on an aggregate basis insuring Borrower and Lender against claims for personal injury, including bodily injury, death or property damage. Said insurance is to be kept in full force and effect at all times throughout the term of this Agreement until the full payment and performance of the Obligations.

(b) Worker's Compensation. Worker's compensation insurance covering Borrower and its employees, as required by applicable law, which shall contain an agreement to notify Lender in writing at least thirty (30) days prior to any cancellation or amendment of such policy. Said insurance is to be kept in full force and effect at all times throughout the term of this Agreement until the full payment and performance of the Obligations.

(c) Other. Such other insurance, in such amounts and for such terms, as may from time to time be reasonably required by Lender insuring against such other casualties or losses which at the time are commonly insured against by those in Borrower's business.

The policy described in (a) above shall be evidenced by an Acord 25 certificate naming Lender as additional insured (and an additional insured endorsement to said policy in form and substance satisfactory to Lender shall be delivered to Lender on or prior to the Closing Date) and shall provide that Lender shall receive not less than thirty (30) days written notice prior to amendment or cancellation. Borrower will notify Lender of any change in the status of the insurance required above within five (5) Business Days of Borrower's receipt of notice of any such change. The proceeds of the policy described in (a) above shall be payable by check to Lender or jointly payable to Borrower and to Lender, in Lender's discretion, and shall be delivered to Lender, and such proceeds (after deducting Lender's reasonable costs and expenses of obtaining such proceeds) shall be applied by Lender, at Lender's sole option.

Section 6.11 Financial Statements and Reports. Promptly furnish to Lender:

(a) As soon as available, and in any event within thirty (30) days after the end of each calendar month, Borrower shall furnish to Lender monthly company prepared financial statements of Borrower prepared by Borrower and certified as true and correct by an Authorized Representative of Borrower.

(b) Borrower shall cause Lender to receive the annual local, state and federal tax returns for Borrower for the immediately preceding month within thirty (30) days following the filing of such tax return with the applicable governmental entity during the term of the Loan and until the Note has been repaid in full. Each tax return shall be certified as true and correct by an Authorized Representative of Borrower.

(c) Following the occurrence of a Default or an Event of Default and upon Lender's request thereafter, Borrower shall provide to Lender updated financial statements for Borrower within ten (10) days from the date of the such request, which shall be certified as true and correct by an Authorized Representative Borrower. Except as otherwise provided in this Section, the financial statements required under this Section shall be prepared using GAAP and shall include a balance sheet, an income statement, a statement of cash flow, a statement of contingent liabilities, and such other information as may be requested by Lender.

Section 6.12 Capital. At all times maintain capital sufficient to operate its business and to perform and/or pay all Obligations as they become due, including payments due with respect to the Note.

Section 6.13 Intentionally Deleted

## ARTICLE 7 NEGATIVE COVENANTS

Borrower covenants and agrees that, during the term of this Agreement and until all Obligations shall have been paid and performed in full, unless Lender shall otherwise first consent in writing, Borrower will not, either directly or indirectly:

Section 7.1 Transfer. Transfer, or permit to exist any Transfer of, or Lien on, the Collateral, except, subject to all other provisions of this Article, the foregoing restrictions shall not apply to sales or leases otherwise permitted by Lender in writing.

Section 7.2 Proceeds of Loan. Permit the proceeds of the Loan to be used for any purpose other than those permitted under this Agreement.

Section 7.3 Structure. Suffer or permit any material change to be made to Borrower's ownership or management structure or the character of its business as carried on as of the Closing Date without the prior written consent of Lender. Notwithstanding the foregoing, Borrower intends to merge both Guarantor entities into Borrower, and nothing in this Agreement shall be deemed to prevent such merger or to constitute a default or Event of Default in the event such mergers occur.

Section 7.4 Assignment. Assign or transfer any of Borrower's rights, remedies, powers, duties, liabilities or obligations arising under or pursuant to any of the Loan Documents.

Section 7.5 Additional Debt. Incur, create, assume, or in any manner become or be liable with respect to any Debt other than Debt owed to Lender.

Section 7.6 Sale of Assets, Dissolution, Etc. (a) Sell, lease, transfer or otherwise dispose of any of its property which is not classified as Collateral, except in the ordinary course of business for fair market value or more (as used herein "fair market value" shall be that amount which is within ten percent (10%) of the appraised value of any of such assets); (b) suffer or permit in whole or in part dissolution or liquidation; (c) enter into any arrangement, directly or indirectly, with any Person whereby Borrower shall Transfer any Property used and/or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such Property or other Property which Borrower intends to use for substantially the same purpose or purposes as the Property being sold or transferred; or (d) make or obtain any acquisition of all or substantially all of the Property or assets of any other Person, or merge or consolidate with or into, or Transfer (whether in one transaction or in a series of transactions) all or substantially all of its Properties to any Person.

Section 7.7 Inconsistent Agreements. Enter into any agreement containing any provision that would be violated or breached by the performance by Borrower of its Obligations.

## ARTICLE 8 EVENTS OF DEFAULT

The occurrence of any of the following events (each an "Event of Default") shall terminate any obligations on the part of Lender to make any Advance hereunder and, at the option of Lender, shall make all sums of principal, interest and expenses remaining unpaid on the Loan immediately due and payable, without notice of default, presentment or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind, except as hereinafter specified:

Section 8.1 Principal and Interest Payments. Borrower fails to make payment of any installment of principal or interest on the Obligations within ten (10) days of the date when due.

Section 8.2 Representations and Warranties. Any representation or warranty made by or on behalf of Borrower or any Obligor in any Loan Document appears to have been incorrect in any material respect as of the date thereof, or any representation, warranty, statement (including financial statements), certificate, or data furnished or made by or on behalf of Borrower or any Obligor in any Loan Document appears to have been untrue in any material respect as of the date as of which the facts therein set forth were stated or certified.

Section 8.3 Obligations. Excluding obligations set forth in this Article 8, Borrower or any Obligor fails to perform any of its agreements, obligations or covenants as required by and contained in any Loan Document and fails to cure such non-performance within fifteen (15) days after the earlier of (a) receipt by Borrower of written notice from Lender notifying Borrower that a breach or default has occurred, or (b) actual knowledge by Borrower that a breach or default has occurred; provided that no notice or cure period shall be applicable to a default occurring under any of the following sections or articles hereof: Section 6.10 and Article 7.

Section 8.4 Involuntary Bankruptcy or Receivership Proceedings. Any of the following events or conditions occurs with respect to Borrower or any Obligor: (a) a receiver, custodian, liquidator, or trustee of itself or of any of the Property of Borrower or any Obligor is appointed by the order or decree of any court or agency or supervisory authority having jurisdiction; or (b) any of the Property of Borrower or any Obligor is sequestered by court order; or (c) a petition is filed against Borrower or any Obligor under any state or federal bankruptcy, reorganization, debt arrangement, insolvency, readjustment of debt, dissolution, liquidation or receivership law of any jurisdiction, whether now or hereafter in effect.

Section 8.5 Voluntary Petitions. Borrower or any Obligor files (or takes formal action authorizing the filing of or takes affirmative steps to prepare to file) a voluntary bankruptcy petition or other petition to seek relief under any provision of any bankruptcy, reorganization, debt arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction or consents to the filing of any such petition against it under any such law.

Section 8.6 Assignments for Benefit of Creditors, Etc. Borrower or any Obligor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee, or liquidator of Borrower or of all or any part of its Property.

Section 8.7 Discontinuance of Business, Merger, Control, Etc. Borrower or any Obligor (a) discontinues its usual business; (b) ceases to continue its current operations in the manner and scope conducted on the date of this Agreement; (c) merges or consolidates into any other entity, other than Borrower; (d) dies or commences to dissolve, wind-up or liquidate itself or (e) experiences a change of control in its ownership or management without the prior written consent of Lender;

Section 8.8 Cross Default on Other Debt or Security. Subject to any applicable grace period or waiver prior to any due date, Borrower or any Obligor fails to make any payment due on any Debt or on any security (as "security" is defined for purposes of the federal securities laws) or any event shall occur or any condition shall exist with respect to any Debt or security of Borrower or any Obligor or under any agreement securing or relating to such Debt or security, the effect of which is to cause or to permit any holder or trustee of such Debt or other security or a trustee to cause (whether or not such holder or trustee elects to cause) any or all of such Debt or security to become due prior to its stated maturity or prior to its regularly scheduled dates of payment.

Section 8.9 Undischarged Judgments. If judgment for the payment of money is rendered by any court or other Governmental Authority against Borrower which is not fully covered by valid collectible insurance and such remains unpaid or not bonded (to Lender's satisfaction) in full within thirty (30) days after such judgment is entered.

Section 8.10 Violation of Laws. Borrower or any Obligor materially violates or otherwise materially fails to comply with any Governmental Regulation or Borrower or any Obligor fails or refuses at any and all times to remain current on its financial reporting requirements pursuant to such Governmental Regulations.

Section 8.11 Litigation. Should a court order, injunction, or judgment be issued in connection with any litigation, the effect of which would have a Material Adverse Effect on Borrower or any Obligor.

Section 8.12 Fire or Casualty. Should any portion of the Collateral be materially damaged or destroyed by fire or other casualty, which is not adequately covered by insurance (as determined by Lender in the exercise of its discretion) to effect the full and complete repair or replacement of same to the satisfaction of Lender.

Section 8.13 Levy. A levy shall be made under any legal process on the Property, and such levy is not removed within thirty (30) days following such levy.

Section 8.14 Attachment of Liens to Property. Attachment of any involuntary Lien upon the Collateral which is not removed within thirty (30) days after the attachment.

Section 8.15 Material Adverse Change. The occurrence of any Material Adverse Change or any event that would result in a Material Adverse Effect.

Section 8.16 Failure of Merger. The failure to complete the mergers contemplated by Section 2.2 of this Agreement no later than May 10, 2019.

#### ARTICLE 9 REMEDIES

Section 9.1 General Remedies. Upon the occurrence of an Event of Default, Lender may declare the entire principal amount of all Obligations then outstanding, including interest accrued thereon, to be immediately due and payable without presentment, demand, protest, notice of protest, or dishonor or other notice of default of any kind, all of which Borrower, to the extent permitted by applicable law, hereby expressly waives, and, at Lender's sole discretion and option, all obligations of Lender under this Agreement shall immediately cease and terminate unless and until Lender shall reinstate such obligations in writing. Such acceleration and cessation of Lender's obligations shall occur automatically, without any declaration by Lender or any notice, upon the occurrence of an Event of Default under Sections 8.4, 8.5 and 8.6 hereof. Upon the occurrence of any Event of Default, Lender may also exercise all rights against Collateral set forth in the Loan Documents or afforded a creditor under applicable law, including all rights and remedies afforded by the UCC, and/or bring an action to protect or enforce its rights under the Loan Documents or seek, collect or enforce the Obligations by any lawful means. All remedies provided in this Agreement or in any other Loan Document shall be cumulative, in addition to all other remedies available to Lender under the principles of law and equity or pursuant to any other body of law, statutory or otherwise, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

Section 9.2 Default. Upon the occurrence of a Default or at any time thereafter until such Default no longer exists, Borrower agrees that Lender, in its sole discretion, and may immediately cease making Advances or Equipment Loans, all without liability whatsoever to Borrower or any other Person, all of which is expressly waived hereby. Borrower releases Lender from any and all liability whatsoever, whether direct, indirect, or consequential, and whether seen or unforeseen, resulting from or arising out of or in connection with Lender's determination to cease making Advances pursuant to this Section.

Section 9.3 No Waiver. The acceptance by Lender at any time and from time to time of part payment on the Note shall not be deemed to be a waiver of any Default or Event of Default then existing. No delay or omission by Lender to exercise any right, power or remedy accruing to Lender upon any Default or Event of Default under this Agreement or the other Loan Documents shall impair any such right, power or remedy of Lender, nor shall it be construed to be a waiver of any such Default or Event of Default or an acquiescence therein, or in any similar Default or Event of Default thereafter occurring; nor shall any single or partial exercise of any such right or power preclude other or further exercise thereof, or the exercise of any other right or power of Lender under this Agreement or the other Loan Documents; nor shall any waiver or any single Default or Event of Default be deemed a waiver of any other Default or Event of Default theretofore or thereafter occurring, or be deemed to be a continuing waiver. Any waiver, permit, consent or approval of any kind or character on the part of Lender of any Default or Event of Default, or any waiver on the part of Lender of any provision or condition of this Agreement or the other Loan Documents, must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 9.4 Lender's Performance of Borrower's Covenants and Duties. Should any covenant, duty or agreement of Borrower fail to be performed in accordance with its terms hereunder or under any other Loan Document, Lender may, at its option, perform, or attempt to perform, such covenant, duty or agreement on behalf of Borrower. Borrower shall, at the request of Lender, promptly pay any amount expended by Lender in such performance or attempted performance to Lender, together with interest thereon at the Default Rate from the date of such expenditure by Lender until paid; except that Lender does not assume and shall not have, except by express written consent of Lender, any liability for the performance of any duties of Borrower under this Agreement or under the other Loan Documents.

Section 9.5 Right of Set off. Upon the occurrence and during the continuance of any Event of Default, Lender is authorized, at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Borrower against any and all of the Obligations, irrespective of whether or not Lender shall have accelerated the Obligations or made any demand under this Agreement or the Note and although such obligations may be unmatured.

ARTICLE 10  
GENERAL PROVISIONS

Section 10.1 Notices. All notices, requests, demands, directions and other communications (collectively "notices") required under this Agreement shall be in writing (including communication by facsimile transmission) and shall be sent by hand, by registered or certified mail return receipt requested, by overnight courier service maintaining records of receipt, or by facsimile transmission with confirmation in writing mailed first class, in all cases with charges prepaid. Any such properly given notice shall be effective upon the earlier of receipt or (a) the date delivered by hand, or (b) the third Business Day after being mailed, or (c) the following Business Day if sent by overnight courier service, or (d) upon sender's receipt of transmission confirmation, if sent by facsimile. All notices shall be sent to the applicable party at its address (or facsimile number) set forth below or in accordance with the last written direction from such party to the other party hereto:

Borrower: Better Choice Company Inc.  
81 Prospect Street  
Brooklyn, New York 11201  
Attention: Damian Dalla-Longa  
Fax: N/A

With a copy to: Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022-4834  
Attention: Erika L. Weinberg  
Fax: (212) 751-4864

Lender: Franklin Synergy Bank  
3325 West End Avenue  
Nashville, Tennessee 37203  
Attention: Melinda Bailey  
Fax: (615) 515-8100

With a copy to: Thompson Burton PLLC  
6100 Tower Circle, Suite 200  
Franklin, Tennessee 37067  
Attention: J. Bryan Echols  
Fax: (615) 807-6804

Section 10.2 Term of This Agreement. This Agreement shall be binding on Borrower as long as any portion of the Obligations remains outstanding or Lender has any obligations to make Advances hereunder, provided however, Borrower's representations and warranties, and Borrower's agreements of indemnity shall survive the payment and performance in full of the Obligations and shall continue in full force and effect so long as the possibility of such liabilities, claims, or losses exists.

Section 10.3 Invalidity. If any one or more of the provisions contained in any Loan Document for any reason shall be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of any Loan Document.

Section 10.4 Survival of Agreements. All representations and warranties of Borrower in this Agreement and the other Loan Documents and all covenants and agreements in this Agreement and the other Loan Documents not fully performed before the Closing Date of this Agreement shall survive the Closing.

Section 10.5 Successors and Assigns. Borrower shall not assign its rights or delegate its duties under this Agreement or any other Loan Document. All covenants and agreements made by or on behalf of Borrower in any Loan Document shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

Section 10.6 Renewal, Extension, or Rearrangement. All provisions of this Agreement or any other Loan Document relating to the Obligations shall apply with equal force and effect to each and all promissory notes, amendment, restatement or other modification hereafter executed which in whole or in part represent a renewal, extension for any period, increase, or rearrangement of any part of the Obligations.

Section 10.7 Waivers. Pursuant to Tennessee Code Annotated Section 47-50-112, no action or course of dealing on the part of Lender, its officers, employees, consultants, or agents, nor any failure or delay by Lender with respect to exercising any right, power, or privilege of Lender under any Loan Document shall operate as a waiver thereof, except as otherwise provided in such Loan Document. Lender may from time to time waive any requirement hereof, including any of the Conditions Precedent; however, no waiver shall be effective unless in writing and signed by Lender. The execution by Lender of any waiver shall not obligate Lender to grant any further, similar, or other waivers.

Section 10.8 Construction; Governance. This Agreement and the other Loan Documents constitute a contract made under and shall be construed in accordance with and governed by the laws of the state in which Lender's Office is located (without regard to its conflict of law principles). The terms of this Agreement shall govern if determined to be in conflict with the terms or provisions in any other Loan Document.

Section 10.9 Nature of Commitment. Lender's obligation to accept the Note or make any Advances thereunder shall be deemed to be pursuant to a contract to make a loan or to extend debt financing or financial accommodations to or for the benefit of Borrower within the meaning of Sections 365(c)(2) and 365(e)(2)(B) of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.

Section 10.10 Disclosures. Every reference in this Agreement to disclosures of Borrower to Lender (except the subsequent Financial Statements of Borrower), to the extent that such references refer or are intended to refer to disclosures at or prior to the execution of this Agreement, shall be deemed strictly to refer only to written disclosures delivered to Lender concurrently with the execution of this Agreement and referred to specifically in the Loan Documents. The parties hereto intend that such disclosures are to be limited to those presented in an orderly manner at the time of executing this Agreement and are not to be deemed to include expressly or impliedly any disclosures that previously may have been delivered from time to time to Lender, except to the extent that such previous disclosures are again presented to Lender in writing concurrently with the execution of this Agreement.

Section 10.11 Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Section 10.12 Distribution of Information. Borrower hereby authorizes Lender, as Lender may elect in its sole discretion, to discuss with and furnish to any affiliate of Lender, to any government or self-regulatory agency with jurisdiction over Lender, or to any participant or prospective participant, all financial statements, audit reports and other information pertaining to Borrower and any Obligor whether such information was provided by Borrower or prepared or obtained by Lender or third parties. Neither Lender nor any of its employees, officers, directors or agents make any representation or warranty regarding any audit reports or other analyses of Borrower which Lender may elect to distribute, whether such information was provided by Borrower or prepared or obtained by Lender or third parties, nor shall Lender or any of its employees, officers, directors or agents be liable to any Person receiving a copy of such reports or analyses for any inaccuracy or omission contained in such reports or analyses or relating thereto.

Section 10.13 Entire Agreement; No Oral Representations. This Agreement represents the entire agreement between the parties hereto except for such other agreements set forth in the Loan Documents, superseding any and all other agreements, promises or representations existing prior to or made simultaneously with this Agreement. Any oral statements regarding the subject matter of this Agreement are merged herein.

Section 10.14 Amendments. Neither this Agreement nor any of the other Loan Documents may be modified or amended except in writing signed by the parties hereto or thereto.

Section 10.15 Indemnification. It is agreed that Lender has not made Borrower its agent and their relationship is merely one between a lender and a borrower. Borrower shall indemnify Lender and the respective directors, officers, employees, agents and advisors of Lender (each, an "Indemnitee") against, and hold each of them harmless from, any and all costs, losses, liabilities, claims, damages and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, which may be incurred by or asserted against any Indemnitee arising out of, in connection with or as a result of (a) the execution or delivery of this Agreement or any other Loan Document, the performance by Borrower of the obligations or the consummation of any of the transactions contemplated hereby or thereby; (b) the disbursement of any Advance or any actual or proposed use of the proceeds therefrom; or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory and regardless of whether any Indemnitee is a party thereto. The foregoing provision shall survive the term of this Agreement and the payment and performance in full of the Obligations and shall continue in full force and effect so long as the possibility of such liabilities, claims or losses exists. All amounts due under this Section shall be payable promptly by Borrower after written demand by Lender.

Section 10.16 No Marshalling of Assets. Lender may proceed against the Collateral and against parties liable therefore in such order as it may elect, and neither Borrower nor any Obligor nor any creditor of Borrower shall be entitled to require Lender to marshal assets. The benefit of any rule of law or equity to the contrary is hereby expressly waived.

Section 10.17 Impairment of Collateral. Lender may, in its sole discretion, release any of the Collateral or release any party liable therefore. The defenses of impairment of collateral and impairment of recourse and any requirement of diligence on Lender's part in collecting the Obligations are hereby expressly waived.

Section 10.18 Relationship of Lender and Borrower. Lender and Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in any of the Loan Documents, nor the consummation of the transactions contemplated herein or therein, shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between Lender and Borrower, or to create a relationship between Lender and Borrower other than that of creditor and debtor, or to cause Lender to be liable or responsible in any way for the actions, liabilities, debts or obligations of Borrower.

Section 10.19 Joint and Several Liability. Notwithstanding anything to the contrary contained herein or in the other Loan Documents to the contrary, if Borrower consists of more than one Person: (a) the duties, covenants, obligations, representations and warranties of each Borrower in this Agreement and the other Loan Documents are and shall be joint and several obligations of each Borrower; and (b) each Borrower hereby waives any and all rights of subrogation, reimbursement, contribution, indemnity or otherwise arising by contract or operation of law, including any lien rights from or against the other Borrower until the Loan is paid in full and all Obligations are fulfilled.

Section 10.20 Counterparts. This Agreement and the other Loan Documents may be executed in any number of counterparts or counterpart signature pages (by facsimile transmission or otherwise), each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

Section 10.21 Time of Essence. Time is of the essence with regard to each and every provision of this Agreement and the other Loan Documents.

Section 10.22 Jurisdiction; Venue; Service of Process. BORROWER HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE AND OF ALL TENNESSEE STATE COURTS LOCATED IN DAVIDSON COUNTY, TENNESSEE, INCLUDING THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE, FOR ANY SUIT BROUGHT OR ACTION COMMENCED IN CONNECTION WITH THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, ANY OF THE OBLIGATIONS, ANY COLLATERAL, OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER, AND AGREES NOT TO CONTEST OR CHALLENGE VENUE IN ANY SUCH COURTS. Borrower irrevocably consents to the service of process of any such courts in any such action or proceeding by registered or certified mail, postage prepaid, return receipt requested, to Borrower at the address provided pursuant to Section 10.1 hereof, and agrees that such service shall become effective thirty (30) days after such mailing. However, nothing herein shall affect the right of Lender or Borrower to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Lender or Borrower in any other jurisdiction. This Section does not confer or expand any standing to Borrower to bring any cause of action.

Section 10.23 Jury Waiver. BORROWER AND LENDER HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS AND THEIR RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, ANY OF THE OBLIGATIONS, ANY COLLATERAL, OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER. BORROWER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS SECTION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 10.24 Waiver of Certain Damages. IN ANY ACTION TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS UNDER THE LAWS OF ANY STATE TO CLAIM OR RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN ACTUAL DIRECT DAMAGES.

[SIGNATURE PAGE TO FOLLOW]

ENTERED INTO as of the date first written above.

**BORROWER:**

BETTER CHOICE COMPANY INC., a Delaware corporation

By: /s/ Damian Dalla-Longa  
Print Name: Damian Dalla-Longa  
Title: Co-CEO

**LENDER:**

FRANKLIN SYNERGY BANK, a Tennessee banking corporation

By: /s/ Melinda M. Bailey  
MELINDA M. BAILEY  
Senior Vice President

SECURITY AGREEMENT

DEBTOR:

Better Choice Company Inc.  
81 Prospect Street  
Brooklyn, New York 11201  
Attention: Damian Dalla-Longa

SECURED PARTY:

Franklin Synergy Bank  
3325 West End Avenue  
Nashville, Tennessee 37203  
Attention: Melinda Bailey

THIS SECURITY AGREEMENT (this "Agreement") is made as of this 6<sup>th</sup> day of May, 2019 between BETTER CHOICE COMPANY INC., a Delaware corporation, having a place of business at the address shown above (the "Debtor") and FRANKLIN SYNERGY BANK, a Tennessee banking corporation, having a place of business at the address shown above banking corporation, having a place of business at the address shown above (the "Secured Party").

WITNESSETH:

WHEREAS, Secured Party has agreed to extend certain credit to Debtor under certain terms and conditions; and

WHEREAS, Secured Party desires to obtain, and Debtor desires to grant, a security interest in certain property of Debtor, now owned or hereafter acquired, and the proceeds thereof, to secure repayment of all indebtedness described in Section 2 hereof.

NOW, THEREFORE, in consideration of the extension of certain credit to Debtor by Secured Party, and in consideration of the premises and the mutual promises and covenants hereinafter set forth, the parties hereby agree as follows:

Section 1. Security Interest. As security for the payment of the indebtedness more particularly described in Section 2 of this Agreement, Debtor hereby collaterally assigns to Secured Party and grants to Secured Party a security interest in and to all of Debtor's presently existing and hereafter acquired rights in and to the items and types of property described on Exhibit A, including, without limitation, all proceeds thereof (including insurance proceeds) and products attributable to or arising therefrom (collectively the "Collateral").

Section 2. Indebtedness. The security interest granted herein by Debtor secures and shall secure:

- (a) Prompt and full payment of all indebtedness and obligations of Debtor to Secured Party evidenced by that certain Revolving Line of Credit Promissory Note in the original principal amount of up to SIX MILLION TWO HUNDRED AND NO/100 DOLLARS (\$6,200,000.00) executed of even date herewith by Debtor to the order of Secured Party, as such may be amended from time to time (the "Note");

(b) Prompt payment and performance of all obligations of Debtor to Secured Party under that certain Loan Agreement between Debtor and Secured Party dated of even date herewith, as such may be amended from time to time (the "Loan Agreement") and under the other Loan Documents, as such term is defined in the Loan Agreement; and

(c) Payment of all costs and expenses incurred by Secured Party in enforcing or protecting its rights with respect to the Collateral or the indebtedness secured by the Collateral, including, but not limited to, reasonable attorneys' fees.

For purposes of this Agreement, all such obligations described in this Section 2 shall be referred to as "Indebtedness" and shall be secured by the Collateral.

Section 3. Debtor's Representations to Secured Party. Debtor hereby represents the following facts to be true and correct as of the date hereof:

- (a) Debtor is the true and lawful owner of the Collateral;
- (b) Debtor has good right to assign and grant a security interest in the Collateral;
- (c) There are no advances, liens, security interests or encumbrances against any of the Collateral, and there have been no prior assignments of any of the Collateral; and
- (d) Debtor's name, state of organization and type of entity are accurately stated at the beginning of this Agreement.

Section 4. Warranties and Covenants. Debtor hereby warrants, covenants and agrees that, until the Indebtedness secured hereby shall have been paid in full or unless Debtor shall have received the prior written consent of the Secured Party:

(a) Protection and Use of Collateral. Debtor will keep the Collateral free from any adverse lien, security interest, or encumbrance (other than the security interest granted herein), and Debtor will not waste or destroy the Collateral or any part thereof; Debtor will not use the Collateral in violation of any regulations, statute or ordinance or of any judgments, citations, decrees or orders of any judicial or administrative authority;

(b) Sale, Assignment or Impairment of Collateral. Without Secured Party's prior written consent (which consent shall not be unreasonably withheld), Debtor will not sell, assign or offer to sell or otherwise transfer, dispose of or encumber the Collateral, or any interest therein, or otherwise dispose of any material asset, for less than its reasonable fair market value in such manner as to materially diminish the value of the Collateral, or in any other manner impair any of its assets so as to substantially diminish the value of the Collateral;

(c) Insurance. Debtor will maintain such insurance on the Collateral as required by Secured Party with insurance carriers acceptable to Secured Party;

(d) Indemnification. Debtor will and does hereby agree to indemnify and hold Secured Party harmless against all claims arising out of or in connection with Debtor's ownership or use of the Collateral;

(e) Removal of Collateral. Debtor warrants and represents to and covenants with Secured Party that: (i) Secured Party's security interest in the Collateral is now and at all times hereafter shall be perfected and have a first priority; (ii) the offices and/or locations where Debtor keeps the Collateral and Debtor's books and records concerning the Collateral are at the locations set forth on Schedule 1 hereof, and Debtor shall not remove such books and records and/or the Collateral therefrom and shall not keep any of such books and records and/or the Collateral at any other office or location unless Debtor gives Secured Party written notice thereof within thirty (30) days thereof and the same is within the continental United States of America; and (c) such addresses include and designate Debtor's chief executive office, chief place of business and other offices and places of business and are Debtor's sole offices and places of business. Debtor, by written notice delivered to Secured Party within thirty (30) days thereof, shall advise Secured Party of Debtor's changing the state of its formation, opening of any new office or place of business or its closing of any existing office or place of business and any new office or place of business shall be within the continental United States of America;

(f) Inspect Collateral. Secured Party (by any of its officers, employees and/or agents) shall have the right, at any time or times during Debtor's usual business hours, to inspect the Collateral and all related records (and the premises upon which it is located) and all financial records and to verify the amount and condition of the Collateral or any other matter whether or not relating to the Collateral. After an Event of Default, all costs, fees and expenses incurred by Secured Party, or for which Secured Party has become obligated, in connection with such inspection and/or verification shall be payable by Debtor to Secured Party;

(g) Tax Liens, Etc. Debtor agrees to pay all taxes or other liens taking priority over the security interest created in this Agreement and, should default be made in the payment of same, Debtor agrees to give Secured Party prompt notice of such default, and Secured Party, at its option, may pay the same, which shall then become part of the Indebtedness secured hereby;

(h) Discharge Liens. Secured Party, in its sole and absolute discretion, without waiving or releasing any obligation, liability or duty of Debtor under this Agreement or otherwise, may at any time or times hereafter, but shall be under no obligation to pay, acquire and/or accept an assignment of any security interest, lien, encumbrance or claim asserted by a person against the Collateral. All sums paid by Secured Party in respect thereof and all costs, fees and expenses, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto incurred by Secured Party on account thereof shall be payable by Debtor to Secured Party; and

(i) Additional Actions. Debtor will, at its own expense, take all such actions, and execute or procure all such documents, as Secured Party may from time to time deem appropriate to protect its security interest under this Agreement against the interest of third persons. Without limiting the foregoing, Debtor shall provide, at Secured Party's request, any consents to assignment, control agreements, landlords' waivers, acknowledgments and other third-party documents that Secured Party may deem necessary or advisable to perfect or protect Secured Party's security interest in the Collateral or to protect Secured Party's rights to enforce any contracts or other agreements included in the Collateral. Secured Party is hereby appointed Debtor's attorney in fact to do all acts and things that Secured Party may deem necessary to perfect and/or continue the perfection of the security interest created by this Agreement and to protect the Collateral. Debtor shall pay all costs, fees and expenses in connection with any of the foregoing. Debtor further agrees to pay all costs and fees for filing any termination statements. Debtor authorizes the Secured Party to file all such UCC financing statements and amendments, in all such filing offices, as Secured Party may deem necessary or reasonable to perfect its security interest in the Collateral.

Section 5. Events of Default. The term "Event of Default", whenever used in this Agreement, shall mean, subject to any applicable notice and cure periods, the occurrence of an Event of Default under, and as defined in, the Loan Agreement.

Section 6. Remedies. Secured Party shall have the following remedies hereunder:

(a) Acceleration and Foreclosure, Etc. Upon the happening of any Event of Default, and at any time thereafter, at the option of the Secured Party, any and all Indebtedness secured hereby shall become immediately due and payable without presentment or demand or any notice to Debtor or any other person obligated thereon, and Secured Party shall have and may exercise any or all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Tennessee, and as otherwise contractually granted herein or under any other applicable law or under any other agreement executed by Debtor in favor of Secured Party, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of or utilize such portion of the Collateral and any part or parts thereof in any manner authorized or permitted under said Uniform Commercial Code after default by a Debtor, and to apply the proceeds thereof toward payment of any costs and expenses and reasonable attorneys' fees and legal expenses thereby incurred by Secured Party and toward payment of the obligations in such order or manner as Secured Party may elect. Additionally, and as an essential part of the bargained for consideration running to the Secured Party, and to the extent permitted by applicable law, Debtor hereby expressly grants to Secured Party the contractual right to purchase any or all of the Collateral at private sale any time after 10 days' notice of such sale shall have been sent to Debtor by Secured Party.

(b) Waiver of Notice, Etc. Debtor agrees that if notice of public or private sale or disposition of the Collateral is required under law, then such notice mailed or sent by overnight courier, in each case with charges prepaid, to Debtor at the address stated at the beginning of this document at least 10 days before the time of the proposed sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement of giving of notice, and the proposed sale may take place any time after such 10 day period without the necessity of sending another notice to Debtor. Secured Party may postpone and reschedule any proposed sale or disposition at its option without the necessity of giving Debtor further notice of such fact as long as the rescheduled sale occurs within 60 days of the originally scheduled sale.

(c) Method of Sale of Collateral Approved. All recitals in any instrument of assignment or any other document or paper executed by Secured Party incident to sale, transfer, assignment or other disposition or utilization of the Collateral or any part thereof hereunder shall be sufficient to establish full legal propriety of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto, and all prerequisites of such sale or other action shall be presumed conclusively to have been performed or to have occurred. Secured Party shall not be required to prepare or process Collateral before disposition, or to make any warranties of title or otherwise to any person acquiring any of the Collateral. Secured Party may, at its option, dispose of Collateral on credit terms, and, in such event, shall credit Debtor only with the amounts of cash proceeds actually received by from time to time thereafter by Secured Party and applied to the Indebtedness.

(d) Preservation and Use of Collateral and Proceeds. In addition to the foregoing provisions, following an Event of Default, and upon Secured Party's demand, Debtor agrees to assemble the Collateral at the location of the Debtor's office and make same available to Secured Party immediately. Secured Party is hereby granted a license or other right to use, without charge, Debtor's labels, patents, copyrights, rights of use of any name, trade secrets, tradenames, trademarks and advertising matter, or any tangible or intangible property or rights of a similar nature, as it pertains to the Collateral, in advertising for sale and selling any Collateral, and Debtor's rights under all licenses and all franchise agreements shall inure to Secured Party's benefit.

Section 7. Secured Party's Powers and Duties with Respect to Collateral.

(a) Secured Party shall be under no duty to collect any amount that may be or become due at any time on any of the Collateral, to realize on Collateral, to keep any Collateral insured, to collect principal, interest or dividends, to make any presentments, demands or notices of protest or preserve any rights against third parties, in connection with any of the Collateral, or to do anything for the enforcement and collection of Collateral or the protection thereof.

(b) Not limiting the generality of any of the foregoing but in amplification of the same, Secured Party shall be in no way liable to or responsible for any diminution in the value of the Collateral from any cause whatsoever.

(c) Debtor agrees to do all things necessary to preserve and maintain the value and collectability of the Collateral, and on the failure of Debtor to so do, Secured Party may, after giving Debtor written notice of its intention to do so, make such payments and advance such sums on account thereof as Secured Party, in its discretion, deems desirable. Debtor agrees to reimburse Secured Party immediately upon demand for all such payments and advances plus interest thereon at the Default Rate (as defined in the Loan Agreement), repayment of all of which is secured by this Agreement and the Collateral.

(d) Secured Party, or any of its agents, shall have the right to call at reasonable times at the Debtor's place or places of business at intervals to be determined by Secured Party, and without hindrance or delay, to inspect, audit, check, and make extracts from the books, records, journals, orders, receipts, correspondence, and other data relating to the Debtor's operations.

Section 8. General Authority. Effective immediately, but exercisable by Secured Party (or by any person designated by Secured Party) only upon the occurrence of an Event of Default and after the expiration of any applicable notice and cure periods, Debtor hereby irrevocably appoints Secured Party (or any person designated by Secured Party) as Debtor's true and lawful attorney in fact with full power of substitution, in Secured Party's name or Debtor's name or otherwise, for Secured Party's sole use and benefit, but at Debtor's cost and expense, to exercise at any time and from time to time all or any of the following powers with respect to all or any of the Collateral:

(a) To receive, take, endorse, assign and deliver in Secured Party's name or Debtor's name any and all checks, notes, drafts and other instruments relating to the Collateral;

(b) To transmit to account debtors notice of Secured Party's interest in accounts and to request from account debtors at any time, in Debtor's name or in Secured Party's name or the name of Secured Party's designee;

(c) To notify account debtors to make payment directly to Secured Party or to any bank designated by Secured Party;

(d) To take or bring, in Debtor's name or Secured Party's name, all steps, actions, suits or proceedings deemed by Secured Party necessary or desirable to effect collection of the accounts, to compromise with any account debtor and give acquittance for any and all accounts; and

(e) In general, to do all things necessary to preserve its rights under the terms of this Agreement, including, without limitation, to take any action or proceedings that Secured Party deems necessary or appropriate to protect and preserve the security interest of Secured Party in the Collateral;

provided, however, the exercise by Secured Party of or failure to so exercise any such authority shall in no manner affect Debtor's liability to Secured Party hereunder or in connection with the Indebtedness; and provided further, that Secured Party shall be under no obligation or duty to exercise any of the powers hereby conferred upon it and it shall have no liability for any act or failure to act in connection with any of the Collateral. Secured Party shall not be bound to take any steps necessary to preserve rights in any instrument, contract or lease against third parties.

Section 9. Survival of Agreements, Representations and Warranties. All agreements, representations and warranties contained herein or made in writing by or on behalf of Debtor in connection with the transactions contemplated hereby shall survive the execution and delivery of this Agreement, any investigation at any time made by Secured Party or on its behalf, and the acquisition and disposition of the Indebtedness. All statements contained in any certificate or other instrument delivered by or on behalf of Debtor pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations and warranties by Debtor hereunder.

Section 10. Dealings With Debtor. It is expressly understood and agreed that, notwithstanding anything else contained in this Agreement, Secured Party may, for all purposes hereof deal solely with Debtor in connection therewith, and nothing herein shall be construed so as to require dealings with, consent of, or notice to any other parties or persons.

Section 11. Agreement Not Exclusive Remedy. This Agreement shall not prejudice the right of Secured Party, at its option, to enforce collection of the Indebtedness by suit or in any lawful manner. If Secured Party has additional security, then it may resort to such other security for the payment of the Indebtedness secured hereby. No right or remedy in this Agreement or in any instrument evidencing the Indebtedness is intended to be exclusive of any other right or remedy, but every such right or remedy shall be cumulative and shall be in addition to every other right or remedy herein or therein conferred, or now or hereafter existing, by contract, at law or in equity or by statute.

Section 12. Non Waiver Provision. No delay or omission by Secured Party to exercise any right or remedy shall impair such right or remedy or any other right or remedy or shall be construed to be a waiver of any Event of Default or an acquiescence therein; and every right and remedy herein conferred or now or hereafter existing by contract or at law or in equity or by statute may be exercised separately or concurrently and in such order and as often as may be deemed expedient by Secured Party. Not limiting the generality of the foregoing, pursuit or exercise of any right or remedy conferred herein, or by law or in equity or by statute, shall not be, and shall not be considered to be, an election against, or waiver or relinquishment of, any other right or remedy.

Section 13. Severability. The invalidity or unenforceability of any of the rights or remedies herein provided in any jurisdiction shall not in any way affect the right to the enforcement in such jurisdiction or elsewhere of any of the other rights or remedies herein provided.

Section 14. Applicable Law. This Agreement is being delivered and is intended to be performed in the State of Tennessee and shall be construed and enforced in accordance with and governed by the substantive law of such State.

Section 15. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the successors, representatives and assigns of the parties hereto. This agreement may be signed in counterparts.

Section 16. Entire Agreement. This Agreement contains the entire Agreement between the Secured Party and the Debtor and supersedes all prior agreements and understandings relating to the subject matter hereof. It may not be changed or terminated orally, but may only be changed by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification, extension, discharge or termination is sought.

Section 17. Captions. The captions of this Agreement are for the purpose of reference only, and shall not limit or otherwise affect any of the terms hereof.

Section 18. Notices. Except as expressly provided otherwise herein, all notices, certificates, requests, consents and other communications hereunder shall be made or given in accordance with the notice provisions set forth in the Loan Agreement or the Note to, when applicable, the addresses set forth in the beginning of this Agreement, or at such other address as either party may designate by written notice to the other party in accordance herewith.

Section 19. Rules of Construction. The Rules of Construction set forth in Section 1.2 of the Loan Agreement are hereby incorporated into this Agreement by this reference and shall be construed to compliment, rather than contradict, the provisions of this Agreement.

Section 20. JURY TRIAL WAIVER. DEBTOR AND SECURED PARTY HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS AND THEIR RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT, ANY OF THE INDEBTEDNESS, ANY COLLATERAL, OR ANY RELATIONSHIP BETWEEN DEBTOR AND SECURED PARTY. DEBTOR WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS SECTION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

**DEBTOR:**

BETTER CHOICE COMPANY INC., a Delaware corporation

By: /s/ Damian Dalla-Longa

Print Name: Damian Dalla-Longa

Title: Co-CEO

**SECURED PARTY:**

FRANKLIN SYNERGY BANK, a Tennessee banking corporation

By: /s/ Melinda M. Bailey

MELINDA M. BAILEY  
Senior Vice President

**EXHIBIT A**

**COLLATERAL**

The Collateral consists of all of Debtor's right, title and interest in and to the following described documents and property (and types of property) both presently existing and hereafter acquired or arising:

1. All assets of Debtor, including, without limitation, all accounts, machinery, apparatus, goods, deposit and operating accounts held with Secured Party, investment property, instruments, documents, chattel paper, letter-of-credit rights, equipment, furniture, inventory, goods, building materials, general intangibles, issues, profits and any commercial tort claims hereafter identified by Debtor in any authenticated record delivered to Secured Party, presently existing and hereafter acquired or arising, by which Debtor has or may have any interest; and

2. All proceeds (including insurance proceeds) of any and all of the foregoing.

**SCHEDULE 1**

**COLLATERAL LOCATIONS**

1. 4025 Tampa Road, Suite 1117, Oldsmar, Florida 34677

**REVOLVING LINE OF CREDIT PROMISSORY NOTE**Nashville, Tennessee  
\_\_\_\_\_, 2019

\$6,200,000.00

FOR VALUE RECEIVED, BETTER CHOICE COMPANY INC., a Delaware corporation ("Borrower"), promises and agrees to pay to the order of FRANKLIN SYNERGY BANK, a Tennessee banking corporation, its successors, assigns or any subsequent holder of this Promissory Note ("Lender") at its offices in Nashville, Tennessee, or at such other place as may be designated in writing by Lender, in lawful money of the United States of America in immediately available funds, the principal sum of SIX MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,200,000.00), or so much thereof as may be advanced from time to time, together with interest thereon and other amounts due as provided below. This Note shall mature on the earlier of (a) \_\_\_\_\_, 2020, or (b) the date on which the principal amount of this Note has been declared or automatically has become due and payable (whether by acceleration or otherwise) (the "Maturity Date").

Advances hereunder shall be governed by that certain Loan Agreement of even date herewith between Borrower and Lender (as it may be modified, amended or restated from time to time, the "Loan Agreement"). *Any term not otherwise defined in this Note shall have the same meaning as in the Loan Agreement.* Reference is made to the Loan Agreement, which, among other things, provides for the acceleration of the maturity hereof upon the occurrence of certain events and for prepayments in certain circumstances and upon certain terms and conditions.

As long as no Event of Default (as defined below) (or any event that would constitute an Event of Default upon the giving of notice or passage of time or both) has occurred, Borrower may borrow, repay, reborrow and repay hereunder until the Maturity Date; provided, however, that at no time shall the principal amount outstanding hereunder exceed the lesser of (a) the face amount of this Note, or (b) the amount of deposits in the Money Market Account. If such excess occurs, Borrower shall immediately pay to Lender all principal outstanding hereunder in excess of the face amount of this Note, plus all interest and other charges accrued on such excess.

All advances hereunder shall bear interest from the date of such advance until such amount is due and payable (whether on any payment date, at maturity, by acceleration, or otherwise), at the "Effective Rate", which is defined as a fixed rate of interest equal to three and seventy one-hundredths percent (3.70%) per annum. Interest for each year shall be computed on the basis of a year of 360 days for the actual number of days elapsed.

Notwithstanding the foregoing, Lender may adjust the Effective Rate from time to time in the event that the interest payable on the Money Market Account increases so that the Effective Rate shall at all times be one hundred eighty-five (185) basis points higher than the rate payable on the Money Market Account funds.

This Note shall be repaid as follows:

(a) commencing on the 5<sup>th</sup> day of June, 2019, and on the 5<sup>th</sup> day of each consecutive month thereafter through and including \_\_\_\_\_, 2020, the Borrower shall pay to Lender an amount equal to all then accrued interest; and (b) on the Maturity Date, this Note shall mature and Borrower shall pay to Lender a balloon payment in an amount equal to all outstanding principal *plus* all then accrued interest *plus* all other amounts due hereunder.

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This Note may be permanently prepaid at any time in whole or in part without penalty or premium in accordance with, and subject to any limitations on prepayments set forth in, the Loan Agreement.

Upon the occurrence of an Event of Default under, and as defined in, the Loan Agreement, then, at the option of Lender, the entire indebtedness hereby evidenced shall become due, payable and collectible then or thereafter, without notice, as Lender may elect regardless of the date of maturity.

Borrower shall pay a late charge equal to five percent (5%) of any payments of principal and/or interest that are paid more than ten (10) days after the due date thereof, to cover the extra expenses involved in handling delinquent payments (the "Late Charge"); provided that in no event shall the Late Charge result in the payment of interest in excess of the maximum rate or interest permitted by applicable law.

Subject to any applicable notice and cure periods, following the occurrence of any Event of Default, principal and unpaid interest shall bear interest (both before and after judgment) until paid at a rate of interest equal to the Default Rate (as defined in the Loan Agreement) ("Default Interest").

All amounts received for payment under this Note shall at the option of Lender be applied first to any unpaid expenses due Lender under this Note or under any other Loan Document, then to the unpaid Late Charge, then to the unpaid Default Interest, then to all other accrued but unpaid interest due under this Note and finally to the reduction of outstanding principal due under this Note.

Time is of the essence of this Note. This Note is a secured promissory note.

Lender may waive any Event of Default before or after the same has been declared and restore this Note to full force and effect without impairing any rights hereunder, such right of waiver being a continuing one, but one waiver shall not imply any additional or subsequent waiver.

Lender and Borrower intend to conform strictly to applicable usury laws as presently in effect. Accordingly, Borrower and Lender agree that, notwithstanding anything to the contrary herein or in any agreement executed in connection with or as security for this Note, the sum of all consideration that constitutes interest under applicable law which is contracted for, charged, or received hereunder shall under no circumstance, including without limitation any circumstance in which the Note has been accelerated or prepaid, exceed the maximum lawful rate of interest permitted by applicable law. Any excess interest shall be credited on this Note or, if this Note shall have been paid in full, refunded to Borrower, by the holder hereof.

Borrower and any and all accommodation parties, endorsers, guarantors, general partners and other parties liable on this Note (collectively, the "Obligors"), jointly and severally waive presentment for payment, protest, notice of protest, notice of nonpayment of this Note, demand and all legal diligence in enforcing collection, and any discharge or defenses based on suretyship or impairment of collateral; and hereby expressly consent to (a) any and all delays, extensions, renewals or other modifications of this Note or any waivers of any term hereof, (b) any release or discharge by Lender of any of the Obligors, (c) any release, substitution or exchange of any security for the payment hereof, (d) any failure to act on the part of Lender, and (e) any indulgence shown by Lender from time to time (without notice or further assent from any of the Obligors) and hereby agree that no such action, failure to act or failure to exercise any right or remedy by Lender shall in any way affect or impair the obligations of any of the Obligors.

This Note has been executed and delivered in, and shall be governed by and construed according to the laws of the State of Tennessee (without regard to its conflict of law principles) except to the extent preempted by applicable laws of the United States of America. If any provision of this Note should for any reason be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.

This Note may not be changed, extended or terminated except in writing signed by Borrower and Lender. No waiver of any term or provision hereof shall be valid unless in writing signed by Lender.

Borrower shall pay, on demand, all costs and expenses (including court costs, attorneys' fees and expenses) incurred by Lender in attempting to enforce or collect this Note, protect or enforce its rights under this Note or the Loan Agreement or protect or collect on any collateral or security for the payment of this Note.

BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS NOTE) HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS AND THEIR RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS NOTE OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER. BORROWER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS SECTION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**[SIGNATURE APPEARS ON FOLLOWING PAGE]**

Executed the date first written above.

**BORROWER:**

BETTER CHOICE COMPANY INC., a Delaware corporation

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

Print Name: \_\_\_\_\_

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

\_\_\_\_\_

**GUARANTY AGREEMENT**

ENTERED INTO by BONA VIDA, INC., a Delaware corporation ("Guarantor"), in favor of FRANKLIN SYNERGY BANK, a Tennessee banking corporation, its successors and assigns ("Lender") this 8th day of April, 2019.

## RECITALS:

1. Guarantor desires to induce Lender to extend a loan to BETTER CHOICE COMPANY INC., a Delaware corporation ("Borrower").
2. One condition to Lender's agreement to extend the loan to Borrower is that Guarantor must unconditionally guarantee the obligations of Borrower, without which Lender would not extend credit to Borrower.
3. Guarantor acknowledges that it derives both a direct and indirect benefit from the credit extended to Borrower.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

## ARTICLE 1

## DEFINITIONS

Section 1.1 The following terms shall have the following meanings unless the context expressly requires otherwise:

- (a) "Borrower" has the meaning ascribed to that term in the recitals hereof.
  - (b) "Collateral" means (i) any and all Property and things of value in or against which a deed of trust lien, mortgage lien, other lien, and/or security interest has been granted or may in the future be granted to secure to Lender repayment and performance of the Guaranteed Obligations; (ii) any and all Property and things of value now held or which may in the future be held by or for the benefit of Lender as security for or for application to the Guaranteed Obligations; and (iii) any and all Property and things of value assigned to or which may in the future be assigned to or for the benefit of Lender as security for or for application to the Guaranteed Obligations.
  - (c) "Financial Statements" means (i) the financial statement or statements of Guarantor delivered with this Guaranty to Lender, and (ii) subsequent financial statements required to be provided pursuant to this Guaranty.
  - (d) "Guaranteed Obligations" means the following: (i) obligations and indebtedness arising out of or in connection with that certain Promissory Note dated of even date herewith in the principal amount of SIX MILLION TWO HUNDRED AND NO/100 DOLLARS (\$6,200,000.00) executed by Borrower to the order of Lender (the "Note"); (ii) (without duplication) obligations and indebtedness of Borrower arising out of that certain Loan Agreement dated of even date herewith executed by Borrower and Lender (the "Loan Agreement") and the other Loan Documents (as defined in the Loan Agreement); (iii) all obligations of Borrower under any application and agreements for issuance of letters of credit, indemnity agreements, or reimbursement agreements executed by Borrower in favor of Lender in connection with the issuance by Lender of letters of credit on Grantor's account and (iv) all amendments, modifications, extensions or increases in the indebtedness of, and in connection with, any of the foregoing.
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(e) “Guarantor” has the meaning ascribed to that term in the preamble hereof, and shall include without limitation: (i) Guarantor as debtor-in-possession or any trustee in any bankruptcy proceeding, and (ii) any trustee, receiver, custodian, conservator or other similar appointee over Guarantor or over his Property pursuant to any court proceeding of any kind.

(f) “Guaranty” means this Guaranty Agreement, as it may be modified and amended from time to time hereafter.

(g) “Lender” has the meaning ascribed to that term in the preamble hereof.

(h) “Other Guarantor” means any and all Persons who now or in the future guarantee to Lender all or any portion of the Guaranteed Obligations.

(i) “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof, or any other form of entity.

(j) “Property” or “Properties” means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES

To induce Lender to accept this Guaranty and to cause Lender to extend credit from time to time to Borrower, Guarantor hereby represents and warrants to Lender the following:

Section 2.1 Binding Obligations. This Guaranty is legal, valid and binding upon and against Guarantor, enforceable in accordance with its respective terms, subject to no defense, counterclaim, set-off, or objection of any kind. Lender has taken no action nor has it failed to take any action that subjects Lender to any liability to Guarantor.

Section 2.2 No Legal Bar or Resultant Lien. Guarantor’s execution, delivery and performance of this Guaranty does not constitute a default under, and will not violate any contract, agreement, law, regulation, order, injunction, judgment, decree, or writ to which Guarantor is subject, or result in the creation or imposition of any lien upon any Properties of Guarantor.

Section 2.3 No Consent. Guarantor’s execution, delivery, and performance of this Guaranty does not require the consent or approval of any other Person.

Section 2.4 Financial Condition. The Financial Statements that have been delivered to Lender, present fairly the financial condition of Guarantor as of the date or dates and for the period or periods stated therein. No material adverse change in the financial condition of Guarantor has occurred since the date of the most recent Financial Statements.

Section 2.5 Liabilities and Litigation. Guarantor has no material liabilities (individually or in the aggregate) direct or contingent, except as referred to or reflected in the Financial Statements. There is no litigation, legal or administrative proceeding, investigation, or other action of any nature pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor that involves the possibility of any judgment or liability not fully covered by insurance and that may materially and adversely affect the business or the Properties of Guarantor.

Section 2.6 Taxes; Governmental Charges. Guarantor has filed or caused to be filed all tax returns and reports required to be filed and has paid all taxes, assessments, fees, and other governmental charges levied upon it or upon any of its Properties or income, which are due and payable, including interest and penalties.

Section 2.7 Title, Etc. Guarantor has good title to its Properties, free and clear of all liens except those referenced or reflected in the Financial Statements.

Section 2.8 No Default. Guarantor is not in default in any respect that affects his business, Properties, operations, or condition, financial or otherwise, under any indenture, mortgage, deed of trust, credit agreement, note, agreement, or other contract to which Guarantor is a party or by which Guarantor or its Properties are bound.

Section 2.9 Solvency. Guarantor is solvent as of the date hereof. Guarantor is generally paying its debts as they mature and the fair value of Guarantor's assets exceed the sum total of Guarantor's liabilities.

Section 2.10 Existence. The entity type of Guarantor is correctly described in the preamble hereof, and Guarantor is duly organized, legally existing and in good standing under the laws of the state of its organization, incorporation or formation as the case may be, which is described in the preamble hereof. Guarantor has taken all action required by its organizational documents and applicable law to authorize the execution, delivery and performance of this Guaranty.

### ARTICLE 3

#### COVENANTS AND AGREEMENTS

Section 3.1 Guarantee of Payment

- Obligations.
- (a) Guarantor hereby irrevocably and unconditionally guarantees to Lender the full and timely payment and performance of the Guaranteed
  - (b) All payments by Guarantor shall be paid in lawful money of the United States of America.

(c) Each and every default in payment of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by Lender as each cause of action arises.

(d) Guarantor shall pay on demand to Lender all reasonable costs and expenses (including attorneys' fees) incurred by Lender in the protection, interpretation, and enforcement of any of its rights or in the pursuance of any of its remedies in respect of the Guaranteed Obligations or this Guaranty.

Section 3.2 Obligations Continuing and Unconditional. The obligations of Guarantor under this Guaranty are continuing, absolute and unconditional and shall remain in full force and effect until the entire principal of and interest and expenses on the Guaranteed Obligations shall have been paid in full and discharged, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event whatsoever, including, without limitation, any of the following, whether or not with notice to or the consent of Guarantor:

(a) the invalidity, irregularity, illegality or unenforceability of, or any defect in, any instrument, document, agreement or contract evidencing or comprising the Guaranteed Obligations;

(b) any present or future law or order of any government or of any agency thereof purporting to reduce, amend or otherwise affect the Guaranteed Obligations or any other obligation of the Borrower or any other obligor or to vary any terms of payment;

(c) any claim of immunity or defense (other than full and final payment of the Guaranteed Obligations) on behalf of the Borrower or any other obligor;

(d) the waiver, compromise, settlement, release or termination of any or all of the Guaranteed Obligations or the release of any Collateral or any Other Guarantor;

(e) the failure to give notice to Guarantor of the occurrence of any event of default or breach of any of the Guaranteed Obligations or the breach of any provisions hereunder;

(f) the extension of the time for payment of any principal of or interest or premium on any of the Guaranteed Obligations or of the time for performance of any other obligations, covenants or agreements under or arising out of the Guaranteed Obligations;

(g) the modification or amendment (whether material or otherwise) of any obligation, instrument, contract, covenant or agreement set forth in, evidencing, or comprising any part of the Guaranteed Obligations;

(h) the taking of, or the omission to take, any of the actions referred to in this Guaranty or in any of the instruments, documents, agreements, and contracts evidencing or comprising the Guaranteed Obligations;

(i) any failure, omission or delay on the part of Lender or any other Person to enforce, assert or exercise any right, power or remedy conferred on Lender or such other Person in the Guaranty or the Guaranteed Obligations;

(j) the voluntary or involuntary liquidation of, dissolution of, sale or other disposition of all or substantially all the assets of, cessation of business of, marshalling of assets and liabilities of, receivership of, financial decline of, insolvency of, bankruptcy of, assignment for the benefit of creditors of, reorganization of, arrangement of, composition with creditors or readjustment of, or other similar proceedings affecting, the Borrower or any of its subsidiaries or assets or any allegation or contest of the validity of the Guaranteed Obligations or this Guaranty, or the disaffirmance or attempted disaffirmance of the Guaranteed Obligations or this Guaranty, in any such proceedings;

(k) the default or failure of Guarantor fully to perform any of its obligations set forth in this Guaranty;

(l) the failure of any other Person to guarantee any or all of the Guaranteed Obligations;

(m) the failure of Lender to take or perfect a lien, security interest, or any other interest in any Collateral, or the failure by Lender to give notice to Guarantor of any foreclosure or other sale of the Collateral by Lender;

(n) the release by Lender of any Collateral or a determination by Lender not to assert a claim against or proceed against the Borrower, any Collateral or any Other Guarantor;

(o) Lender's compromise or settlement with or without release of any other Person liable for any of the Guaranteed Obligations;

(p) Lender's failure to file suit against Borrower (regardless whether Borrower is becoming insolvent, is believed to be about to leave the state, or any other circumstance);

(q) Lender's acceleration of any or all of the Guaranteed Obligations;

(r) the renewal, extension, amendment, or increase in indebtedness of any of the Guaranteed Obligations;

(s) Lender's failure to exercise diligence in the collection of the Guaranteed Obligations; or

(t) to the extent permitted by law, any event or action that would, in the absence of this paragraph, result in the release or discharge of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty.

Section 3.3 Waivers by Guarantor.

(a) Guarantor hereby waives with respect to the Guaranteed Obligations and this Guaranty: diligence; presentment; demand of payment; filing of claims with a court in the event of bankruptcy of the Borrower or any other Person liable in respect of the Guaranteed Obligations; any right to require Lender to proceed first against the Borrower or any other Person; protest; notice of dishonor or nonpayment of any such liabilities; notice of the release of any Other Guarantor; notice of the release or sale of any Collateral; and any other notice and all demands whatsoever. Guarantor hereby waives notice from Lender and the holders at any time or from time to time of the Guaranteed Obligations, of the issuance of the instruments evidencing the Guaranteed Obligations, and of acceptance of, or notice and proof of reliance on, the benefits of this Guaranty.

(b) Guarantor hereby agrees that it shall have no right of subrogation, reimbursement or indemnity whatsoever and no right of recourse to or with respect to any assets or property of Borrower until payment in full of the Guaranteed Obligations.

(c) The obligations of Guarantor hereunder shall not be discharged except by full and final payment and discharge of the Guaranteed Obligations.

Section 3.4 Primary Liability of Guarantor. This Guaranty constitutes a guarantee of payment and performance and not of collection. Accordingly, Lender may enforce this Guaranty against Guarantor without first making demand or instituting collection proceedings upon the Guaranteed Obligations. Guarantor's liability for the Guaranteed Obligations is hereby declared to be primary, and not secondary, and each document presently or hereafter executed by Borrower to evidence or secure an obligation to Lender is incorporated herein by reference and shall be fully enforceable against Guarantor. Guarantor shall not be entitled to satisfy this Guaranty by contributing ratably with any Other Guarantor or otherwise paying less than the entire unpaid indebtedness comprising the Guaranteed Obligations.

Section 3.5 Subordination. Guarantor agrees that any presently existing or hereafter arising loan or extension of credit made by Guarantor to Borrower and any other presently existing or hereafter arising obligation of Borrower to Guarantor shall be subordinate to the Guaranteed Obligations as to both payment and collection. Accordingly, Guarantor agrees not to accept any payment whatsoever from Borrower or to allow any payment by Borrower on Guarantor's behalf while any default, event of default, or breach exists with respect to the Guaranteed Obligations. Guarantor agrees that in the event of a bankruptcy or other insolvency proceeding involving Borrower, Guarantor will timely file a claim for the amount of the subordinated debt, in form reasonably acceptable to Lender. Guarantor agrees to pursue said claim with diligence. The proceeds of such claim shall be delivered to Lender to the extent Guarantor owes any Lender amounts under this Guaranty.

Section 3.6 Statute of Limitations. Guarantor acknowledges that the statute of limitations applicable to this Guaranty shall begin to run only upon Lender's accrual of a cause of action against Guarantor hereunder caused by Guarantor's refusal to honor a demand for performance hereunder made by Lender in writing; provided, however, if, subsequent to the demand upon Guarantor, Lender reaches an agreement with Borrower on any terms causing Lender to forbear in the enforcement of its demand upon Guarantor, the statute of limitation shall be reinstated for its full duration until Lender subsequently again make demands upon Guarantor.

Section 3.7 Recovery of Avoided Payments. If any amount applied by Lender to the Guaranteed Obligations is subsequently challenged by a bankruptcy trustee or debtor-in-possession or other Person as an avoidable transfer on the grounds that the payment constituted a preferential payment or a fraudulent conveyance under state law or the Bankruptcy Code or any successor statute thereto or on any other grounds, Lender may at its option and in its sole discretion, elect whether to contest such challenge. If Lender contests the avoidance action, all costs of the proceeding, including Lender's attorneys fees, will become part of the Guaranteed Obligations, and shall be due and payable by Guarantor on demand. If the contested amount is successfully avoided, the avoided amount will become part of the Guaranteed Obligations hereunder and shall be due and payable by Guarantor on demand. If Lender elects not to contest the avoidance action, Lender may tender the amount subject to the avoidance action to the bankruptcy court, trustee or debtor in possession and the amount so advanced shall become part of the Guaranteed Obligations hereunder, and shall be due and payable by Guarantor on demand. Guarantor's obligation to reimburse Lender for amounts due under this section shall survive the purported cancellation hereof.

Section 3.8 Changes in Financial Condition. Guarantor covenants to give Lender prompt written notice of the creation or discovery of any material contingent liability or the occurrence of any material adverse change in the financial condition of Guarantor.

#### ARTICLE 4

#### SETOFF RIGHTS

In order to further secure the payment of the Guaranteed Obligations, Guarantor hereby grants Lender a right to set off against all of Guarantor's presently owned or hereafter acquired monies, securities, deposits, instruments (including certificates of deposit), and other Property presently or hereafter in the possession of Lender. By maintaining any such accounts with Lender or placing Property in Lender's possession, Guarantor acknowledges that Guarantor voluntarily subjects the Property to Lender's rights hereunder.

#### ARTICLE 5

#### EVENTS REQUIRING GUARANTOR TO PERFORM

Section 5.1 Events. Upon the occurrence of any of the following events, Guarantor immediately and without notice from Lender, shall pay to Lender an amount equal to all Guaranteed Obligations, and Lender shall be entitled to enforce the provisions hereof, and to exercise any other rights, powers, and remedies provided hereunder. Upon the occurrence of any of the following events, Guarantor agrees that it shall pay to Lender an amount equal to all Guaranteed Obligations, regardless whether any of the Guaranteed Obligations themselves have been accelerated, are past due, or are in default:

(a) Borrower breaches or an event of default occurs under or in connection with any of the Guaranteed Obligations or any of the instruments, documents, agreements or contracts evidencing the Guaranteed Obligations; or

(b) Guarantor fails to perform or observe any agreement, covenant or provision contained in this Guaranty; or

(c) Guarantor fails to make any payment due on any indebtedness owed to any Person or security of Guarantor (as "security" is defined for purposes of federal securities laws as amended) or any event shall occur or any condition shall exist in respect of any indebtedness owed to any Person or security of Guarantor, or under any agreement securing or relating to such indebtedness or security, the effect of which is to cause any holder of such indebtedness or other security or a trustee to cause (whether or not such holder or trustee elects to cause) such indebtedness or security, or a portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment; or

(d) any warranty, representation or other statement by or on behalf of Guarantor contained in this Guaranty is false or misleading in any material respect; or

(e) any final, non-appealable judgment is rendered against Guarantor which exceeds \$10,000, and which is not satisfied or fully bonded against within thirty (30) days of the rendering thereof; or

(f) Guarantor files a petition seeking relief under any provision of the United States Bankruptcy Code; or

(g) the occurrence of any event that would permit Lender to accelerate all or any part of the Guaranteed Obligations, but acceleration thereof is prevented by law, court order, or otherwise; or

(h) the dissolution of Guarantor.

Section 5.2 Remedies; Waiver, Etc.

(a) No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity or by statute or by contract.

(b) No delay or omission to exercise any right or power accruing upon the occurrence of any of the events specified in Section 5.01 hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) In the event any provision contained in this Guaranty should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(d) No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing.

ARTICLE 6

MISCELLANEOUS

Section 6.1 Survival. All warranties, representations, and covenants made by Guarantor herein shall be deemed to have been relied upon by Lender and the holder(s) from time to time of the Guaranteed Obligations and shall survive the delivery to Lender of this Guaranty regardless of any investigation made by Lender or the holder(s) from time to time of the Guaranteed Obligations.

Section 6.2 Successors and Assigns. This Guaranty shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, except that Guarantor shall not assign any rights or delegate any obligation hereunder without the prior written consent of Lender. Any attempted assignment or delegation without the required prior consent shall be void. The provisions of this Guaranty are intended to be for the benefit of Lender and any other holder or holders of the Guaranteed Obligations. Guarantor acknowledges that the Guaranteed Obligations and this Guaranty may be assigned or sold by Lender to one or more third parties without the consent of Guarantor.

Section 6.3 No Partners; No Third Party Beneficiaries. Nothing contained herein or in any related document shall be deemed to render either Lender a partner of Borrower or Guarantor for any purpose. This Guaranty and any documents securing the Guaranteed Obligations have been executed for the sole benefit of Lender as an inducement to cause Lender to extend credit to Borrower, and neither Guarantor nor any other third party is authorized to rely upon Lender's rights hereunder or to rely upon an assumption that Lender has or will exercise its rights under any document.

Section 6.4 Notices. All communications under or in connection with this Guaranty shall be in writing and shall be mailed by first class certified mail, postage prepaid, or otherwise sent by facsimile or other similar form of rapid transmission confirmed by mailing (in the manner stated above) a written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent, or delivered as follows:

To Guarantor:                   Bona Vida, Inc.  
81 Prospect Street  
Brooklyn, New York 11201  
Attention:                    Damian Dalla-Longa  
Fax:                             N/A

With a copy to:                Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022-4834  
Attention:                    Erika L. Weinberg  
Fax:                             (212) 751-4864

To Lender: Franklin Synergy Bank  
3325 West End Avenue  
Nashville, Tennessee 37203  
Attention: Melinda Bailey  
Fax: (615) 515-8100

With a copy to: Thompson Burton PLLC  
6100 Tower Circle, Suite 200  
Franklin, Tennessee 37067  
Attention: J. Bryan Echols  
Fax: (615) 807-3048

Any written communication mailed shall also be faxed to the fax number shown above and shall be deemed delivered upon the earlier of: (a) receipt of a confirmation that the fax was received, or (b) three days after being deposited in the U.S. Mail, first-class postage prepaid, to the address shown above.

Section 6.5 Partial Invalidity. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty or any part thereof.

Section 6.6 Indulgence Not Waiver. Lender's indulgence in the existence of a default hereunder or any other departure in from the terms of this Guaranty shall not prejudice Lender's rights to make demand and recover from Guarantor.

Section 6.7 Amendment and Waiver in Writing. No provision of this Guaranty can be amended or waived, except by a statement in writing signed by the party against which enforcement of the amendment or waiver is sought.

Section 6.8 Entire Agreement; No Oral Representations Limiting Enforcement. This Guaranty represents the entire agreement between the parties concerning the liability of Guarantor for the Guaranteed Obligations, and any previously made oral statements regarding Guarantor's liability for the Guaranteed Obligations are merged herein. Without limiting the foregoing, Guarantor acknowledges that Lender has made no oral statements to Guarantor that could be construed as a waiver of Lender's right to enforce this Guaranty by all available legal means.

Section 6.9 Costs of Collection Against Guarantor. Guarantor agrees to pay on demand all reasonable costs of collection, including, without limitation, court costs, attorney's fees and compensation for time spent by Lender's employees, that Lender may incur in enforcing the terms of this Guaranty or that may be incurred in any legal proceeding brought to construe, enforce, or apply this Guaranty.

Section 6.10 Cumulative Remedies. The remedies provided Lender in this Guaranty are not exclusive of any other remedies that may be available to Lender under any other document or at law or equity.

Section 6.11 Applicable Law. The validity, construction and enforcement of this Guaranty and all other documents executed with respect to the Guaranteed Obligations shall be determined according to the laws of Tennessee.

Section 6.12 Gender and Number. Words used herein indicating gender or number shall be read as context may require.

Section 6.13 Captions Not Controlling. Captions and headings have been included in this Guaranty for the convenience of the parties, and shall not be construed as affecting the content of the respective paragraphs.

Section 6.14 Cancellation by Lender. Lender may evidence its cancellation of this Guaranty and the release of Guarantor from liability hereunder by delivering to Guarantor an instrument of release, or by delivering the original of this Guaranty to Guarantor with a notation on its face signed and dated by an authorized officer of Lender stating "Cancelled in Full As To All Guaranteed Obligations." However, the purported cancellation hereof and release of Guarantor shall not impair Guarantor's continuing liability for (i) any amount of principal, interest, or expenses that was mistakenly omitted by Lender in calculating the final payment due under the Guaranteed Obligations, if the release of Guarantor was based upon Lender's belief that it had been paid in full, (ii) liability for avoided payments and expenses related thereto set forth in Section 3.7 hereto, and (iii) any surviving liability of Borrower to reimburse Lender or to indemnify Lender for any amounts whatsoever. Lender shall not be obligated to release any collateral securing this Guaranty until after all applicable time periods have expired regarding bankruptcy preference or other avoidance actions that may be applicable to the circumstances of payment of any or all of the Guaranteed Obligations.

Section 6.15 No Marshaling of Assets. Lender may proceed against any Collateral and against parties liable therefore in such order as it may elect, and Guarantor shall not be entitled to require Lender to marshal assets. The benefit of any rule of law or equity to the contrary is hereby expressly waived.

Section 6.16 Bankruptcy, Etc. Without limitation, Guarantor's obligations hereunder shall not be affected by: (a) the filing of a petition in bankruptcy by or against Borrower under 11 U.S.C. § 101, et seq., or the appointment of a trustee, receiver, custodian, conservator, or other similar appointment over Borrower or any of Borrower's assets, whether under 11 U.S.C. § 101, et seq. or other statutory, administrative, or other laws, rules, or regulations; (b) any order, ruling, or action taken (by Lender, Borrower, or others) in any bankruptcy case initiated by or against Borrower or in any receivership, conservatorship, or other similar estate. Lender may in its discretion modify any of the terms of the Guaranteed Obligations with any successor or assignee of the Borrower or its Property including a debtor in possession or trustee in bankruptcy, receiver, custodian, conservator, or similar Person, without affecting Guarantor's obligations hereunder. Any such debtor-in-possession, trustee, receiver, custodian, conservator, or other similarly appointed Person shall be deemed to be authorized to act on behalf of Borrower, and Guarantor authorizes Lender to deal with any such Person as if that Person were the Borrower for purposes of this Guaranty.

Section 6.17 Jury Trial Waiver. GUARANTOR AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS AND THEIR RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS GUARANTY OR ANY RELATIONSHIP BETWEEN LENDER AND GUARANTOR. GUARANTOR WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS SECTION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 6.18 Consent to Jurisdiction and Venue. GUARANTOR HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE AND OF ALL TENNESSEE STATE COURTS SITTING IN DAVIDSON COUNTY, TENNESSEE, FOR THE PURPOSE OF ANY LITIGATION TO WHICH LENDER MAY BE A PARTY AND WHICH CONCERNS THIS GUARANTY OR THE GUARANTEED OBLIGATIONS. IT IS FURTHER AGREED THAT VENUE FOR ANY SUCH ACTION SHALL LIE EXCLUSIVELY WITH COURTS SITTING IN DAVIDSON COUNTY, TENNESSEE, UNLESS LENDER AGREES TO THE CONTRARY IN WRITING.

Section 6.19 Waiver of Certain Damages. IN ANY ACTION TO ENFORCE GUARANTY, GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS UNDER THE LAWS OF ANY STATE TO CLAIM OR RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN ACTUAL DIRECT DAMAGES.

Section 6.20 Guarantor's Independent Decision. Guarantor delivers this Guaranty based solely on its own independent investigation and determination, and Guarantor has not relied on any statement or representation of Lender or its agents with respect to any matter whatsoever. Guarantor is in a position to and hereby assumes full responsibility for obtaining any additional information concerning the Guaranteed Obligations and the Borrower.

Section 6.21 Financial Statements. As soon as available, and in any event within thirty (30) days after the last Internal Revenue Service deadline for tax filing for the preceding fiscal year of Guarantor Borrower shall cause Lender to receive true, complete and accurate personal annual financial statements and tax returns of Guarantor, certified as true and correct by Guarantor.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

ENTERED INTO the date first set forth above.

**GUARANTOR:**

BONA VIDA, INC., a Delaware corporation

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

Print Name: Damian Dalla-Longa

Title: Co-CEO

STATE OF NEW YORK )

COUNTY OF NEW YORK )

Before me, Olivia Savannah Logan, a Notary Public of said County and State, personally appeared Damian Dalla-Longa, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Co-CEO (or other officer authorized to execute the instrument) of BONA VIDA, INC., the within named bargain or, a Delaware corporation, and that he as such Co-CEO, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as its Co-CEO.

Witness my hand and seal, at Office, New York, New York, this 8th in day of May 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: November 13, 2021

**[SIGNATURE PAGE – GUARANTY AGREEMENT]**

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**GUARANTY AGREEMENT**

ENTERED INTO by TRUPET LLC, a Delaware limited liability company ("Guarantor"), in favor of FRANKLIN SYNERGY BANK, a Tennessee banking corporation, its successors and assigns ("Lender") this 8th day of April, 2019.

RECITALS:

1. Guarantor desires to induce Lender to extend a loan to BETTER CHOICE COMPANY INC., a Delaware corporation ("Borrower").
2. One condition to Lender's agreement to extend the loan to Borrower is that Guarantor must unconditionally guarantee the obligations of Borrower, without which Lender would not extend credit to Borrower.
3. Guarantor acknowledges that it derives both a direct and indirect benefit from the credit extended to Borrower.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE 1.

DEFINITIONS

Section 1.1 The following terms shall have the following meanings unless the context expressly requires otherwise:

- (a) "Borrower" has the meaning ascribed to that term in the recitals hereof.
- (b) "Collateral" means (i) any and all Property and things of value in or against which a deed of trust lien, mortgage lien, other lien, and/or security interest has been granted or may in the future be granted to secure to Lender repayment and performance of the Guaranteed Obligations; (ii) any and all Property and things of value now held or which may in the future be held by or for the benefit of Lender as security for or for application to the Guaranteed Obligations; and (iii) any and all Property and things of value assigned to or which may in the future be assigned to or for the benefit of Lender as security for or for application to the Guaranteed Obligations.
- (c) "Financial Statements" means (i) the financial statement or statements of Guarantor delivered with this Guaranty to Lender, and (ii) subsequent financial statements required to be provided pursuant to this Guaranty.
- (d) "Guaranteed Obligations" means the following: (i) obligations and indebtedness arising out of or in connection with that certain Promissory Note dated of even date herewith in the principal amount of SIX MILLION TWO HUNDRED AND NO/100 DOLLARS (\$6,200,000.00) executed by Borrower to the order of Lender (the "Note"); (ii) (without duplication) obligations and indebtedness of Borrower arising out of that certain Loan Agreement dated of even date herewith executed by Borrower and Lender (the "Loan Agreement") and the other Loan Documents (as defined in the Loan Agreement); (iii) all obligations of Borrower under any application and agreements for issuance of letters of credit, indemnity agreements, or reimbursement agreements executed by Borrower in favor of Lender in connection with the issuance by Lender of letters of credit on Grantor's account and (iv) all amendments, modifications, extensions or increases in the indebtedness of, and in connection with, any of the foregoing.

(e) “Guarantor” has the meaning ascribed to that term in the preamble hereof, and shall include without limitation: (i) Guarantor as debtor-in-possession or any trustee in any bankruptcy proceeding, and (ii) any trustee, receiver, custodian, conservator or other similar appointee over Guarantor or over his Property pursuant to any court proceeding of any kind.

(f) “Guaranty” means this Guaranty Agreement, as it may be modified and amended from time to time hereafter.

(g) “Lender” has the meaning ascribed to that term in the preamble hereof.

(h) “Other Guarantor” means any and all Persons who now or in the future guarantee to Lender all or any portion of the Guaranteed Obligations.

(i) “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof, or any other form of entity.

(j) “Property” or “Properties” means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

## ARTICLE 2.

### REPRESENTATIONS AND WARRANTIES

To induce Lender to accept this Guaranty and to cause Lender to extend credit from time to time to Borrower, Guarantor hereby represents and warrants to Lender the following:

Section 2.1 Binding Obligations. This Guaranty is legal, valid and binding upon and against Guarantor, enforceable in accordance with its respective terms, subject to no defense, counterclaim, set-off, or objection of any kind. Lender has taken no action nor has it failed to take any action that subjects Lender to any liability to Guarantor.

Section 2.2 No Legal Bar or Resultant Lien. Guarantor’s execution, delivery and performance of this Guaranty does not constitute a default under, and will not violate any contract, agreement, law, regulation, order, injunction, judgment, decree, or writ to which Guarantor is subject, or result in the creation or imposition of any lien upon any Properties of Guarantor.

Section 2.3 No Consent. Guarantor's execution, delivery, and performance of this Guaranty does not require the consent or approval of any other Person.

Section 2.4 Financial Condition. The Financial Statements that have been delivered to Lender, present fairly the financial condition of Guarantor as of the date or dates and for the period or periods stated therein. No material adverse change in the financial condition of Guarantor has occurred since the date of the most recent Financial Statements.

Section 2.5 Liabilities and Litigation. Guarantor has no material liabilities (individually or in the aggregate) direct or contingent, except as referred to or reflected in the Financial Statements. There is no litigation, legal or administrative proceeding, investigation, or other action of any nature pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor that involves the possibility of any judgment or liability not fully covered by insurance and that may materially and adversely affect the business or the Properties of Guarantor.

Section 2.6 Taxes; Governmental Charges. Guarantor has filed or caused to be filed all tax returns and reports required to be filed and has paid all taxes, assessments, fees, and other governmental charges levied upon it or upon any of its Properties or income, which are due and payable, including interest and penalties.

Section 2.7 Title, Etc. Guarantor has good title to its Properties, free and clear of all liens except those referenced or reflected in the Financial Statements.

Section 2.8 No Default. Guarantor is not in default in any respect that affects his business, Properties, operations, or condition, financial or otherwise, under any indenture, mortgage, deed of trust, credit agreement, note, agreement, or other contract to which Guarantor is a party or by which Guarantor or its Properties are bound.

Section 2.9 Solvency. Guarantor is solvent as of the date hereof. Guarantor is generally paying its debts as they mature and the fair value of Guarantor's assets exceed the sum total of Guarantor's liabilities.

Section 2.10 Existence. The entity type of Guarantor is correctly described in the preamble hereof, and Guarantor is duly organized, legally existing and in good standing under the laws of the state of its organization, incorporation or formation as the case may be, which is described in the preamble hereof. Guarantor has taken all action required by its organizational documents and applicable law to authorize the execution, delivery and performance of this Guaranty.

#### ARTICLE 3.

#### COVENANTS AND AGREEMENTS

Section 3.1 Guarantee of Payment.

- (a) Guarantor hereby irrevocably and unconditionally guarantees to Lender the full and timely payment and performance of the Guaranteed Obligations.

(b) All payments by Guarantor shall be paid in lawful money of the United States of America.

(c) Each and every default in payment of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by Lender as each cause of action arises.

(d) Guarantor shall pay on demand to Lender all reasonable costs and expenses (including attorneys' fees) incurred by Lender in the protection, interpretation, and enforcement of any of its rights or in the pursuance of any of its remedies in respect of the Guaranteed Obligations or this Guaranty.

Section 3.2 Obligations Continuing and Unconditional. The obligations of Guarantor under this Guaranty are continuing, absolute and unconditional and shall remain in full force and effect until the entire principal of and interest and expenses on the Guaranteed Obligations shall have been paid in full and discharged, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event whatsoever, including, without limitation, any of the following, whether or not with notice to or the consent of Guarantor:

(a) the invalidity, irregularity, illegality or unenforceability of, or any defect in, any instrument, document, agreement or contract evidencing or comprising the Guaranteed Obligations;

(b) any present or future law or order of any government or of any agency thereof purporting to reduce, amend or otherwise affect the Guaranteed Obligations or any other obligation of the Borrower or any other obligor or to vary any terms of payment;

(c) any claim of immunity or defense (other than full and final payment of the Guaranteed Obligations) on behalf of the Borrower or any other obligor;

(d) the waiver, compromise, settlement, release or termination of any or all of the Guaranteed Obligations or the release of any Collateral or any Other Guarantor;

(e) the failure to give notice to Guarantor of the occurrence of any event of default or breach of any of the Guaranteed Obligations or the breach of any provisions hereunder;

(f) the extension of the time for payment of any principal of or interest or premium on any of the Guaranteed Obligations or of the time for performance of any other obligations, covenants or agreements under or arising out of the Guaranteed Obligations;

(g) the modification or amendment (whether material or otherwise) of any obligation, instrument, contract, covenant or agreement set forth in, evidencing, or comprising any part of the Guaranteed Obligations;

- (h) the taking of, or the omission to take, any of the actions referred to in this Guaranty or in any of the instruments, documents, agreements, and contracts evidencing or comprising the Guaranteed Obligations;
- (i) any failure, omission or delay on the part of Lender or any other Person to enforce, assert or exercise any right, power or remedy conferred on Lender or such other Person in the Guaranty or the Guaranteed Obligations;
- (j) the voluntary or involuntary liquidation of, dissolution of: sale or other disposition of all or substantially all the assets of, cessation of business of, marshalling of assets and liabilities of, receivership of, financial decline of, insolvency of, bankruptcy of, assignment for the benefit of creditors of, reorganization of, arrangement of, composition with creditors or readjustment of, or other similar proceedings affecting, the Borrower or any of its subsidiaries or assets or any allegation or contest of the validity of the Guaranteed Obligations or this Guaranty, or the disaffirmance or attempted disaffirmance of the Guaranteed Obligations or this Guaranty, in any such proceedings;
- (k) the default or failure of Guarantor fully to perform any of its obligations set forth in this Guaranty;
- (l) the failure of any other Person to guarantee any or all of the Guaranteed Obligations;
- (m) the failure of Lender to take or perfect a lien, security interest, or any other interest in any Collateral, or the failure by Lender to give notice to Guarantor of any foreclosure or other sale of the Collateral by Lender;
- (n) the release by Lender of any Collateral or a determination by Lender not to assert a claim against or proceed against the Borrower, any Collateral or any Other Guarantor;
- (o) Lender's compromise or settlement with or without release of any other Person liable for any of the Guaranteed Obligations;
- (p) Lender's failure to file suit against Borrower (regardless whether Borrower is becoming insolvent, is believed to be about to leave the state, or any other circumstance);
- (q) Lender's acceleration of any or all of the Guaranteed Obligations;
- (r) the renewal, extension, amendment, or increase in indebtedness of any of the Guaranteed Obligations;
- (s) Lender's failure to exercise diligence in the collection of the Guaranteed
- (t) to the extent permitted by law, any event or action that would, in the absence of this paragraph, result in the release or discharge of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty.

Section 3.3 Waivers by Guarantor.

(a) Guarantor hereby waives with respect to the Guaranteed Obligations and this Guaranty: diligence; presentment; demand of payment; filing of claims with a court in the event of bankruptcy of the Borrower or any other Person liable in respect of the Guaranteed Obligations; any right to require Lender to proceed first against the Borrower or any other Person; protest; notice of dishonor or nonpayment of any such liabilities; notice of the release of any Other Guarantor; notice of the release or sale of any Collateral; and any other notice and all demands whatsoever. Guarantor hereby waives notice from Lender and the holders at any time or from time to time of the Guaranteed Obligations, of the issuance of the instruments evidencing the Guaranteed Obligations, and of acceptance of, or notice and proof of reliance on, the benefits of this Guaranty.

(b) Guarantor hereby agrees that it shall have no right of subrogation, reimbursement or indemnity whatsoever and no right of recourse to or with respect to any assets or property of Borrower until payment in full of the Guaranteed Obligations.

(c) The obligations of Guarantor hereunder shall not be discharged except by full and final payment and discharge of the Guaranteed Obligations.

Section 3.4 Primary Liability of Guarantor. This Guaranty constitutes a guarantee of payment and performance and not of collection. Accordingly, Lender may enforce this Guaranty against Guarantor without first making demand or instituting collection proceedings upon the Guaranteed Obligations. Guarantor's liability for the Guaranteed Obligations is hereby declared to be primary, and not secondary, and each document presently or hereafter executed by Borrower to evidence or secure an obligation to Lender is incorporated herein by reference and shall be fully enforceable against Guarantor. Guarantor shall not be entitled to satisfy this Guaranty by contributing ratably with any Other Guarantor or otherwise paying less than the entire unpaid indebtedness comprising the Guaranteed Obligations.

Section 3.5 Subordination. Guarantor agrees that any presently existing or hereafter arising loan or extension of credit made by Guarantor to Borrower and any other presently existing or hereafter arising obligation of Borrower to Guarantor shall be subordinate to the Guaranteed Obligations as to both payment and collection. Accordingly, Guarantor agrees not to accept any payment whatsoever from Borrower or to allow any payment by Borrower on Guarantor's behalf while any default, event of default, or breach exists with respect to the Guaranteed Obligations. Guarantor agrees that in the event of a bankruptcy or other insolvency proceeding involving Borrower, Guarantor will timely file a claim for the amount of the subordinated debt, in form reasonably acceptable to Lender. Guarantor agrees to pursue said claim with diligence. The proceeds of such claim shall be delivered to Lender to the extent Guarantor owes any Lender amounts under this Guaranty.

Section 3.6 Statute of Limitations. Guarantor acknowledges that the statute of limitations applicable to this Guaranty shall begin to run only upon Lender's accrual of a cause of action against Guarantor hereunder caused by Guarantor's refusal to honor a demand for performance hereunder made by Lender in writing; provided, however, if, subsequent to the demand upon Guarantor, Lender reaches an agreement with Borrower on any terms causing Lender to forbear in the enforcement of its demand upon Guarantor, the statute of limitation shall be reinstated for its full duration until Lender subsequently again make demands upon Guarantor.

Section 3.7 Recovery of Avoided Payments. If any amount applied by Lender to the Guaranteed Obligations is subsequently challenged by a bankruptcy trustee or debtor-in- possession or other Person as an avoidable transfer on the grounds that the payment constituted a preferential payment or a fraudulent conveyance under state law or the Bankruptcy Code or any successor statute thereto or on any other grounds, Lender may at its option and in its sole discretion, elect whether to contest such challenge. If Lender contests the avoidance action, all costs of the proceeding, including Lender's attorneys fees, will become part of the Guaranteed Obligations, and shall be due and payable by Guarantor on demand. If the contested amount is successfully avoided, the avoided amount will become part of the Guaranteed Obligations hereunder and shall be due and payable by Guarantor on demand. If Lender elects not to contest the avoidance action, Lender may tender the amount subject to the avoidance action to the bankruptcy court, trustee or debtor in possession and the amount so advanced shall become part of the Guaranteed Obligations hereunder, and shall be due and payable by Guarantor on demand. Guarantor's obligation to reimburse Lender for amounts due under this section shall survive the purported cancellation hereof.

Section 3.8 Changes in Financial Condition. Guarantor covenants to give Lender prompt written notice of the creation or discovery of any material contingent liability or the occurrence of any material adverse change in the financial condition of Guarantor.

#### ARTICLE 4.

#### SETOFF RIGHTS

In order to further secure the payment of the Guaranteed Obligations, Guarantor hereby grants Lender a right to set off against all of Guarantor's presently owned or hereafter acquired monies, securities, deposits, instruments (including certificates of deposit), and other Property presently or hereafter in the possession of Lender. By maintaining any such accounts with Lender or placing Property in Lender's possession, Guarantor acknowledges that Guarantor voluntarily subjects the Property to Lender's rights hereunder.

#### ARTICLE 5.

#### EVENTS REQUIRING GUARANTOR TO PERFORM

Section 5.1 Events. Upon the occurrence of any of the following events, Guarantor immediately and without notice from Lender, shall pay to Lender an amount equal to all Guaranteed Obligations, and Lender shall be entitled to enforce the provisions hereof, and to exercise any other rights, powers, and remedies provided hereunder. Upon the occurrence of any of the following events, Guarantor agrees that it shall pay to Lender an amount equal to all Guaranteed Obligations, regardless whether any of the Guaranteed Obligations themselves have been accelerated, are past due, or are in default:

(a) Borrower breaches or an event of default occurs under or in connection with any of the Guaranteed Obligations or any of the instruments, documents, agreements or contracts evidencing the Guaranteed Obligations; or

(b) Guarantor fails to perform or observe any agreement, covenant or provision contained in this Guaranty; or

(c) Guarantor fails to make any payment due on any indebtedness owed to any Person or security of Guarantor (as "security" is defined for purposes of federal securities laws as amended) or any event shall occur or any condition shall exist in respect of any indebtedness owed to any Person or security of Guarantor, or under any agreement securing or relating to such indebtedness or security, the effect of which is to cause any holder of such indebtedness or other security or a trustee to cause (whether or not such holder or trustee elects to cause) such indebtedness or security, or a portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment; or

(d) any warranty, representation or other statement by or on behalf of Guarantor contained in this Guaranty is false or misleading in any material respect; or

(e) any final, non-appealable judgment is rendered against Guarantor which exceeds \$10,000, and which is not satisfied or fully bonded against within thirty (30) days of the rendering thereof; or

(f) Guarantor files a petition seeking relief under any provision of the United States Bankruptcy Code; or

(g) the occurrence of any event that would permit Lender to accelerate all or any part of the Guaranteed Obligations, but acceleration thereof is prevented by law, court order, or otherwise; or

(h) the dissolution of Guarantor.

Section 5.2 Remedies; Waiver, Etc.

(a) No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity or by statute or by contract.

(b) No delay or omission to exercise any right or power accruing upon the occurrence of any of the events specified in Section 5.01 hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) In the event any provision contained in this Guaranty should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(d) No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing.

ARTICLE 6.

MISCELLANEOUS

Section 6.1 Survival. All warranties, representations, and covenants made by Guarantor herein shall be deemed to have been relied upon by Lender and the holder(s) from time to time of the Guaranteed Obligations and shall survive the delivery to Lender of this Guaranty regardless of any investigation made by Lender or the holder(s) from time to time of the Guaranteed Obligations.

Section 6.2 Successors and Assigns. This Guaranty shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, except that Guarantor shall not assign any rights or delegate any obligation hereunder without the prior written consent of Lender. Any attempted assignment or delegation without the required prior consent shall be void. The provisions of this Guaranty are intended to be for the benefit of Lender and any other holder or holders of the Guaranteed Obligations. Guarantor acknowledges that the Guaranteed Obligations and this Guaranty may be assigned or sold by Lender to one or more third parties without the consent of Guarantor.

Section 6.3 No Partners; No Third Party Beneficiaries. Nothing contained herein or in any related document shall be deemed to render either Lender a partner of Borrower or Guarantor for any purpose. This Guaranty and any documents securing the Guaranteed Obligations have been executed for the sole benefit of Lender as an inducement to cause Lender to extend credit to Borrower, and neither Guarantor nor any other third party is authorized to rely upon Lender's rights hereunder or to rely upon an assumption that Lender has or will exercise its rights under any document.

Section 6.4 Notices. All communications under or in connection with this Guaranty shall be in writing and shall be mailed by first class certified mail, postage prepaid, or otherwise sent by facsimile or other similar form of rapid transmission confirmed by mailing (in the manner stated above) a written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent, or delivered as follows:

To Guarantor: TruPet LLC  
81 Prospect Street  
Brooklyn, New York 11201  
Attention: Damian Dalla-Longa  
Fax: N/A

With a copy to: Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022-4834  
Attention: Erika L. Weinberg  
Fax: (212) 751-4864

To Lender: Franklin Synergy Bank  
3325 West End Avenue  
Nashville, Tennessee 37203  
Attention: Melinda Bailey  
Fax: (615) 515-8100

With a copy to: Thompson Burton PLLC  
6100 Tower Circle, Suite 200  
Franklin, Tennessee 37067  
Attention: J. Bryan Echols  
Fax: (615) 807-3048

Any written communication mailed shall also be faxed to the fax number shown above and shall be deemed delivered upon the earlier of: (a) receipt of a confirmation that the fax was received, or (b) three days after being deposited in the U.S. Mail, first-class postage prepaid, to the address shown above.

Section 6.5 Partial Invalidity. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty or any part thereof.

Section 6.6 Indulgence Not Waiver. Lender's indulgence in the existence of a default hereunder or any other departure in from the terms of this Guaranty shall not prejudice Lender's rights to make demand and recover from Guarantor.

Section 6.7 Amendment and Waiver in Writing. No provision of this Guaranty can be amended or waived, except by a statement in writing signed by the party against which enforcement of the amendment or waiver is sought.

Section 6.8 Entire Agreement: No Oral Representations Limiting Enforcement. This Guaranty represents the entire agreement between the parties concerning the liability of Guarantor for the Guaranteed Obligations, and any previously made oral statements regarding Guarantor's liability for the Guaranteed Obligations are merged herein. Without limiting the foregoing, Guarantor acknowledges that Lender has made no oral statements to Guarantor that could be construed as a waiver of Lender's right to enforce this Guaranty by all available legal means.

Section 6.9 Costs of Collection Against Guarantor. Guarantor agrees to pay on demand all reasonable costs of collection, including, without limitation, court costs, attorney's fees and compensation for time spent by Lender's employees, that Lender may incur in enforcing the terms of this Guaranty or that may be incurred in any legal proceeding brought to construe, enforce, or apply this Guaranty.

Section 6.10 Cumulative Remedies. The remedies provided Lender in this Guaranty are not exclusive of any other remedies that may be available to Lender under any other document or at law or equity.

Section 6.11 Applicable Law. The validity, construction and enforcement of this Guaranty and all other documents executed with respect to the Guaranteed Obligations shall be determined according to the laws of Tennessee.

Section 6.12 Gender and Number. Words used herein indicating gender or number shall be read as context may require.

Section 6.13 Captions Not Controlling. Captions and headings have been included in this Guaranty for the convenience of the parties, and shall not be construed as affecting the content of the respective paragraphs.

Section 6.14 Cancellation by Lender. Lender may evidence its cancellation of this Guaranty and the release of Guarantor from liability hereunder by delivering to Guarantor an instrument of release, or by delivering the original of this Guaranty to Guarantor with a notation on its face signed and dated by an authorized officer of Lender stating "Cancelled in Full As To All Guaranteed Obligations." However, the purported cancellation hereof and release of Guarantor shall not impair Guarantor's continuing liability for (i) any amount of principal, interest, or expenses that was mistakenly omitted by Lender in calculating the final payment due under the Guaranteed Obligations, if the release of Guarantor was based upon Lender's belief that it had been paid in full, (ii) liability for avoided payments and expenses related thereto set forth in Section 3.7 hereto, and (iii) any surviving liability of Borrower to reimburse Lender or to indemnify Lender for any amounts whatsoever. Lender shall not be obligated to release any collateral securing this Guaranty until after all applicable time periods have expired regarding bankruptcy preference or other avoidance actions that may be applicable to the circumstances of payment of any or all of the Guaranteed Obligations.

Section 6.15 No Marshaling of Assets. Lender may proceed against any Collateral and against parties liable therefore in such order as it may elect, and Guarantor shall not be entitled to require Lender to marshal assets. The benefit of any rule of law or equity to the contrary is hereby expressly waived.

Section 6.16 Bankruptcy. Etc. Without limitation, Guarantor's obligations hereunder shall not be affected by: (a) the filing of a petition in bankruptcy by or against Borrower under 11 U.S.C. § 101, et seq., or the appointment of a trustee, receiver, custodian, conservator, or other similar appointment over Borrower or any of Borrower's assets, whether under 11 U.S.C. § 101, et seq. or other statutory, administrative, or other laws, rules, or regulations; (b) any order, ruling, or action taken (by Lender, Borrower, or others) in any bankruptcy case initiated by or against Borrower or in any receivership, conservatorship, or other similar estate. Lender may in its discretion modify any of the terms of the Guaranteed Obligations with any successor or assignee of the Borrower or its Property including a debtor in possession or trustee in bankruptcy, receiver, custodian, conservator, or similar Person, without affecting Guarantor's obligations hereunder. Any such debtor-in-possession, trustee, receiver, custodian, conservator, or other similarly appointed Person shall be deemed to be authorized to act on behalf of Borrower, and Guarantor authorizes Lender to deal with any such Person as if that Person were the Borrower for purposes of this Guaranty.

Section 6.17 Jury Trial Waiver. GUARANTOR AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS AND THEIR RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS GUARANTY OR ANY RELATIONSHIP BETWEEN LENDER AND GUARANTOR. GUARANTOR WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS SECTION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 6.18 Consent to Jurisdiction and Venue. GUARANTOR HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE AND OF ALL TENNESSEE STATE COURTS SITTING IN DAVIDSON COUNTY, TENNESSEE, FOR THE PURPOSE OF ANY LITIGATION TO WHICH LENDER MAY BE A PARTY AND WHICH CONCERNS THIS GUARANTY OR THE GUARANTEED OBLIGATIONS. IT IS FURTHER AGREED THAT VENUE FOR ANY SUCH ACTION SHALL LIE EXCLUSIVELY WITH COURTS SITTING IN DAVIDSON COUNTY, TENNESSEE, UNLESS LENDER AGREES TO THE CONTRARY IN WRITING.

Section 6.19 Waiver of Certain Damages. IN ANY ACTION TO ENFORCE GUARANTY, GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS UNDER THE LAWS OF ANY STATE TO CLAIM OR RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN ACTUAL DIRECT DAMAGES.

Section 6.20 Guarantor's Independent Decision. Guarantor delivers this Guaranty based solely on its own independent investigation and determination, and Guarantor has not relied on any statement or representation of Lender or its agents with respect to any matter whatsoever; Guarantor is in a position to and hereby assumes full responsibility for obtaining any additional information concerning the Guaranteed Obligations and the Borrower.

Section 6.21 Financial Statements. As soon as available, and in any event within thirty (30) days after the last Internal Revenue Service deadline for tax filing for the preceding fiscal year of Guarantor Borrower shall cause Lender to receive true, complete and accurate personal annual financial statements and tax returns of Guarantor, certified as true and correct by Guarantor.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

ENTERED INTO the date first set forth above.

**GUARANTOR:**

TRUPET LLC, a Delaware limited liability company

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

Print Name: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, a Notary Public of said County and State, personally appeared ) \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged \_\_\_\_\_self to be \_\_\_\_\_ (or other officer authorized to execute the instrument) of TRUPET LLC, the within named bargainor, a Delaware limited liability company, and that \_\_\_\_\_ as such \_\_\_\_\_ executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by \_\_\_\_\_self as its \_\_\_\_\_.

Witness my hand and seal, at Office, in \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of May, 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[SIGNATURE PAGE – GUARANTY AGREEMENT]

**Legal Name**

Bona Vida, Inc.

TruPet LLC

Wamore Corporation S.A.

**Jurisdiction of Incorporation**

Delaware

Delaware

Uruguay

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the inclusion in this Registration Statement on Form S-1 of our report dated July 24, 2019, relating to the consolidated financial statements of Better Choice Company, Inc. formerly Sport Endurance, Inc. (the “Company”), appearing in the Annual Report on Form 10-KT of the Company for the four months ended December 31, 2018 and year ended August 31, 2018, and to the reference to us under the heading “Experts” in the Prospectus, which is part of this Registration Statement.

/s/ RBSM LLP

New York, New York  
October 25, 2019

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October 25, 2019

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation in this Registration Statement on Form S-1, dated October 25, 2019, of our report dated April 26, 2019 relating to Trupet LLC's financial statements for the years ended December 31, 2018 and 2017.

Signed:

*MNP LLP*

**Chartered Professional Accountants  
Licensed Public Accountants**

**Toronto, Ontario**



**ACCOUNTING > CONSULTING > TAX**

SUITE 300, 111 RICHMOND STREET W, TORONTO ON, M5H 2G4  
1.877.251.2922 T: 416.596.1711 F: 416.596.7894 MNP.ca

October 25, 2019

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation in this Registration Statement on Form S-1, dated October 25, 2019, of our report dated April 9, 2019 relating to Bona Vida, Inc's financial statements for the period from the date of incorporation, March 29, 2018 to December 31, 2018

Signed:

*MNP LLP*

**Chartered Professional Accountants  
Licensed Public Accountants**

**Toronto, Ontario**



**ACCOUNTING > CONSULTING > TAX**  
SUITE 300, 111 RICHMOND STREET W, TORONTO ON, M5H 2G4  
1.877.251.2922 T: 416.596.1711 F: 416.596.7894 MNP.ca

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the inclusion in this Registration Statement on Form S-1 of our report dated November 29, 2017, of Sport Endurance, Inc., relating to the audit of the financial statements for the period ending August 31, 2017 and the reference to our firm under the caption "Experts" in the Registration Statement.

/s/ M&K CPAS, PLLC

www.mkacpas.com

Houston, Texas

October 18, 2019

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