

FRANCHISE DISCLOSURE DOCUMENT



Totally Nutz Franchise, LLC

a Utah limited liability company

69 E. 2580 S.

St. George, Utah 84790

Phone: 435-986-0999

Fax: 435-986-0222

email: franchisingmiles@totallynutz.com

www.totallynutz.com

Totally Nutz businesses sell fresh roasted cinnamon glazed nuts and related products at various venues, events, and mall locations (“Totally Nutz Businesses”).

The total investment necessary to begin operation of a Totally Nutz franchised business is between ~~\$59,872~~65,372 and \$216,000. This includes \$58,000 to \$105,500 that must be paid to the franchisor or its affiliate(s). Totally Nutz franchisees may purchase multiple Totally Nutz Businesses at the same time. The total investment necessary to begin operation of three Totally Nutz franchised businesses under a Multi-3 Franchise is between \$136,616 and \$605,000. This includes \$131,000 to \$273,500 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of five Totally Nutz franchised businesses under a Multi-5 Franchise is between \$221,360 and \$1,002,000. This includes \$212,000 to \$449,500 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of ten Totally Nutz franchised businesses under a Multi-10 Franchise is between \$393,620 and \$1,954,900. This includes \$374,900 to \$849,900 that must be paid to the franchisor or its affiliate(s).

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Matthew Barker at 69 E. 2580 S., St. George, Utah 84790, telephone: (435) 986-0999.

The terms of your contract will govern your franchise relationship. Do not rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP, or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC’s home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.



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Issuance Date: ~~April 16~~ March 31, 2021 2022

How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
How much can I earn?	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit C.
How much will I need to invest?	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor’s direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
Does the franchisor have the financial ability to provide support to my business?	Item 21 or Exhibit B includes financial statements. Review these statements carefully.
Is the franchise system stable, growing, or shrinking?	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
Will my business be the only Totally Nutz business in my area?	Item 12 and the “territory” provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
Does the franchisor have a troubled legal history?	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
What’s it like to be a Totally Nutz franchisee?	Item 20 or Exhibit C lists current and former franchisees. You can contact them to ask about their experiences.
What else should I know?	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.



What You Need To Know About Franchising Generally

Continuing responsibility to pay fees. You may have to pay royalties and other fees even if you are losing money.

Business model can change. The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

Supplier restrictions. You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

Operating restrictions. The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

Competition from franchisor. Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

Renewal. Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

When your franchise ends. The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit D.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.



Special Risks to Consider About *This Franchise*

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Utah. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Utah than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.
3. **Mandatory Minimum Payments.** You must make minimum royalty or advertising fund payments, regardless of your sales levels. Your inability to make the payments may result in termination of your franchise and loss of your investment.
4. **Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.



**NOTICE REQUIRED BY
STATE OF MICHIGAN**

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that the franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its terms except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least six (6) months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type or under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
 - (i) The failure of the proposed transferee to meet the franchisor's then-current reasonable qualifications or standards.



(ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

(h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

The fact there is a notice of this offering on file with the attorney general does not constitute approval, recommendation, or endorsement by the attorney general.

Any questions regarding this notice should be directed to the Department of Attorney General, State of Michigan, 670 Williams Building, Lansing, Michigan 48913, telephone (517) 373-7117.

THE MICHIGAN NOTICE APPLIES ONLY TO FRANCHISEES WHO ARE RESIDENTS OF MICHIGAN OR LOCATE THEIR FRANCHISES IN MICHIGAN.



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EXHIBITS:

- Exhibit A Franchise Agreement
- Exhibit B Financial Statements

Exhibit C	List of Current and Former Franchisees
Exhibit D	List of State Administrators and Agents for Service of Process
Exhibit E	Franchise Disclosure Questionnaire
Exhibit F	Brand Standards Manual Table of Contents
Exhibit G	State Addenda and Agreement Riders
Exhibit H	Contracts for use with the Totally Nutz Franchise
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APPLICABLE STATE LAW MAY REQUIRE ADDITIONAL DISCLOSURES REGARDING THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT OR STATE SPECIFIC AMENDMENTS TO THE FRANCHISE AGREEMENT. THESE ADDITIONAL DISCLOSURES OR STATE SPECIFIC AMENDMENTS, IF ANY, APPEAR IN THE STATE ADDENDA AT EXHIBIT G.



ITEM 1 THE FRANCHISOR, AND ANY PARENT, PREDECESSORS, AND AFFILIATES

To simplify the language in this Franchise Disclosure Document, “TNF,” “we,” “us,” and “our” means Totally Nutz Franchise, LLC, the franchisor. “You,” “your,” and “Franchisee” means the person, and its owners if the Franchisee is a business entity, who buys the franchise from Totally Nutz Franchise, LLC.

The Franchisor and its Affiliate

TNF is a Utah limited liability company formed May 6, 2014. We operate under the name Totally Nutz Franchise, LLC, and Totally Nutz. Our principal business address is 69 E. 2580 S., St. George, Utah 84790. We offer franchises (“Totally Nutz Franchise(s)” or “Franchise(s)”) for Totally Nutz Businesses and have done so since August 22, 2014. We do not conduct business under any other name or in any other line of business, and we do not offer franchises in any other line of business. We do not conduct, and have never conducted, a business of the type described in this Franchise Disclosure Document.

Our agent for service of process in Utah is [Matthew Yvette Barker](#), 69 E. 2580 S., St. George, UT 84790. Our agents for service of process for other states are identified by state in [Exhibit D](#). If a state is not listed, we have not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed above in which we have appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

We do not have any parent or predecessor entities. We have two affiliates, Totally Nuts, LLC (“TNL”) and German Nut Roasters, Inc. (“GNR”), both Utah limited liability companies.

TNL owns and has licensed us to use the know-how, recipes, trademarks, and other intellectual property involved in operating Totally Nutz Businesses. TNL also operates businesses similar to the type offered in this Franchise Disclosure Document and has done so since 1990. TNL’s principal business address is 69 E. 2580 S., St. George, Utah 84790. TNL has not offered franchises in any line of business and does not conduct any other business except as described in this paragraph.

GNR is a Utah corporation with a principal business address of 69 E. 2580 S., St. George, UT 84790. GNR is our approved supplier of the nut roasting equipment and packaging. GNR does not, and has not operated businesses similar to the type offered in this Franchise Disclosure Document and does not, and has not offered franchises in this or any line of business.

The Franchise

Totally Nutz Businesses sell fresh roasted, cinnamon glazed nuts and related products (“Totally Nutz Products”) at various venues, events, and mall locations. You must sign our franchise agreement which is attached to this Franchise Disclosure Document as [Exhibit A](#) (“Franchise Agreement”).

Totally Nutz Businesses are typically operated from mobile self-contained units and non-traditional fixed location kiosks. We may also allow franchisees to open Totally Nutz Businesses in a retail location. You will choose the type of Totally Nutz Business when you sign your first Franchise Agreement on the “Unit Rider” attached to the Franchise Agreement. Any reference to “Totally Nutz



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Businesses” shall include both mobile and fixed location Totally Nutz Businesses unless we expressly state otherwise.

All Totally Nutz Businesses are operated under our Totally Nutz trademarks, trade names, service marks, and logos (“Marks”) using our unique and proprietary system and related methods of doing business, and proprietary method of preparing, marketing, and selling Totally Nutz Products (“System”). You must operate the Totally Nutz Business in accordance with the System and our proprietary operating manuals.

Mobile Totally Nutz Businesses are usually operated at activities including fairs, sporting events, conventions, rodeos, festivals, trade shows, grand openings, and seminars (“Events”), but may also be operated from permanent, fixed sites located in strip malls, schools, office buildings, hospitals, airports, colleges, health clubs, auditoriums, arenas, and concert and sports venues. Fixed location Totally Nutz Businesses may be located in malls, airports, rest stops, and other high traffic venues.

If you qualify, we may grant you the option to open and operate additional Totally Nutz Businesses. A Multi-3 Franchise provides you the option to open and operate up to two additional Units; a Multi-5 Franchise provides you the option to open and operate up to four additional Units; and a Multi-10 Franchise provides you the option to open and operate up to nine additional Units. The type of Franchise granted under the Franchise Agreement (i.e., Single, Multi-3, Multi-5 or Multi-10) will be designated in the Addendum to Franchise Agreement (“Addendum”) and you and we will sign a Unit Rider to your Franchise Agreement for each Unit that you are permitted to open. The Unit Rider for a Single Unit or your first Unit is signed when you sign the Franchise Agreement. A separate Unit Rider will be signed for each additional Unit you open and operate before each additional Unit opens. If you are granted a Multi-3, Multi-5 or Multi-10 Franchise, there is no time frame within which your additional Totally Nutz Businesses have to be opened.

Market and Competition

Totally Nutz Businesses sell their products to the general public. While you will provide your products and services to the general public, your target market will be Event attendees, shoppers, travelers, and individuals desiring a healthy snack while away from home. Totally Nutz Businesses are not seasonal in nature; however, there may be an increased demand for products in the fourth quarter during the holiday season.

While the market for glazed nuts is continuing to develop in consumer product recognition and popularity, the market for snacks, confections, and other food and beverage products served in a mobile dining atmosphere is competitive and well-developed. The casual dining industry is highly competitive and is often affected by changes in eating habits of the public, by local and national conditions affecting spending habits, and by population and traffic patterns. Totally Nutz Businesses will compete with other local businesses, as well as many local, regional, and national business chains, grocery stores, street vendors and other food service businesses offering similar products. You will face competition from other independent businesses, franchises, and national companies offering similar services as your Franchise.

Industry-Specific Laws



Many states and local jurisdictions have enacted laws, rules, regulations, and ordinances which may apply to the operation of your Totally Nutz Business, including those which: (a) establish general standards, specifications, and requirements for the construction, design, and maintenance of your Totally Nutz Business; (b) regulate matters affecting the health, safety, and welfare of your customers, such as general health and sanitation requirements; employee practices concerning the storage, handling, and preparation of food; restrictions on smoking and exposure to tobacco smoke or other carcinogens or reproductive toxicants and saccharin; availability of and requirements for public accommodations, including restrooms; (c) set standards pertaining to employee health and safety; (d) set standards and requirements for fire safety and general emergency preparedness; (e) govern the use of vending machines; (f) regulate the proper use, storage, and disposal of waste, insecticides, and other hazardous materials; (g) establish general requirements or restrictions on advertising containing false or misleading claims, or health and nutrient claims on menus or otherwise, such as “low calorie” or “fat free;” and (h) establish requirements concerning withholdings and employee reporting of taxes on tips.

Many local or state jurisdictions require food service permits for those preparing, handling, and serving food to the public. You and your employees may be required to pass a test or other certification process to obtain these permits. There may also be local ordinances and regulations governing food storage, preparation, and serving.

You alone are responsible for investigating, understanding, and complying with all applicable laws, regulations, and requirements applicable to you and your Totally Nutz Franchise. You should consult with a legal advisor about whether these and/or other requirements apply to your Totally Nutz Business. Failing to comply with laws and regulations is a material breach of the Franchise Agreement.

ITEM 2 BUSINESS EXPERIENCE

President: Matthew Barker

Mr. Barker serves as our President in St. George, Utah, and has done so since our inception in May 2014. Mr. Barker has served as the President of Totally Nuts, LLC in St. George, Utah since its inception in October 1998.

Vice President: Yvette Barker

Mrs. Barker serves as our Vice President in St. George, Utah, and has done so since our inception in May 2014. Mrs. Barker has served as the Vice President of Totally Nuts, LLC in St. George, Utah since its inception in October 1998.

~~CEO: Jill Summerhays~~

~~Ms. Summerhays is our founder and has served as our CEO since June 2017. From June 2016 to May 2017, she was our Franchise Strategist. In January 1983, Ms. Summerhays founded the Maui Wowi Hawaiian franchise system and served in various positions with Maui Wowi from January 1983 until March 2017.~~



**ITEM 3
LITIGATION**

No litigation is required to be disclosed in this Item.

**ITEM 4
BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**ITEM 5
INITIAL FEES**

Initial Franchise Fee

The “Initial Franchise Fee” varies depending on the number of Totally Nutz Businesses you wish to open:

Franchise Type	Number of Totally Nutz Businesses	Initial Franchise Fee
Single	1	\$27,500
“Multi-3”	Up to 3	\$39,500
“Multi-5”	Up to 5	\$59,500
“Multi-10”	Up to 10	\$69,900

There is no development territory or development schedule to open additional Totally Nutz Businesses. To open your first and any additional Totally Nutz Businesses under a Multi-3, Multi-5 or Multi-10 Franchise, you will be required to sign the Unit Rider indicating the type of Totally Nutz Business prior to the opening of that Totally Nutz Business. The Initial Franchise Fee is partially refundable if we decide to terminate your Franchise Agreement because you have not successfully completed our initial training program. If this occurs, we may cancel the Franchise Agreement and refund fifty percent (50%) of the Initial Franchise Fee. You will be required to enter into a general release as a condition to getting the refund.

The Initial Franchise Fee is deemed fully earned by us once paid. Except for the discount for additional Totally Nutz Businesses, the Initial Franchise Fee is uniform, payable, in a lump sum, when you sign your Franchise Agreement, and is non-refundable except as provided above. The Initial Franchise Fee is payment for all of our pre-opening assistance that we provide to allow you to open your Totally Nutz Business and also offsets some of our franchisee recruitment expenses.

Cart/Kiosk Package

You must purchase either a cart or kiosk package from us after you sign the Franchise Agreement and prior to opening. The price of the cart package will range from ~~\$30,500~~36,000 to ~~\$36,500~~38,500 but

you may incur additional charges to modify the cart to comply with your local or state health regulations. The price of the kiosk package will range from \$69,000 to ~~\$73,500~~78,500 depending on the size of the kiosk and the equipment and signage outfitted in the kiosk. Neither the cart nor the kiosk is motorized.

Package Type	Package Cost
“Traveler Cart Package” (Venue)	\$30,500-\$32,500 <u>\$36,000-\$38,500</u>
“Event Cart Package” (Mobile)	\$32,500-\$36,500
Kiosk Package (10’x10’)	\$69,000-\$72,500
Kiosk Package (10’x12’)	\$70,000-\$73,500

Included in the price of the cart or kiosk package is a “Franchise Starter Package” of start-up items from us. The Franchise Starter Package includes: (1) nut roasting machine; (6) coolers; (8) cooling trays; (1) hot pan; (1) scale; (4) 2-way sample trays or (2) 3-way sample trays; (4) sample tongs; (2) scoops; (2) measuring cups; (1) pitcher; (1) stainless steel canister; (1) wood stir stick; (1) box of sanitary gloves; (1) box of T-shirt bags; (1 each) Clorox/dish soap/hand soap/paper towels; (1 box) scrub brush/copper bowl scrubbie; (1 set) counter signage; (1 pair) roasting gloves; surge bar; (1) fan; 50’ electrical cord; fire extinguisher; stackable tray set; (2) 7 gallon water jugs; (4) buckets; (4) floor mats; (1) 10’ x 10’ tarp; (4) Totally Nutz® aprons; (4) Totally Nutz® hats; (500) ½# labels-almonds; (500) 1# labels-almonds; (500) ½# labels-cashews; (500) 1# labels-cashews; (500) ½# labels-pecans; (500) 1# labels-pecans; (2) box of twist ties; (1,000) half pound plastic bags; (1,000) one pound plastic bags; (1) box of almond snack pack bags; (1) box of pecan snack pack bags; (1) box of cashew snack pack bags; (500) 8 oz. “Hot Half” paper bag; (500) 14 oz. “Hot Pound” paper bag; (40 batches) raw almonds & pre-mix; (40 batches) raw pecan & pre-mix; (20 batches) raw cashews & pre-mix; stainless flip up shelf (on kiosk or cart); (2) 4’ stainless steel tables; (2) propane tanks; (1) crescent wrench; (1) hand cart; (1) event cooling rack; (2) event table cover; (2) lifetime folding tables; (1) water/bleach test strips.

If you purchase ~~the Event Cart Package or~~ the Kiosk Package, you are also required to purchase a Totally Nutz branded tent from us. The cost of the tent is \$3,000 for a branded pop-up tent or \$4,500 for a pinnacle tent. All amounts paid for the tent are fully earned when paid and are not refundable under any circumstances.

The Franchise Starter Package will be delivered to you along with your cart or kiosk package, usually after you complete initial training. All amounts paid for the cart and kiosk packages are fully earned when paid and are not refundable under any circumstances.

Fee Deferral

Some states have imposed a fee deferral. Please refer to the State Addenda and Agreement Riders in Exhibit G to the Franchise Disclosure Document.

ITEM 6 OTHER FEES



Type of Fee	Amount	Due Date	Remarks
Royalty Fee(1)	6% of Gross Revenue	Due on the 7th of each month	The “ <u>Royalty Fee</u> ” is based on “ <u>Gross Revenue</u> ” during the previous month. Your Royalty Fee is an ongoing payment that allows you to use the Marks and the intellectual property of the System and pays for our ongoing support and assistance.
Brand Building Fund Contribution	\$500 per year	Billed annually and paid on each anniversary of the execution of your Franchise Agreement	This fee will be used for a system-wide “ <u>Brand Building Fund</u> ” for our use in promoting and building the Totally Nutz brand. The Brand Building Fund is discussed in Item 11.
Technology Fee	To be determined	Same as Royalty Fee	We do not currently charge this fee but we reserve the right in the Franchise Agreement to charge you a fee for your use of your email system, access to cloud-based office services, technology company support of firewall and POS system, social media account management, and other technology expenses.
Custom Advertising Fee	Actual costs plus 20% administration fee	As incurred	If you elect to purchase custom advertising materials developed by us or Totally Nutz, LLC, you will be required to pay this fee to cover setup and art charges or pay directly to a third party vendor that we select and approve.
Unauthorized Advertising Fee	\$500 per occurrence	Upon demand	This fee is payable to us or, if established, the Brand Building Fund, if you use unauthorized advertising in violation of the terms of the Franchise Agreement.
Insurance for Franchisees	You must reimburse our costs plus a 20% administrative fee	Upon demand	If you fail to obtain insurance, we may obtain insurance for you, and you must reimburse us for the cost of insurance obtained plus twenty percent (20%) of the



Type of Fee	Amount	Due Date	Remarks
			premium as an administrative cost of obtaining the insurance.
Additional Training/Assistance	Then-current charge (up to \$500 per day, not including travel and living expenses)	As incurred	We provide additional training or assistance upon your reasonable request. We may also require you to attend and successfully complete additional training if we determine it appropriate or necessary. The fee amount will depend on the training required and experience level of the trainer. You will also be responsible for our travel and living expenses if we send a representative to provide on-site training or assistance, or your (or your other representatives') travel and living expenses if the training or assistance is not provided on-site. We can change the fees upon 30 days' notice to you.
Additional Person Training Fee	\$250 per additional attendee	As incurred	Payable if you choose to send additional persons to initial training beyond those persons that we designate.
Training Cancellation Fee	\$500	At time of cancellation	If you cancel any training program within two weeks of the date of the training program, you will be required to pay this cancellation fee to us.
Convention Fee	Then-current fee (currently estimated to be \$500 per person)	Upon demand	Payable to us to help defray the cost of your attendance at any annual convention that we choose to hold. This fee is due regardless of whether or not you attend our annual convention in any given year. We did not hold an annual convention during 2018.
Supplier and Product Evaluation Fee	Costs of inspection (estimated to be approximately	As incurred	Payable if we inspect a new product, service, or proposed supplier nominated by you.



Type of Fee	Amount	Due Date	Remarks
	\$100 to \$500)		
Customer Issue Resolution	Varies; reasonable costs we incur for responding to a customer complaint, which will typically be between \$20 and \$100	On invoice	Payable if a customer of the Totally Nutz Business contacts us with a complaint and we provide a gift card, refund, or other value to the customer as part of our addressing the issue.
Payment Service Fees	Up to 4% of total charge	As incurred	If payment is made to us or our affiliates by credit card for any fee required, we may charge a service charge of up to four percent (4%) of the total charge.
Late Payment Fee(2)	The greater of: (i) the Prime Rate plus 8%; or (ii) 18% per annum	As incurred	Payable if any payment due to us or our affiliates is not made by the due date. Interest is per annum calculated monthly on any outstanding balance. Interest accrues from the original due date until payment is received in full. This fee will be subject to state law regarding the maximum legal interest rate.
Non-Sufficient Funds Fee	The lesser of: (1) \$50 per occurrence and 2.5% of the amount requested; or (2) the highest amount allowed by state law	As incurred	Payable if any check, credit card, or electronic funds payment is not successful due to insufficient funds, stop payment, or any similar event.
Failure to Submit Required Report Fee	\$100 per occurrence and \$100 per week	Your bank account will be debited for failure to submit any requested report within five days of request	Payable if you fail to submit any required report or financial statement when due. Fines collected are paid to the Brand Building Fund, if established, or us. You will continue to incur this fee until you submit the required report.
Audit Expenses	Cost of audit and inspection, any	On demand	You will be required to pay this if an audit reveals that you



Type of Fee	Amount	Due Date	Remarks
	understated amounts, and any related accounting and legal expenses (we estimate this cost to be between \$1,000 and \$12,000)		understated monthly Gross Revenue by more than two percent (2%) or you fail to submit required reports.
Indemnification	All amounts (including attorney fees) incurred by us or otherwise required to be paid	As incurred	You must indemnify and reimburse us for any expenses or losses that we or our representatives incur related in any way to your Totally Nutz Business or Franchise.
Professional Fees and Expenses	Will vary under circumstances	As incurred	You must reimburse us for any legal or accounting fees that we incur as a result of any breach or termination of your Franchise Agreement. You must reimburse us if we incur any expenses in enforcing our rights against you under the Franchise Agreement, or payable for any fees we incur for any transfer that is not completed.
Successor Franchise Fee	20% of the then-current Initial Franchise Fee	At the time you sign the new franchise agreement	Payable if you qualify to renew your Franchise Agreement and choose to enter into a successor franchise agreement.
Transfer	25% of the then-current Initial Franchise Fee	\$1,000 non-refundable deposit at time of transfer application submittal and the remaining balance at time of the transfer	Payable in connection with the transfer of your Totally Nutz Business, a transfer of ownership of your legal entity, or the Franchise Agreement.
Transfer of Cart or Kiosk Equipment	\$500.00 per cart or kiosk transferred to	At the time of transfer	Payable if you transfer a cart or kiosk to another franchisee.



Type of Fee	Amount	Due Date	Remarks
	another franchisee		
Resale Assistance Fee	\$12,500 per Totally Nutz Business	At time of the approved transfer of your Totally Nutz Business	Payable if you are selling your Totally Nutz Business and a buyer or anyone affiliated with a buyer is made aware of your sales opportunity through us or our affiliates.
Broker Fees	Our actual cost of the brokerage commissions, finder's fees, or similar charges	As incurred	If you transfer your Totally Nutz Business to a third party or purchaser, you must reimburse all of our actual costs for commissions, finder's fees and similar charges.

Notes:

All fees paid to us or our affiliates are uniform and not refundable under any circumstances once paid. Fees paid to vendors or other suppliers may be refundable depending on the vendors and suppliers. We currently require you to pay fees and other amounts due to us or our affiliates via electronic funds transfer (“EFT”) or other similar means. You are required to complete the EFT authorization (in the form attached to this Franchise Disclosure Document in Exhibit H) for direct debits from your business bank operating account. We have the right to periodically specify (in the brand standards manual or otherwise in writing) different payees and/or payment methods, such as, but not limited to, weekly/biweekly/monthly payment, payment by auto-draft, credit card, and payment by check. All fees are current as of the Issuance Date of this Franchise Disclosure Document. Certain fees that we have indicated may increase over the term of the Franchise Agreement.

1. Royalty Fee. “Gross Revenue” means the total selling and price of all services and products sold at, from, or through your Totally Nutz Business, whether or not sold or performed at or from the Totally Nutz Business, including the full retail value of any gift certificate or coupon sold for use with Totally Nutz Businesses (fees retained by or paid to third party sellers of such gift certificates or coupons are not excluded from this calculation), and all income, revenue, and consideration of every other kind and nature related to the Totally Nutz Business operation, including all proceeds from any business interruption insurance, whether for cash or credit, and regardless of collection in the case of credit. Gross Revenue shall exclude only: (1) sales tax receipts that each Totally Nutz Business must collect by law and pay to the government; (2) TNF authorized promotional or discount coupons to the extent that Franchisee realizes no revenue; and (3) products or services provided to employees at no charge in accordance with TNF’s policies and procedures.
2. Late Payment Fee. Interest begins from the date of non-payment and continues until all outstanding amounts are paid in full. “Prime Rate” is the announced base rate applicable to corporate loans in the Wall Street Journal.

**ITEM 7
ESTIMATED INITIAL INVESTMENT**

YOUR ESTIMATED INITIAL INVESTMENT

Single Franchise

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Initial Franchise Fee ⁽¹⁾	\$27,500	\$27,500	Lump Sum	When you sign the Franchise Agreement	Us
Training Expenses ⁽²⁾	\$500	\$3,200	As Required	As Incurred	Providers of Travel, Lodging, and Food Services
3-Months' Lease Rent ⁽³⁾	\$0	\$35,000	As Agreed	As Agreed	Landlord
Security Deposit ⁽³⁾	\$0	\$1,000	As Agreed	Before Opening	Landlord and/or Utility Companies
Cart/Kiosk Package ⁽⁴⁾	\$30,500 \$36,000	\$73,500	As Agreed	Before Opening	Us
Tent ⁽⁵⁾	\$0	\$4,500	As Agreed	Before Opening	Us
Cart/Kiosk Shipping ⁽⁶⁾	\$0	\$3,500	As Agreed	As Incurred	Third Parties
Additional Inventory ⁽⁷⁾	\$0	\$40,000	As Agreed	As Incurred	Third Parties
Vehicle and Trailer ⁽⁸⁾	\$0	\$11,000	Lump Sum	When Purchased	Third Parties
Leasehold Improvements ⁽⁹⁾	\$0	\$5,000	As Agreed	Before Opening	Landlord or Construction Contractors
Computer Equipment ⁽¹⁰⁾	\$147	\$2,500	Lump Sum	Before Opening	Third Parties
Business Licenses and Permits ⁽¹¹⁾	\$50	\$500	As Required	Before Opening	Government Agencies
Insurance ⁽¹²⁾	\$175	\$1,800	As Agreed	Before Opening	Insurer
Professional Fees ⁽¹³⁾	\$0	\$1,000	As Agreed	Before Opening	Third Parties
Optional Signage ⁽¹⁴⁾	\$0	\$1,000	As Agreed	Before Opening	Third Parties
Additional Funds- 3 Months ⁽¹⁵⁾	\$1,000	\$5,000	As Agreed	As Incurred	Third Parties
TOTAL ESTIMATED	\$59,872 \$65,372	\$216,000			

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
INITIAL INVESTMENT FOR YOUR FIRST FRANCHISE ⁽¹⁶⁾					

Notes:

These estimated initial expenses are our best estimate of the costs you may incur in establishing and operating your Totally Nutz Franchise. We do not offer direct or indirect financing for these items. Our estimates are based on our experience, the experience of our affiliates, and our current requirements for Totally Nutz Franchises. The factors underlying our estimates may vary depending on several variables, and the actual investment you make in developing and opening your Franchise may be greater or less than the estimates given depending upon the location of your Franchise, and current relevant market conditions. Your costs will also depend on factors such as how well you follow our methods and procedures; your management skills; your business experience and capabilities; local economic conditions; the local market for our products and services; the prevailing wage rates; competition; and sales levels reached during your initial phase of business operations. All expenditures paid to us or our affiliates are uniform and non-refundable under any circumstances once paid. All expenses payable to third parties are non-refundable, except as you may arrange for utility deposits and other payments.

1. Initial Franchise Fee. The Initial Franchise Fee is \$27,500 for the purchase of a single Franchise; \$39,500 for the purchase of a Multi-3 Franchise, which allows you to open up to three Totally Nutz Franchises, \$59,500 for a Multi-5 Franchise, which allows you to open up to five Totally Nutz Franchises and \$69,900 for a Multi-10 Franchise, which allows you to open up to ten Totally Nutz Franchises. Once you open additional Totally Nutz Businesses, you will incur the costs listed in this Item 7 (except for the Initial Franchise Fee) at the time you open the additional Totally Nutz Businesses. These costs may increase in the future depending on when you open the additional Totally Nutz Businesses.
2. Training Expenses. We provide training at our training center in St. George, Utah or at another location designated by us. You must pay for airfare, meals, transportation costs, lodging, and incidental expenses for all initial training program attendees. Provided they attend the same training program, initial training is provided at no charge for up to two people, one of which must be a principal owner. If additional initial training is required, or more people must be trained, an additional fee will be assessed. This estimate assumes two people will attend training.
3. 3-Months' Lease Rent/Security Deposit. If you choose to operate a Totally Nutz Business cart or kiosk at a fixed location, you may be required to lease real estate or pay a percentage of your Gross Revenue to the venue. We estimate that you will need approximately 50 to 250 square feet of floor space. You may incur lease or concession license charges, which may range between ten percent (10%) and fifty percent (50%) of Gross Revenue. You should investigate these lease or concession license charges before you agree to operate at a particular location. The low estimate assumes that you will not operate your Totally Nutz Business from a fixed location. If you choose to operate the Totally Nutz Business at a retail location, the expense of leasing will vary depending upon the size of the premises, its location, landlord contributions, and the



requirements of individual landlords. You will need approximately 100 to 500 square feet for your location. Landlords typically require security deposits equal to one or two months' rent and may, in addition, require payment in advance of the first and/or last (or more) month's rent. The high estimate shown in the chart above includes one month's security plus three months' rent for your initial period of operation and assumes that you are opening your Totally Nutz Business in a mall during the holiday season (when rent is the highest).

4. Cart/Kiosk Package. You must purchase your cart or kiosk from TNF. The price of the cart or kiosk package includes the Franchise Starter Package (See Item 5 for list of items included in the Franchise Starter Package). The low estimate represents the cost of a cart package and the high end represents the purchase of a kiosk package. The costs may vary depending on the type of modifications that must be made to the cart or kiosk to comply with health regulations, the size of the kiosk, and the equipment for the kiosk.
5. Tent. If you purchase ~~the Event Cart Package or~~ the Kiosk Package, you are also required to purchase a Totally Nutz branded tent from us. The cost of the tent is \$3,000 for a branded pop-up tent or \$4,500 for a pinnacle tent. All amounts paid for the tent are fully earned when paid and are not refundable under any circumstances.
6. Cart/Kiosk Shipping. Shipping costs for the cart or kiosk are included in this estimate and vary depending on type of unit and delivery destination, and are estimated to range from \$0 to \$3,500. The low estimate represents the cost of a cart with \$0 shipping (where the franchisee picks up the cart) and the high end represents \$3,500 in shipping charges.
7. Additional Inventory. The initial inventory quantity required will fluctuate depending on when you purchase your Franchise, whether or not you purchase a cart or kiosk, the size of your kiosk, and the time of year of your purchase. Franchises purchased in the fourth quarter of the year will likely result in higher additional inventory purchases beyond what is provided in the Franchise Starter Package because of the increased demand of the holiday season.
8. Vehicle and Trailer. You may need a suitable vehicle and trailer to transport the cart. Standard cars are typically not capable to transport the cart and a passenger truck or sport utility vehicle will be required. You may use a vehicle and trailer that you currently own provided that: (1) the vehicle is in good condition with no major dents, scratches, or body damage; (2) the vehicle has the appropriate Totally Nutz branding; and (3) we approve it prior to use. We reserve the right to revoke a vehicle or trailer approval should the vehicle or trailer no longer meet these minimum standards. If you require a vehicle for your Totally Nutz Business, you must also have an enclosed trailer with minimum dimensions of 7'x14' with a ramp door for loading and unloading equipment. The low estimate assumes that you are using a vehicle and trailer that you currently own or that you do not require a vehicle and trailer, and the high end of the estimate provides up to three months of lease payments on either a 36-month or a 48-month lease for one vehicle and one trailer.
9. Leasehold Improvements. The carts and kiosks contain most items needed to operate the Totally Nutz Business. In certain mall locations, franchisees may incur additional costs in running



electrical and plumbing lines to the location for the cart or kiosk, and the high end estimate reflects this cost.

10. Computer Equipment. This figure includes the cost range for an iPad, point-of-sale system, software, credit card processing, an Internet hot spot device, and back office computer system. The low estimate includes the monthly lease of an iPad and POS equipment package, and the high estimate provides for the purchase of a complete setup.
11. Business Licenses and Permits. You may be required to obtain business licenses from the local government agencies to operate your Totally Nutz Business.
12. Insurance. You must obtain and maintain, at your own expense, the insurance coverage we require, and satisfy other insurance-related obligations. Please note that if you have had prior issues or claims from previous operations unrelated to the operation of a Totally Nutz Business, your rates may be significantly higher than those estimated above.
13. Professional Fees. We strongly recommend that you hire a lawyer, accountant, or other professional to advise you on this franchise offering. Rates for professionals can vary significantly based on area and experience.
14. Optional Signage. The cart and kiosk are outfitted with Totally Nutz signage. You may desire to purchase additional signage to display in the mall locations, and the high end estimate provides for such purchases.
15. Additional Funds. These amounts represent our estimate of the amount needed to cover your expenses for the initial three-month start-up phase of your Totally Nutz Business. Our estimates are based on our experience, the experience of our affiliates, and our current requirements for Totally Nutz Franchises. They include payroll, administrative, maintenance, utilities, and other items. These figures do not include standard pre-opening expenses, Royalties, or advertising fees payable under the Franchise Agreement or debt service, and assume that none of your expenses are offset by any sales generated during the start-up phase. For purposes of this disclosure, we estimated the start-up phase to be three months from the date your Totally Nutz Business opens for business. These figures are estimates, and we cannot guarantee that you will not have additional expenses starting your Totally Nutz Business.
16. Figures May Vary. This is an estimate of your initial start-up expenses for one Totally Nutz Franchise. You should review these figures carefully with a business advisor before making any decision to purchase the Totally Nutz Franchise.

Multi-Franchise

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Initial Franchise Fee for Multi-Franchise Rights ⁽¹⁾	\$39,500	\$69,900	Lump Sum	When you sign the Franchise Agreement	Us

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Remainder of Initial Investment for a Totally Nutz Business ⁽²⁾	\$32,372	\$188,500	Per Table Above	Per Table Above	Per Table Above
TOTAL ESTIMATED INITIAL INVESTMENT FOR TWO TOTALLY NUTZ BUSINESSES ⁽³⁾	\$104,244	\$416,500			
TOTAL ESTIMATED INITIAL INVESTMENT FOR THREE TOTALLY NUTZ BUSINESSES ⁽³⁾	\$136,616	\$605,000			
TOTAL ESTIMATED INITIAL INVESTMENT FOR FOUR TOTALLY NUTZ BUSINESSES ⁽³⁾	\$188,988	\$813,500			
TOTAL ESTIMATED INITIAL INVESTMENT FOR FIVE TOTALLY NUTZ BUSINESSES ⁽³⁾	\$221,360	\$1,002,000			
TOTAL ESTIMATED INITIAL INVESTMENT FOR SIX TOTALLY NUTZ BUSINESSES ⁽³⁾	\$264,132	\$1,200,900			
TOTAL ESTIMATED INITIAL INVESTMENT FOR SEVEN TOTALLY NUTZ BUSINESSES ⁽³⁾	\$296,504	\$1,389,400			
TOTAL ESTIMATED INITIAL INVESTMENT FOR EIGHT TOTALLY NUTZ BUSINESSES ⁽³⁾	\$328,876	\$1,577,900			
TOTAL ESTIMATED INITIAL INVESTMENT FOR NINE TOTALLY NUTZ BUSINESSES ⁽³⁾	\$361,248	\$1,766,400			



Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
TOTAL ESTIMATED INITIAL INVESTMENT FOR TEN TOTALLY NUTZ BUSINESSES ⁽³⁾	\$393,620	\$1,954,900			

Notes:

These estimated initial expenses are our best estimate of the costs you may incur in establishing and operating your Totally Nutz Franchise. We do not offer direct or indirect financing for these items. Our estimates are based on our experience and our current requirements for Totally Nutz Franchises. The factors underlying our estimates may vary depending on several variables, and the actual investment you make in developing and opening your Totally Nutz Franchise may be greater or less than the estimates given, depending upon the location of your Totally Nutz Business, and current relevant market conditions. Your costs will also depend on factors such as how well you follow our methods and procedures, your management skills, your business experience and capabilities, local economic conditions, the local market for our products and services, the prevailing wage rates, competition, and sales levels reached during your initial phase of business operations. All expenditures paid to us or our affiliates are uniform and non-refundable under any circumstances once paid. All expenses payable to third parties are non-refundable, except as you may arrange for utility deposits and other payments.

1. Initial Franchise Fee for Multi-Franchise Rights. If you purchase Multi-Franchise rights, you will be required to pay an Initial Franchise Fee for the Multi-3, Multi-5 or Multi-10 Franchise when you sign the franchise agreement. The Initial Franchise Fee will total \$39,500 for a Multi-3; \$59,500 for a Multi-5 and \$69,900 for a Multi-10.
2. Remainder of Initial Investment for Totally Nutz Business. These are the estimates to start a Totally Nutz Business as described in the single franchise chart above, excluding the Initial Franchise Fee which is stated separately, see Note 1 above). Costs associated with starting additional Totally Nutz Businesses are subject to factors that we cannot estimate or control, such as inflation, increased labor costs or increased materials costs and will depend on when the additional Totally Nutz Businesses are opened.
3. Figures May Vary. This is an estimate of your initial start-up expenses for multiple Totally Nutz Franchises. You should review these figures carefully with a business advisor before making any decision to purchase the Franchise.

**ITEM 8
RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

To ensure the highest degree of quality and service is maintained, you must operate your Totally Nutz Business according to our System and specifications we list in our proprietary and confidential brand standards manual (“Brand Standards Manual”), which may exist in various parts, locations, and formats, and may include a combination of written material, electronic media, website content, and/or software components. This includes purchasing or leasing all goods, services, supplies, fixtures,

equipment, inventory, computer hardware and software, and real estate related to establishing and operating the Totally Nutz Franchise under our specifications, which may include purchasing these items from: (i) our designees; (ii) approved suppliers; and/or (iii) us or our affiliates. You must not deviate from these methods, standards, and specifications without our prior written consent, or otherwise operate in any manner which reflects adversely on our Marks or the System.

Our Brand Standards Manual states our specifications, standards, and guidelines for all products and services we require you to obtain in establishing and operating your Totally Nutz Franchise, and approved vendors for these products and services. We will notify you of new or modified specifications, standards, and guidelines through periodic amendments or supplements to the Brand Standards Manual or through other written communication (including electronic communication such as e-mail or through a system-wide intranet). We will issue copies of our standards and specifications to you and approved and proposed suppliers, unless these standards and specifications contain our confidential information.

You must purchase, install, maintain in sufficient supply, and use, only fixtures, furnishings, equipment, signs, and supplies that conform to the standards and specifications described in the Brand Standards Manual or otherwise in writing.

We utilize proprietary food products and recipes and may continue to develop and own proprietary recipes. In order to protect their trade secrets and to monitor the manufacture, packaging, processing, and sale of proprietary food products, we or our affiliates may: (i) manufacture, supply, and sell proprietary food products to Totally Nutz franchisees; and/or (ii) disclose the formula for and methods and preparation of the proprietary food products to a limited number of suppliers, including one or more of our affiliates, who we authorize to manufacture these proprietary food products to our precise specifications and sell these products to Totally Nutz franchisees.

We are currently the only approved supplier of the Franchise Starter Package, the cart, and the kiosks. GNR is the only approved supplier of the nut roasting equipment and packaging. Some of our officers own equity in TNF and GNR, which are approved suppliers. We and our affiliates reserve the right to become approved suppliers of any proprietary food products and nonproprietary products.

You must use the computer hardware and software, including the point-of-sale (“POS”) system that we periodically designate to operate your Totally Nutz Franchise. You must obtain the computer hardware, software licenses, maintenance and support services, and other related services that meet our specifications from the suppliers we specify.

Insurance

You must obtain the insurance coverage required under the Franchise Agreement. Franchisee shall, at all times during the term of this Franchise Agreement, maintain, by advance payment or payments, general liability, combined single limit, bodily injury, and property damage insurance by an insurance company acceptable to Totally Nutz Franchise, including premises operations, products liability and all other occurrences against claims of any person, employee, customer, agent or otherwise in an amount of at least \$1 million per occurrence, \$2 million in the aggregate, or other amounts as Totally Nutz Franchise shall determine in the future, which policy shall, except for employment liability insurance, name Totally Nutz Franchise and its affiliates, their officers and directors, as additional named insureds against any liability which may accrue against them by reason of the ownership, maintenance, or



operation by Franchisee of its Totally Nutz Business. You must provide us with a certificate and endorsements reflecting this. Said policy shall stipulate that Totally Nutz Franchise shall receive a 30-day prior written notice of cancellation. Certain venues may require additional insurance and you will be required to obtain insurance to meet these requirements. The insurance company must be authorized to do business in the state where your Totally Nutz Business is located, and must be approved by us. It must also be rated "A" or better by A.M. Best & Company, Inc. We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage at any time.

Purchases from Approved Suppliers

You must purchase certain equipment, initial inventory, materials, and supplies from us in establishing and operating your Totally Nutz Franchise, and we and our affiliate are the only approved supplier of these certain items. We and our affiliate may derive revenue from these sales and may sell these items at prices exceeding our or their costs. We will provide you with a list of our designated and approved suppliers in our Brand Standards Manual. We do not provide material benefits to you based solely on your purchase of particular products or services or the use of designated or approved suppliers.

You must purchase all products, equipment, supplies, and materials only from approved suppliers (including manufacturers, wholesalers, and distributors). We estimate that approximately ninety-five (95%) of purchases required to open your Totally Nutz Business and five percent (5%) of purchases required to operate your Totally Nutz Business will be from us or from other approved suppliers and under our specifications. We and our affiliate may receive rebates or other consideration from some suppliers based on your purchase of products and services, and we reserve the right to do so in the future.

For the fiscal year ended December 31, ~~2020~~2021, we received \$101,205 in revenue from the sale or lease of products or services to franchisees, which represents approximately 41% of our total revenue of \$245,322. For the fiscal year ended December 31, ~~2020~~2021, GNR received \$130,588 in revenue from the sale or lease of products or services to franchisees.

We may negotiate purchase arrangements with suppliers and distributors for the benefit of our franchisees, and we may receive rebates or volume discounts from our purchase of equipment and supplies that we resell to you. We currently do not have any purchasing or distribution cooperatives.

Approval of New Suppliers

If you want to use or sell a product or service that we have not yet evaluated or if you want to purchase or lease a product or service from a supplier or provider that we have not yet approved (for services and products that require supplier approval), you must notify us and submit to us the information, specifications, and samples we request. We will use reasonable efforts to notify you within 30 days after receiving all requested information and materials whether you are authorized to purchase or lease the product or service from that supplier or provider. We reserve the right to charge a fee to evaluate the proposed product, service, or supplier. We apply the following general criteria in approving a proposed supplier: (1) ability to purchase product in bulk; (2) quality of services; (3) production and delivery capability; (4) proximity to Totally Nutz Franchises to ensure timely deliveries of the product or services; (5) the dependability of the supplier; and (6) other factors. The supplier may also be required to sign a supplier agreement. We may periodically re-inspect approved suppliers' facilities and products,



and we reserve the right to revoke our approval of any supplier, product, or service that does not continue to meet our specifications. We will send written notice of any revocation of an approved supplier, product, or service.

ITEM 9 FRANCHISEE’S OBLIGATIONS

This table lists your principal obligations under the franchise agreement and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

Obligation	Section in Franchise Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	Section 1.3	Item 11
b. Pre-opening purchases/leases	Sections 4.1, 4.4, 4.5, 6.1, and 8.1	Items 8 and 11
c. Site development and other pre-opening requirements	Sections 1.3, 1.4, 3.11, and 4.6	Items 6, 7, and 11
d. Initial and ongoing training	Sections 6.1.3, 7.8, and 7.9	Item 11
e. Opening	Section 7.16	Item 11
f. Fees	Sections 2.2.5, 4, 5.1.1, 5.2.1, 5.4, 6.1.3, 7.5, 7.9, 7.10.2, 12.3, Attachment I	Items 5 and 6
g. Compliance with standards and policies/Brand Standards Manual	Sections 7.2, 7.3, and 7.6	Item 11
h. Trademarks and proprietary information	Section 3	Items 13 and 14
i. Restrictions on products/services offered	Sections 7.4, 8.2, and 8.4	Items 8 and 16
j. Warranty and customer service requirements	Sections 7.6 and 8.3	Item 11
k. Territorial development and sales quotas	Section 7.16	Items 11 and 12
l. Ongoing product/service purchases	Sections 8.1, 8.2, and 8.4	Item 16
m. Maintenance, appearance, and remodeling requirements	Sections 1.3, 3.3, 3.11, 3.12, 7.2, 7.6, and 7.7	Item 7, Note 3
n. Insurance	Section 7.5	Item 8
o. Advertising	Section 5	Item 11
p. Indemnification	Section 7.12	Not Applicable
q. Owner’s participation/management and staffing	Section 7.13	Item 15
r. Records and reports	Section 7.10	Items 6 and 17
s. Inspections and audits	Sections 7.3 and 7.10.2	Item 6
t. Transfer	Section 12	Item 17
u. Renewal	Sections 2.2, 2.3, and 2.4	Item 17
v. Post-termination obligations	Section 10	Item 17
w. Non-competition covenants	Sections 14.1 and 14.2	Item 17
x. Dispute resolution	Section 15	Item 17

ITEM 10 FINANCING

We do not offer direct or indirect financing. We do not guarantee your note, lease, or obligation.

ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEM, AND TRAINING

Except as listed below, TNF is not obligated to provide any assistance to you.

Pre-opening Obligations

Before you open your Totally Nutz Business, we (or our affiliate or designee) will provide the following assistance and services to you:

1. Provide assistance for any Totally Nutz Business that you have purchased, including site selection, site evaluation, lease review (only to ensure compliance with our minimum requirements), and construction and project management, and provide you with advice about any required construction (See Unit Rider).
2. Provide specifications for necessary start-up and inventory items required to operate your Totally Nutz Franchise, and assist you with ordering through us, our affiliates, or other suppliers, products, supplies, and equipment, and the Franchise Starter Package that are necessary for commencement of operations (See Section 6.1 of the Franchise Agreement).
3. Provide you with access to the Brand Standards Manual. The Brand Standards Manual contains approximately 148 pages. The table of contents for the Brand Standards Manual is attached to this Franchise Disclosure Document as Exhibit F (See Sections 3.12 and 6.1.4 of the Franchise Agreement).
4. Provide an initial training program (See Item 6 and Section 6.1.3 of the Franchise Agreement).

Site Selection

If you operate your Totally Nutz Business from a fixed location, you may operate at any location that has been approved by us in writing. We may terminate the Franchise Agreement if the parties cannot agree on a site within six months of the date of the Franchise Agreement, unless the franchisee requests and receives approval from us to extend this time frame. We will grant the approval provided that franchisee is making reasonable efforts to locate a site for the Totally Nutz Business and communicates its efforts to us (See Item 12). We generally do not own sites and lease them back to our franchisees (See Section 1.3 of the Franchise Agreement).

Schedule for Opening

The typical length of time between signing the Franchise Agreement or the payment of any fees and the opening of the Totally Nutz Business can vary from six to twelve weeks if you are operating a



mobile business, and two to eight months if you are operating from a fixed location. We may terminate the Franchise Agreement if your Totally Nutz Business is not open and operating within one year of the date of the Franchise Agreement, unless the franchisee requests and receives approval from us to extend this time frame, which approval we may deny in our sole discretion. Some factors which may affect this timing are your ability to acquire a location through lease or purchase negotiations, your ability to secure any necessary financing, your ability to comply with local zoning and other ordinances, your ability to obtain any necessary permits and certifications, obtaining necessary licenses, the timing of the delivery of equipment, tools, and inventory, and the time to convert, renovate, or build out your Totally Nutz Business. You must comply with all ordinances, building codes, and permit requirements, and with any lease requirements and restrictions.

If you are granted a Multi-3 Franchise, Multi-5 Franchise or Multi-10 Franchise, you must begin operations of your first Totally Nutz Business within one year of the date of the Franchise Agreement. There is no time frame within which you must open and begin operating your additional Units.

Continuing Obligations

During the operation of your Totally Nutz Business, we (or our designee) will provide the following assistance and services to you:

1. Provide you with reasonable numbers of samples of new advertising and promotional materials as they are developed by TNF, if requested by you. TNF reserves the right to charge you for any of these materials (See Section 6.2.3 of the Franchise Agreement).
2. Provide a reasonable amount of consultation with Franchisee by telephone, facsimile, or e-mail correspondence, based on the availability of representatives of TNF and in TNF's discretion (See Section 6.2.2 of the Franchise Agreement). TNF will also provide additional training or on-site assistance (See Section 7.8.2. of the Franchise Agreement). There may be additional charges for these services. If we provide additional assistance, we must agree in advance on the charges you will pay and the length of the visit. Whether there are additional charges and the charge amount will depend on the nature of the services, the assistance required, and the experience level of the trainee (See Item 6).
3. Provide additional training to you for newly-hired personnel on the Totally Nutz brand and System guidelines, refresher training courses, and additional training or assistance that, in our discretion, you need or request. You may be required to pay additional fees for this training or assistance (See Section 7.8.2 of the Franchise Agreement).
4. Allow you to continue to use confidential materials, including the Brand Standards Manual, and the Marks (See Section 3 of the Franchise Agreement).
5. Perform each of the services listed above for each additional Totally Nutz Business you open (See Franchise Agreement Section 6.2.1).

Optional Assistance



During the term of the Franchise Agreement, we (or our designee) may, but are not required to, provide the following assistance and services to you:

1. Modify, update, or change the System, including the adoption and use of new or modified trade names, trademarks, service marks, or copyrighted materials, new products, new menu items, new equipment, or new techniques.
2. Make periodic visits to the Totally Nutz Business for the purpose of assisting in all aspects of the operation and management of the Totally Nutz Franchise, prepare written reports concerning these visits outlining any suggested changes or improvements in the operation of the Totally Nutz Franchise, and detailing any problems in the operations which become evident as a result of any visit.
3. Maintain and administer a Brand Building Fund and use these funds to develop promotional and advertising programs for Totally Nutz Businesses. We may dissolve the Brand Building Fund upon written notice (See Section 5.2 of the Franchise Agreement).
4. Hold periodic national or regional conferences to discuss business and operational issues affecting Totally Nutz franchisees.

Advertising

Brand Building Fund

We have established a Brand Building Fund. You must pay \$500 annually for the Brand Building Fund (“Brand Building Fund Contribution”). Your payment will be made on each anniversary date of the execution of your Franchise Agreement. Your contribution to the Brand Building Fund is in addition to all other advertising requirements set out in this Item 11. Each franchisee will be required to contribute to the Brand Building Fund but certain franchisees may contribute on a different basis depending on when they signed their Franchise Agreement. Franchisor-owned and Company-Owned outlets may, but are not required, to contribute to the Brand Building Fund on the same basis as franchisees.

The Brand Building Fund is administered by us or our affiliate or designees, in our discretion, and we may use a professional advertising agency or media buyer to assist us. The Brand Building Fund is in a separate bank account, commercial account or savings account.

We have complete discretion on how the Brand Building Fund will be utilized. We may use the Brand Building Fund for local, regional or national marketing, advertising, sales promotion and promotional materials, public and consumer relations, website development and search engine optimization, the development of technology for the System and any other purpose to promote the Totally Nutz brand. We may reimburse ourselves, our authorized representatives or our affiliates from the Brand Building Fund for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes, and all other direct or indirect expenses associated with the programs funded by the Brand Building Fund. We do not guarantee that advertising expenditures from the Brand Building Fund will benefit you or any other franchisee directly, on a pro rata basis, or at all. We are not obligated to spend any amount on advertising in the geographical area where you are or will be located.



We will not use the Brand Building Fund contributions for advertising that is principally a solicitation for the sale of franchises, but we reserve the right to include a notation in any advertisement indicating “Franchises Available” or similar phrasing or include information regarding acquiring a franchise on or as a part of materials and items produced by or for the Brand Building Fund.

We assume no fiduciary duty to you or other direct or indirect liability or obligation to collect amounts due to the Brand Building Fund or to maintain, direct, or administer the Brand Building Fund. Any unused funds in any calendar year will be applied to the following year’s funds, and we reserve the right to contribute or loan additional funds to the Brand Building Fund on any terms we deem reasonable. We will not provide franchisees with any periodic accounting of how Brand Building Fund Contributions are spent. The Brand Building Fund is not audited. We will not provide franchisees with an annual accounting for the Brand Building Fund that shows how the Brand Building Fund proceeds have been spent for the previous year or any other financial statements of the Brand Building Fund except for Maryland franchisees. We collected Brand Building Fund Contributions totaling \$~~6,137~~8657.16 during our last fiscal year, ended December 31, ~~2020~~2021.

In ~~2020~~2021, the Brand Building Fund expenditures were 100% for Administration and 0% for the solicitation of new franchise sales.

Local Advertising

You must also participate in any promotional campaigns and advertising or other programs that we may periodically establish (See Item 6). These may include signage or other printed materials or promotional discounts.

Marketing Resources, Pre-Approvals for Marketing Materials, and Internet Marketing

You must order sales and marketing material from us or our designated suppliers. It is a material breach of the Franchise Agreement to use other marketing material without obtaining our prior written approval. If you desire to use your own advertising materials, you must obtain our prior approval, which may be granted or denied in our sole discretion. We will review your request and we will respond in writing within 30 days from the date we receive all requested information. Our failure to notify you in the specified time frame will be deemed a disapproval of your request. Use of logos, Marks, and other name identification materials must follow our approved standards. You may not use our logos, Marks, and other name identification materials on items to be sold or services to be provided without our prior written approval. If we approve of promotional items or services that will be sold in your Totally Nutz Business, those items or services must be in your Gross Revenue, and will be subject to Royalties and Brand Building Fund Contributions. If you use unauthorized advertising materials, you must pay a fee of \$500 per occurrence to us, or if established, the Brand Building Fund.

If you wish to advertise online, you must follow our online policy, which is contained in our Franchise Operations Manual. Our online policy may change as technology and the Internet changes. Under our online policy, we may retain the sole right to market on the Internet, including all use of websites, domain names, advertising, and co-branding arrangements. We may restrict your use of social media. We may not allow you to independently market on the Internet, or use any domain name, address,



locator, link, metatag, or search technique with words or symbols similar to the Marks. We intend that any franchisee website will be accessed only through our home page.

System Website

You will be required to establish a website for your Totally Nutz Business. Your website must include information specific to your Totally Nutz Business including a showcase of Totally Nutz products and an online ordering system. We require corporate approval for all website content. If you wish to advertise online, you must follow our online and social media policies, which are contained in our Brand Standards Manual.

Advisory Council

We currently do not have, but may form, an advisory council (“Council”) to advise us on advertising policies. Members of the Council would consist of both franchisees and corporate representatives. The Council would be governed by bylaws. Members of the Council would be selected by way of a voting method specified in the Council’s bylaws. The purpose of the Council would be to provide input regarding the Brand Building Fund and to promote communications between us and all Franchisees. The Council would serve in an advisory capacity only. We will have the power to form, change, or dissolve the Council, in our sole discretion.

Software and Computer Equipment

You are required to purchase or lease a computer system that consists of the following hardware and software: (a) a desktop or laptop computer (you may use a computer that you already own); an iPad; and (b) Quick Books Small Business Accounting software for Windows or Macintosh, and our designated POS hardware and software package (“Computer System”). We estimate the cost of purchasing or leasing the Computer System will be between \$~~147~~169 and \$2,000. The Computer System will manage the daily workflow of the Totally Nutz Business, coordinate the customer ordering experience, track inventory and other information. You must record all Gross Revenue on the Computer System. You must store all data and information in the Computer System that we designate, and report data and information in the manner we specify. The Computer System will generate reports on the Gross Revenue of your Totally Nutz Franchise. You must also maintain a high-speed Internet connection at the Totally Nutz Business. In addition to offering and accepting Totally Nutz gift cards and loyalty cards, you must use any credit card vendors and accept all credit cards and debit cards that we determine. The term “credit card vendors” includes, among other things, companies that provide services for electronic payment, such as near field communication vendors (for example, “Apple Pay” and “Google Wallet”). We are not required to provide you with any ongoing maintenance, repairs, upgrades, updates, or support for the Computer System (See Section 7.15 of the Franchise Agreement). You must arrange for installation, maintenance, and support of the Computer System at your cost. There are no limitations in the Franchise Agreement regarding the frequency or costs of such required support, maintenance, repairs, or upgrades relating to the Computer System. We estimate that the annual costs of required maintenance updates or upgrading or support contracts will be less than \$500, however, it may be more or less depending on the update or contract and your repair history, costs of computer maintenance services in your area, and technological advances. We may revise our specifications for the Computer System



periodically. You must upgrade or replace your Computer System at such time as specifications are revised.

Neither we nor any affiliate or third party vendor have any obligation to provide ongoing maintenance, upgrades or updates to your Computer System. You must obtain your own technical support for the Computer System.

You will have sole responsibility for: (1) the operation, maintenance, and upgrading of your Computer System; (2) the manner in which your Computer System interfaces with our computer system and those of other third parties; and (3) any and all consequences that may arise if your Computer System is not properly operated, maintained, and upgraded.

We (or our affiliate or designee) have the right to independently access the electronic information and data relating to your Franchise and to collect and use your electronic information and data in any manner, including to promote the System and the sale of Franchises. This may include posting financial information of each franchisee on an intranet website. There is no contractual limitation on our right to receive or use information through our proprietary data management and intranet system. We may access the electronic information and data from your Computer System remotely, in your Totally Nutz Business, or from other locations.

Training

You or your managing owner, if you are an entity, must complete the initial training to our satisfaction before you open your Totally Nutz Business. Successful completion will be determined by your attendance at the initial training and a certificate of completion. We may require any Designated Manager to successfully complete additional training as deemed appropriate, in our sole discretion. If you do not successfully complete the initial training program to our satisfaction, we may terminate the Franchise Agreement. Additional training sessions will be for approximately 1-5 days. We provide initial training at no charge for up to two people, provided they attend the same initial training program. You must pay a \$250 fee for training each additional person. Initial training classes are held whenever necessary to train new franchisees. You will not receive any compensation or reimbursement for services or expenses for participation in the initial training program. You are responsible for all your expenses to attend any training program, including lodging, transportation, food, and similar expenses. We plan to provide the training listed in the table below. The hours presented for each subject are estimates and may change.

TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
Business overview and background	2	0	Corporate Office in St. George, Utah or other approved location
Totally Nutz philosophy	2	0	Corporate Office in St. George, Utah or other approved location
Equipment	2	0	Corporate Office in St. George, Utah or other approved location
Cart mechanics		0	Corporate Office in St. George, Utah

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
	1		or other approved location
Business licenses, permits, insurance	1	0	Corporate Office in St. George, Utah or other approved location
How to utilize family members in your business	1	0	Corporate Office in St. George, Utah or other approved location
Hiring employees	1	0	Corporate Office in St. George, Utah or other approved location
Training employees	1	0	Corporate Office in St. George, Utah or other approved location
How to buy, roast and sell	3	0	Corporate Office in St. George, Utah or other approved location
Marketing	1	0	Corporate Office in St. George, Utah or other approved location
Event model	3	0	Corporate Office in St. George, Utah or other approved location
Kiosk model	3	0	Corporate Office in St. George, Utah or other approved location
Health department	1	0	Corporate Office in St. George, Utah or other approved location
Cash management and accounting	2	0	Corporate Office in St. George, Utah or other approved location
Protecting the brand	1	0	Corporate Office in St. George, Utah or other approved location
Rules and regulations	1	0	Corporate Office in St. George, Utah or other approved location
Other	7	0	Corporate Office in St. George, Utah or other approved location
Total Hours	33	0	

Notes:

1. We reserve the right to vary the length and content of the initial training program based upon the experience and skill level of the individual attending the initial training program. We will use the Brand Standards Manual as the primary instruction materials during the initial training program.
2. Matt Barker, our President, and Yvette Barker, our Vice President, currently oversee our training program. Mr. and Mrs. Barker have operated a business similar to the Totally Nutz Business for over 20 years.
3. Other instructors may include experienced Totally Nutz store managers and/or assistant managers, with an average of five years' experience in business operations.

Ongoing Training

From time to time, we may require that you, designated managers, and other employees attend system-wide refresher or additional training courses. Some of these courses may be optional, while

others may be required. If you appoint a new designated manager, that person must attend and successfully complete our initial training program before assuming responsibility for the management of your Totally Nutz Business. If we conduct an inspection of your Totally Nutz Business and determine you are not operating in compliance with the Franchise Agreement, we may require that you attend remedial training that addresses your operational deficiencies. You may also request that we provide additional training (either at corporate headquarters or at your Totally Nutz Business).

ITEM 12 TERRITORY

The territorial protections for your Franchise will depend on the type of Totally Nutz Business. If you are operating a mobile business, you may operate at any Event except for a “Protected Event” of another franchisee. A “Protected Event” is an Event for which a franchisee: (1) obtains a written contract to operate one or more mobile businesses at the Event with the appropriate Event personnel; (2) operated a mobile business at the most recent occurrence of the Event; (3) posts required information regarding the Event, including Event dates, name, and contact information for the organizer, costs, number of mobile businesses desired by the organizer, and expected crowds on our current intranet system, and receives our approval; and (4) maintains protection of the Event by operating one or more mobile businesses at each occurrence of the Protected Event, continuing to have the approval of the appropriate Event personnel, complying with the procedures described in the Brand Standards Manual, and doing nothing to cause us to revoke the Protected Event status.

If you operate your Totally Nutz Business from a fixed location, you may operate at any location which has been approved in writing by us. You do not receive any territorial exclusivity around your fixed location. Once a site is selected by you and approved by us for one or more locations, you may not relocate or remove the location without our prior written approval, which approval will typically be granted as long as the relocation will not be detrimental to other franchisees of ours or to us as determined in our discretion. Any relocation of your Totally Nutz Business is subject to our approval and at your sole expense. Our approval for relocation is based on the same standards used to approve new fixed location sites including: location, size, suitability, layout, access and visibility of the proposed location; proximity to other businesses; location and nature of any competitors; population density and demographics; vehicle traffic; pedestrian traffic; existing tenant mix; parking convenience; and other factors that may be relevant to your market.

You will not receive an exclusive territory. You may face competition from other franchisees, from other outlets that we own, or from other channels of distribution or competitive brands that we control. You do not have any exclusive right to any particular market or customers. However, we will consider your proximity when evaluating the site of another franchisee submitted for our approval. The continuation of your right to an approved site or a Protected Event, if applicable, is not dependent on the achievement of a certain sales volume, market penetration, or similar contingency. You may not use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales outside of and apart from your Totally Nutz Business(es), without our prior written consent, which we may deny in our discretion. We do not pay compensation for soliciting or accepting orders inside your territory.

We and our affiliate retain the rights, among others:



1. To use, and to license others to use, the Marks and the System for the operation of Totally Nutz Businesses at any location other than at the approved site of a fixed location Totally Nutz Business of a franchisee or at a Protected Event;

2. To establish company-owned or franchisee-operated businesses that sell similar products and/or services under different trade names or trademarks other than the Marks or System;

3. To sell products or services under the Marks, or any other marks, through any other wholesale or retail outlets, and we may establish other channels of distribution providing the same or similar services under the same or a different trade name or trademark;

4. To use and license the use of any proprietary Marks or Systems (including the Marks and the System) to sell any products, including products that are the same or similar to those which you will sell, through any alternative channels of distribution, regardless of their proximity to your location or their impact on your existing or potential customers. This includes, but is not limited to, grocery stores, convenience stores, club stores, other retail outlets, direct marketing sales, and other channels of distribution such as television, direct mail, mail order, catalog sales, telemarketing, or over the Internet. We exclusively reserve the Internet, including computerized or remote entry ordering systems, as a channel of distribution for us, and you may not independently market on the Internet or conduct e-commerce unless you have received our prior written permission or unless such activities are expressly authorized by the Brand Standards Manual;

5. To acquire, merge with, or be acquired by, any other business, including a business that competes directly with your Totally Nutz Business; and

6. To implement multi-area marketing programs, including Internet and regional or national accounts, which may allow us or others to solicit or sell to customers anywhere. We reserve the right to issue mandatory policies to coordinate these multi-area marketing programs.

We are not required to pay you if we exercise any of the rights specified above. Except for those rights to open additional Franchises under the Multi-3, Multi-5 and Multi-10 Franchise, and the rights granted under a Protected Event, you do not receive the right to acquire Franchises or a right of first refusal on the sale of existing Franchises. If you wish to purchase an additional Totally Nutz Franchise, you must apply to us, and we may, at our discretion, offer an additional Franchise to you. We consider a variety of factors when determining whether to grant additional Franchises. Among the factors we consider, in addition to the then-current requirements for new Totally Nutz franchisees, are whether or not the franchisee is in compliance with the requirements under their current franchise agreement.

You are permitted to have an individual franchisee website that is approved by us and meets with our Brand Standards Manual. You may not promote your business via alternate online strategies.



**ITEM 13
TRADEMARKS**

The Franchise Agreement and your payment of Royalties grant you the non-exclusive right and license to operate your Franchise using our principal Marks listed below. You may also use other future trademarks, service marks, and logos we approve to identify your Totally Nutz Franchise.

The Marks and the System are owned by TNL, and are licensed exclusively to us. TNL has granted us an exclusive license (“Trademark License”) to use the Marks to franchise the System around the world. The Trademark License is for ten years and began on August 22, 2014. It will automatically renew for subsequent ten-year periods provided we are not in default of the Trademark License. If the Trademark License is terminated, TNL has agreed to license the use of the Marks directly to our franchisees until such time as each franchise agreement expires or is otherwise terminated. TNL has registered the following Marks for use with the System on the Principal Register with the United States Patent and Trademark Office (“USPTO”):

Mark	Registration Date	Registration No.	Register
TOTALLY NUTS	October 7, 2014	4,617,077	Registered on the Principal Register
TOTALLY NUTZ	November 24, 2015	4,859,601	Registered on the Principal Register
SO GOOD THEY’LL DRIVE YOU CRAZY	May 24, 2016	4,964,137	Registered on the Principal Register
	December 20, 2016	5,102,840	Registered on the Principal Register

All required affidavits have been filed for the registered Marks. The registrations have not been renewed, as renewal has yet to be required. There are currently no effective determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or court; no pending infringements, oppositions, or cancellations; and no pending material litigation involving any of the Marks.

Except for the Trademark License, no agreement significantly limits our right to use or license the Marks in any manner material to the Totally Nutz Business. We do not know of any superior prior rights or infringing uses that could materially affect your use of the trademarks. You must follow our rules when using the Marks. You cannot use our name or Mark as part of a corporate name or with modifying words, designs, or symbols unless you receive our prior written consent. You must indicate to

the public in any contract, advertisement, and with a conspicuous sign in your Totally Nutz Business that you are an independently owned and operated licensed franchisee of Totally Nutz Franchise, LLC. You may not use the Marks in the sale of unauthorized products or services or in any manner we do not authorize. You may not use the Marks in any advertising for the transfer, sale, or other disposition of the Totally Nutz Business or any interest in the Franchise. All rights and goodwill from the use of the Marks accrue to us. If it becomes advisable at any time for us and/or you to modify or discontinue using any Mark and/or use one or more additional or substitute trademarks or service marks, you must comply with our directions within a reasonable time after receiving notice. We will not reimburse you for your direct expenses of changing signage, for any loss of revenue, or other indirect expenses due to any modified or discontinued Mark, or for your expenses of promoting a modified or substituted trademark or service mark.

We will defend you against any claim brought against you by a third party that your use of the Marks in accordance with the Franchise Agreement infringes upon that party's intellectual property rights. We may require your assistance, but we will exclusively control any proceeding or litigation relating to our Marks. We have no obligation to pursue any infringing users of our Marks or protect you against unfair competition arising out of your use of the Marks. We are not required to indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving the Marks, or if the proceeding is resolved unfavorable to you. If we learn of an infringing user, we will take the action appropriate, but we are not required to take any action if we do not feel it is warranted. You must notify us within three days if you learn that any party is using (or claims the right to use) the Marks or a trademark that is confusingly similar to the Marks. We have the sole discretion to take such action as we deem appropriate to exclusively control any litigation or administrative proceeding involving a trademark licensed by us to you.

If it becomes advisable at any time, in our sole discretion, for us and/or you to modify or discontinue using any Mark and/or use one or more additional or substitute trademarks or service marks, you must comply with our directions within a reasonable time after receiving notice. We will not reimburse you for your direct expenses of changing signage, for any loss of revenue, or other indirect expenses due to any modified or discontinued Mark, or for your expenses of promoting a modified or substituted trademark or service mark.

You must not directly or indirectly contest our right to the Marks. We may acquire, develop, and use additional marks not listed here, and may make those marks available for your use and for use by other franchisees.

ITEM 14 PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

The information in the Brand Standards Manual is proprietary and is protected by copyright and other laws. The designs contained in the Marks, the layout of our advertising materials, the ingredients and formula of our products and recipes, and any other writings and recordings in print or electronic form are also protected by copyright and other laws. Although we have not applied for copyright registration for the Brand Standards Manual, our advertising materials, the content and format of our products, or any other writings and recordings, we claim common law and federal copyrights in these items. We grant you



the right to use this proprietary and copyrighted information (“Copyrighted Works”) for your operation of your Totally Nutz Franchise, but such copyrights remain our sole property.

There are no effective determinations of the United States Copyright Office or any court regarding any Copyrighted Works of ours, nor are there any proceedings pending, nor are there any effective agreements between us and third parties pertaining to the Copyrighted Works that will or may significantly limit using our Copyrighted Works. No patents or patents pending are material to us at this time.

Our Brand Standards Manual, electronic information and communications, sales and promotional materials, the development and use of our System, standards, specifications, policies, procedures, information, concepts and systems on, knowledge of, and experience in the development, operation, and franchising of Totally Nutz Franchises, our training materials and techniques, information concerning product and service sales, operating results, financial performance, and other financial data of Totally Nutz Franchises and other related materials are proprietary and confidential (“Confidential Information”), and are our property to be used by you only as described in the Franchise Agreement and the Brand Standards Manual. Where appropriate, certain information has also been identified as trade secrets (“Trade Secrets”). You must maintain the confidentiality of our Confidential Information and Trade Secrets and adopt reasonable procedures to prevent unauthorized disclosure of our Confidential Information and Trade Secrets.

We will disclose parts of the Confidential Information and Trade Secrets to you as we deem necessary or advisable for you to develop your Totally Nutz Franchise during training and in guidance and assistance furnished to you under the Franchise Agreement, and you may learn or obtain from us additional Confidential Information and Trade Secrets during the term of the Franchise Agreement. The Confidential Information and Trade Secrets are valuable assets of ours and are disclosed to you on the condition that you, and your owners if you are a business entity, and employees agree to maintain the information in confidence by entering into a confidentiality agreement we can enforce. Nothing in the Franchise Agreement will be construed to prohibit you from using the Confidential Information or Trade Secrets in the operation of other Totally Nutz Franchises during the term of the Franchise Agreement.

You must notify us within three days after you learn about another’s use of language, a visual image, or a recording of any kind, that you perceive to be identical or substantially similar to one of our Copyrighted Works or use of our Confidential Information or Trade Secrets, or if someone challenges your use of our Copyrighted Works, Confidential Information, or Trade Secrets. We will take whatever action we deem appropriate, in our sole and absolute discretion, to protect our rights in and to the Copyrighted Works, Confidential Information, or Trade Secrets, which may include payment of reasonable costs associated with the action. However, the Franchise Agreement does not require us to take affirmative action in response to any apparent infringement of or challenge to your use of any Copyrighted Works, Confidential Information, or Trade Secrets, or claim by any person of any rights in any Copyrighted Works, Confidential Information, or Trade Secrets. You must not directly or indirectly contest our rights to our Copyrighted Works, Confidential Information, or Trade Secrets. You may not communicate with anyone except us, our counsel, or our designees regarding any infringement, challenge, or claim. We will take action as we deem appropriate regarding any infringement, challenge, or claim, and the sole right to control exclusively any litigation or other proceeding arising out of any infringement, challenge, or claim under any Copyrighted Works, Confidential Information, or Trade Secrets. You must sign any and all instruments and documents, give the assistance, and do acts and



things that may, in the opinion of our counsel, be necessary to protect and maintain our interests in any litigation or proceeding or to protect and maintain our interests in the Copyrighted Works, Confidential Information, or Trade Secrets.

ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

The Totally Nutz Franchise shall be managed by you, or if you are an entity, by one of your owners who is a natural person with at least a twenty-five percent (25%) ownership interest and voting power in the entity (“Managing Owner”). We will allow you to appoint a designated manager (“Designated Manager”) to run the day-to-day operations of the Totally Nutz Franchise. You will need one Designated Manager for each Totally Nutz Business that you operate. You, or your Managing Owner if you are an entity, must successfully complete our initial training program (See Item 11). Any Designated Manager must complete our training program if required by us, in our sole discretions. We do not require that the Designated Manager have an ownership interest in the legal entity of the Franchise owner. If you replace a Designated Manager or add a Designated Manager, we may require the new Designated Manager to satisfactorily complete our initial training program.

Any Designated Manager and, if you are an entity, an officer that does not own equity in the franchisee entity must sign the System Protection Agreement, the form of which is attached to this Franchise Disclosure Document in Exhibit H. All of your employees, independent contractors, agents, or representatives that may have access to our Confidential Information must sign a Confidentiality Agreement (unless they already signed a System Protection Agreement), the current form of which is attached to this Franchise Disclosure Document in Exhibit H. If you are an entity, each owner (i.e., each person holding an ownership interest in you) must sign an Owners Agreement guaranteeing the obligations of the entity, the form of which is attached to the Franchise Agreement as Attachment II. We also require that the spouses of the Franchise owners sign the Owners Agreement.

ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You must sell or offer for sale only those products and services authorized by us, and which meet our standards and specifications. You must follow our policies, procedures, methods, and techniques. You must sell or offer for sale all types of services and products specified by us. We may change or add to our required products and services at our discretion with prior notice to you. There are no limitations on our rights to make changes to the required services and products. If we change or add to our required products and services, the changes or additions will remain in permanent effect unless we specify otherwise. The amount you must pay for the changes or additions will depend upon the nature and type of changes or additions. You must discontinue selling and offering for sale any products and services that we disapprove. We reserve the right to establish minimum and maximum resale prices for use with multi-area marketing programs and special price promotions.

You may not sell products through other channels of distribution such as wholesale, Internet, or mail order sales, except through your website, as approved by us. All sales are subject to the Royalty Fee. You may not establish an account or participate in any social networking sites (including, without limitation, Facebook, Twitter, or any other social or professional networking site or blog), or mention or



discuss the Totally Nutz Franchise, us, or our affiliate, without our prior written consent and as subject to our online policy. Our online policy may completely prohibit you from any use of the Marks in social networking sites or other online use.

**ITEM 17
RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

THE FRANCHISE RELATIONSHIP

This table lists certain important provisions of the Franchise Agreement and related agreements. You should read these provisions in the agreements attached to this Franchise Disclosure Document.

Provision	Section in Franchise Agreement	Summary
a. Length of the franchise term	Section 2	Ten years.
b. Renewal or extension of the term	Section 2	If you are in good standing and you meet other requirements, you may add two successor terms of ten years each.
c. Requirements for franchisee to renew or extend	Section 2	The term “renewal” refers to extending our franchise relationship at the end of your initial term and any other renewal or extension of the initial term. Your renewal/successor franchise rights permit you to remain as a Franchise after the initial term of your Franchise Agreement expires. You must have complied with all provisions of the Franchise Agreement during the current term, remodel and update the store and equipment, execute a general release, and pay the Successor Franchise Fee. You must sign our then-current franchise agreement and any ancillary documents for the renewal/successor term, and this new franchise agreement may have materially different terms and conditions (including, for example, higher Royalty Fee and Brand Building Fund contributions) from the original Franchise Agreement that covered your initial term.
d. Termination by franchisee	Section 9	You may terminate the Franchise Agreement if you are in compliance with it and we are in material breach and we fail to cure that breach within 30 days of receiving written notice (subject to state law).
e. Termination by franchisor without “cause”	Not Applicable	Not Applicable.
f. Termination by franchisor with “cause”	Section 9	We can terminate upon certain violations of the Franchise Agreement by you.
g. “Cause” defined – curable defaults	Section 9	You have three days to cure health, safety, or



Provision	Section in Franchise Agreement	Summary
		sanitation law violations or failure to operate safely. You have ten days to cure monetary defaults; failure to remodel or refurbish; failure to obtain products, equipment, or services from approved suppliers; failure to submit reports; denial of our inspection; failure to maintain insurance; failure to comply with law; failure to maintain EFT account. You have 30 days to cure the operational defaults listed in Section 17.2.
h. "Cause" defined - non-curable defaults	Section 9	Non-curable defaults: the defaults listed in Section 9.2 of the Franchise Agreement.
i. Franchisee's obligations on termination/non-renewal	Sections 3, 7, 10, 12, and 14	Obligations include complete de-identification, payment of amounts due, and return of confidential Brand Standards Manual, all Confidential Information, Trade Secrets, and records.
j. Assignment of contract by franchisor	Section 12	No restriction on our right to assign.
k. "Transfer" by franchisee – defined	Section 12	Includes any voluntary, involuntary, direct, or indirect assignment, sale, gift, exchange, grant of a security interest, or change of ownership in the Franchise Agreement, the Franchise, or interest in the Franchise.
l. Franchisor approval of transfer by franchisee	Section 12	We have the right to approve all transfers.
m. Conditions for franchisor approval of transfer	Section 12	Totally Nutz Business must be in operation for at least one year, if we have not exercised right of first refusal; new owner must have sufficient business experience and financial resources to operate the Franchise; you must pay all amounts due; new owner and employees must complete the initial training program; your landlord must consent to transfer of lease; you must pay transfer fee; you must sign a general release in favor of us; new owner must agree to bring the Totally Nutz Business up to current standards; new owner signs a new franchise agreement in the then-current form; you must sign a non-compete agreement not to engage in a competitive business for two years within: (i) 25 miles of that Franchise or another Totally Nutz Franchise; or (ii) 25 miles of any site where you held an Event during the term of the Franchise Agreement.
n. Franchisor's right of first refusal to acquire franchisee's business	Section 12	We have 30 days to match any offer for your Totally Nutz Business.
o. Franchisor's option to purchase	Section 12	We may, but are not required to, purchase your



Provision	Section in Franchise Agreement	Summary
franchisee's business		Totally Nutz Franchise, inventory, or equipment at fair market value if your Franchise is terminated for any reason by giving you written notice of our intent to exercise this option within 30 days after the date of termination or expiration of the Franchise Agreement.
p. Death or disability of franchisee	Section 12	The Franchise Agreement must be transferred or assigned to a qualified party within 180 days of death or disability or the Franchise Agreement may be terminated. Your estate or legal representative must apply to us for the right to transfer to the next of kin within 120 calendar days of your death or disability.
q. Non-competition covenants during the term of the Franchise	Section 14	Neither you, your principal owners, nor any immediate family members of you or your principal owners may participate in a diverting business, have no owning interest in, loan money to, or perform services for a competitive business anywhere; you may not interfere with our or our other franchisees' Totally Nutz Franchise(s) (subject to state law).
r. Non-competition covenants after the Franchise is terminated or expires	Section 14	Owners cannot have an interest in any competitive business located or operating within: (i) a 25-mile radius from Franchisee's Totally Nutz Business (and including the premises of the approved location of Franchisee); and (ii) a 25-mile radius from any site or location where you held an Event during the term of the Franchise Agreement Owners may not solicit any customer of the Franchise or any Totally Nutz Franchise for two years (subject to state law).
s. Modification of agreement	Sections 2.3 and 16	No modifications of the Franchise Agreement during the term unless agreed to in writing, but the Brand Standards Manual is subject to change at any time in our discretion. Modifications are permitted on renewal.
t. Integration/merger clause	Section 16	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to state law). Any representations or promises outside of this Franchise Disclosure Document and Franchise Agreement may not be enforceable.
u. Dispute resolution by arbitration or mediation	Section 15	Except for certain claims, all disputes must be mediated and arbitrated in the city closest to our principal place of business (currently St. George, Utah), subject to applicable state law.



Provision	Section in Franchise Agreement	Summary
v. Choice of forum	Section 15	All disputes must be mediated, arbitrated, and if applicable, litigated in the city closest to our principal place of business (currently St. George, Utah), subject to applicable state law.
w. Choice of law	Section 15	Utah law, except for the Utah Business Opportunity Investment Act, applies, subject to applicable state law.

**ITEM 18
PUBLIC FIGURES**

We do not use any public figure to promote our Franchise.

**ITEM 19
FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC’s Franchise Rule permits a franchisor to disclose information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and the information is included in the Franchise Disclosure Document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee’s future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Matt Barker at 69 E. 2580 S., St. George, Utah 84790, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20
OUTLETS AND FRANCHISEE INFORMATION**

Table No. 1

System-wide Outlet Summary
For Years ~~2018-2020~~2019-2021

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2018	19	35	+16
	2019	35	43	+8

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
		<u>34</u>	<u>42</u>	
	2020	43 <u>42</u>	49 <u>51</u>	+6 <u>+9</u>
	<u>2021</u>	<u>51</u>	<u>55</u>	<u>+4</u>
Company-Owned *	2018	11	13	+2
	2019	13	16	+3
	2020	16	16	0
	<u>2021</u>	<u>16</u>	<u>17</u>	<u>+1</u>
Total Outlets	2018	30	48	+18
	2019	48	59	+11
	2020	59 <u>58</u>	65 <u>67</u>	+6 <u>+9</u>
	<u>2021</u>	<u>67</u>	<u>72</u>	<u>+5</u>

*These outlets are owned by our affiliate. Of these ~~eleven~~17, five kiosks operated at malls during the ~~2017~~2021 holiday season, three carts operated year round in semi-permanent sports venues, and ~~three~~four carts operated only at special events.

Table No. 2

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)
For Years ~~2018-2020~~2019-2021

State	Year	Number of Transfers
California	2018	0
	2019	1
	2020	0
	<u>2021</u>	<u>0</u>
Washington	2018	1
	2019	0
	2020	0
	<u>2021</u>	<u>0</u>
Totals	2018	1
	2019	1
	2020	0
	<u>2021</u>	<u>0</u>

Table No. 3

Status of Franchised Outlets
For Years ~~2018-2020~~2019-2021

State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Arizona	2018	2	0	0	0	0	0	2
	2019	2	0	0	0	0	0	2
	2020	2	0	0	0	0	0	2
	<u>2021</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
California	2018	3	3	0	0	0	0	6
	2019	6	2	0	0	0	0	8
	2020	8	0	0	0	0	0	8
	<u>2021</u>	<u>8</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>8</u>
Colorado	2018	0	0	0	0	0	0	0
	2019	0	1	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	<u>2021</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
Georgia	2018	0	1	0	0	0	0	1
	2019	1	2	0	0	0	0	3
	2020	3	0	0	0	0	0	3
	<u>2021</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
Indiana	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	<u>2021</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
Maryland	2018	1	0	1	0	0	0	0
	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	<u>2021</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
Massachusetts	2018	1	1	0	0	0	0	2
	2019	2	1	0	0	0	0	3
	2020	3	0	0	0	0	0	3
	<u>2021</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
Nevada	2018	2	2	0	0	0	0	4
	2019	4	0	0	0	0	0	4
	2020	4	0	0	0	0	0	4
	<u>2021</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>4</u>

State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
	<u>2021</u>							
New Hampshire	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	<u>2021</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
New Jersey	2018	0	0	0	0	0	0	0
	2019	0	0	0	0	0	0	0
	2020	0	3	0	0	0	0	3
	<u>2021</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
North Dakota	2018	1	0	0	0	0	0	1
	2019	1 <u>0</u>	0	0	0	0	0	<u>0</u>
	2020	1 <u>0</u>	3 <u>0</u>	0	0	0	0	3 <u>0</u>
	<u>2021</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
Oklahoma	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	<u>2021</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
Pennsylvania	2018	0	2	0	0	0	0	2
	2019	2	3	0	0	0	0	5
	2020	5	0	0	0	0	0	5
	<u>2021</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>5</u>
South Carolina	2018	0	1	0	0	0	0	1
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	<u>2021</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
Tennessee	2018	3	4	0	0	0	0	7
	2019	7	0	0	0	0	0	7
	2020	7	0	0	0	0	0	7
	<u>2021</u>	<u>7</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>7</u>
Texas	2018	2	3	0	0	0	0	5
	2019	5	0	0	0	0	0	5
	2020	5	0	0	0	0	0	5
	<u>2021</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>5</u>

State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Virginia	2018	0	0	0	0	0	0	0
	2019	0	0	0	0	0	0	0
	2020	0	3	0	0	0	0	3
	<u>2021</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
Washington	2018	1	0	0	0	0	0	1
	2019	1	0	1	0	0	0	0
	2020	0	0	0	0	0	0	0
	<u>2021</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
Total	2018	1	179	1	0	0	0	3542
	<u>2019</u>	<u>35</u>	<u>8</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>43</u>
	2020	4342	69	0	0	0	0	4951
	<u>2021</u>	<u>51</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>55</u>

Table No. 4

Status of Company-Owned Outlets
For Years ~~2018-2020~~2019-2021

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Utah*	2018	11	2	0	0	0	13
<u>Utah*</u>	2019	13	3	0	0	0	16
	2020	16	0	0	0	0	16
	<u>2021</u>	<u>16</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>17</u>
Total Outlets	2018	11	2	0	0	0	13
	2019	13	3	0	0	0	16
	2020	16	0	0	0	0	16
	<u>2021</u>	<u>16</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>17</u>

*These outlets are owned by our affiliate.

Table No. 5

Projected Openings as of
December 31, ~~2020~~2021 for ~~2021~~2022

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
<u>Colorado</u>	<u>1</u>	<u>1</u>	<u>0</u>
Florida <u>Maryland</u>	3 <u>1</u>	2 <u>1</u>	0
Washington	<u>3</u>	1	0
Total	<u>6</u>	<u>2</u>	0

The names, addresses, and telephone numbers of our current franchisees are attached to this Franchise Disclosure Document as Exhibit C. The name and last known address and telephone number of every current franchisee and every franchisee who has had a Totally Nutz Franchise terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under our franchise agreement during the one year period ending December 31, ~~2020~~2021, or who has not communicated with us within ten weeks of the Issuance Date of this Franchise Disclosure Document is listed in Exhibit C. In some instances, current and former franchisees may sign provisions restricting their ability to speak openly about their experiences with the Totally Nutz System. You may wish to speak with current and former franchisees, but know that not all such franchisees can communicate with you. During the last three fiscal years, we have not had any franchisees sign confidentiality provisions that would restrict their ability to speak openly about their experience with the Totally Nutz System. If you buy a Totally Nutz Franchise, your contact information may be disclosed to other buyers when you leave the Franchise System.

As of the Issuance Date of this Franchise Disclosure Document, there are no franchise organizations sponsored or endorsed by us, and no independent franchisee organizations have asked to be included in this Franchise Disclosure Document. We do not have any trademark specific franchise organizations.

ITEM 21 FINANCIAL STATEMENTS

Exhibit B contains the audited financial statements required to be included with this Franchise Disclosure Document, ~~including unaudited balance sheet as of May 31, 2021 and profit and loss statements from January 1, 2021 to May 31, 2021, and audited financial statements~~ as of December 31, 2021, December 31, 2020, and December 31, 2019. Our fiscal year end is December 31st.

ITEM 22 CONTRACTS

The following exhibits contain proposed agreements regarding the Franchise:

Exhibit A Franchise Agreement



- Exhibit E Franchise Disclosure Questionnaire
- Exhibit G State Addenda and Agreement Riders
- Exhibit H Contracts for use with the Totally Nutz Franchise

**ITEM 23
RECEIPT**

The last pages of this Franchise Disclosure Document, Exhibit I, are a detachable document, in duplicate. Please detach, sign, date, and return one copy of the Receipt to us, acknowledging you received this Franchise Disclosure Document. Please keep the second copy for your records.



EXHIBIT A
FRANCHISE AGREEMENT



041621
56958474;5
[033122](#)
[62878045;3](#)

EXHIBIT A
TO FRANCHISE DISCLOSURE DOCUMENT



TOTALLY NUTZ FRANCHISE, LLC
FRANCHISE AGREEMENT

Franchise #: _____
Franchise Owner: _____
Franchise Owner Address: _____

Date: _____



041621
56958474;5
033122
62878045;3

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ATTACHMENTS:

- Attachment I Addendum to Franchise Agreement
- Attachment II Owners Agreement
- Attachment III Statement of Ownership
- Attachment IV Unit Rider



FRANCHISE AGREEMENT

This franchise agreement ("Franchise Agreement") is entered into and made effective as of the date set forth on the signature page of this Franchise Agreement, by and between Totally Nutz Franchise, LLC, a Utah limited liability company, located at 69 E. 2580 S., St. George, Utah 84790 ("we," "our," "us," or "TNF") and the franchisee named on the signature page of this Franchise Agreement ("Franchisee" or "you").

RECITALS

A. TNF has developed a system using the service mark Totally Nutz and related trade names and trademarks ("Marks") for the operation of a business ("Totally Nutz Business" or "Business") that sells fresh roasted cinnamon glazed nuts at various venues, events, and mall locations. Mobile Totally Nutz Businesses are usually operated at activities including fairs, sporting events, conventions, rodeos, festivals, trade shows, grand openings, and seminars ("Events"), but may also be operated from permanent, fixed sites ("Permanent Sites") located in malls, strip centers, schools, office buildings, hospitals, airports, rest stops, colleges, health clubs, auditoriums, arenas, concert and sports venues, and other high traffic venues.

B. TNF's products include its: (1) fresh roasted cinnamon glazed nuts; (2) soft drinks; (3) bottled waters; (4) trademarked bags, tins and other product packaging; (5) clothing and accessories; and (6) such other products as have been or may be introduced and authorized by TNF (collectively "Totally Nutz Products" or "Products").

C. Totally Nutz Businesses prepare, market, and sell Products ("Services");

D. Totally Nutz Businesses are operated under a business format utilizing a unique system with high standards of service, including valuable know-how, information, trade secrets, confidential information, training methods, standards, designs, methods of trademark usage, copyrights, sources and specifications, confidential electronic and other communications, methods of Internet usage, and research and development (the "System"). The System includes: (1) the sale of Products; (2) the use of TNF signage, décor, and other equipment; and (3) the specifications for such equipment and supplies.

E. Franchisee desires to enter into an agreement with TNF to obtain the rights to operate a franchise for a Totally Nutz Business ("Franchise"); and

F. Franchisee has fully investigated and has familiarized itself with the essential aspects and purposes of the System.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions contained in this Franchise Agreement, and the acts to be performed by the respective parties, the parties agree as follows:



1 GRANT OF FRANCHISE

1.1 *Grant of Franchise.* TNF grants to Franchisee, and Franchisee accepts from TNF, the non-exclusive right to establish and operate a Totally Nutz Business. TNF offers three types of Franchises. A single Franchise enables you to own and operate a single franchised Totally Nutz Business Unit (“Unit”); a “Multi-3 Franchise” enables you to own and operate up to three Units; a “Multi-5 Franchise” enables you to own and operate up to five Units and a “Multi-10 Franchise” enables you to own and operate up to ten Units. The type of Franchise granted under this Franchise Agreement is designated in the Addendum to this Franchise Agreement, attached as Attachment I (“Addendum”). Upon signing this Franchise Agreement, Franchisee and TNF shall execute either: (i) a “Mobile Unit Rider” if the Unit is to be operated at Events; or (2) a “Permanent Site Unit Rider” if the Unit is to be operated at a Permanent Site. The Mobile Unit Rider and Permanent Site Unit Rider are each attached in Attachment IV and referred to herein, collectively, as “Unit Rider”). If Franchisee has purchased the rights to open multiple Units, Franchisee and TNF shall execute additional Unit Riders for each additional Unit that is permitted under this Franchise Agreement.

1.2 *Operation of the Business.* Franchisee shall operate its Totally Nutz Business, and use the Marks and System in connection with its Totally Nutz Business, as they may be changed, improved and developed by TNF in the future, only in accordance with the terms and conditions of this Franchise Agreement. Franchisee shall operate its Totally Nutz Business only as set forth in the applicable Unit Riders, at agreed upon Events or Permanent Sites, or a combination of both, up to the maximum number permitted based on the type of Franchise purchased as stated in the Addendum. Franchisee must obtain TNF’s prior written consent if Franchisee wishes to convert one of its Units to a different type of Unit, and shall execute another Unit Rider in that event. Franchisee shall use its best efforts to promote its Totally Nutz Business and to open and operate the maximum number of Units permitted under the Addendum. Franchisee may not use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, except through your website as approved by us, to make sales outside of and apart from Franchisee’s Totally Nutz Business, without our prior consent, and all such sales are subject to the Royalty Fee.

1.3 *Permanent Sites and Events.*

1.3.1 Franchisee shall not operate its Totally Nutz Business at a Permanent Site without the prior written consent of TNF. Franchisee shall follow TNF’s process and procedures to obtain the consent of TNF, including but not limited to completing any applications, conducting such studies, providing copies of any contracts, and paying such amounts as may be required by TNF as part of the approval process. As a condition of TNF’s consent to any lease that Franchisee may enter into for any Permanent Site, a condition of approval shall be Franchisee and its landlord executing the Lease Addendum and Collateral Assignment of Lease, attached to the Franchise Disclosure Document, or alternatively provide similar language in the executed lease.

1.3.2 If Franchisee desires to operate a Unit from a Permanent Site, it understands and agrees that other than the specific Permanent Site location, it does not receive any protected or exclusive territory nor any exclusive right to any particular market or customers. Franchisee must obtain TNF’s approval for the Permanent Site where a Unit will be located and comply with the other terms described

in the Unit Riders for that Unit. Franchisee acknowledges that it is not guaranteed any certain Event sites, Permanent Site or other location for the operation of the Totally Nutz Business.

1.4 Principal Business Address. Franchisee shall designate a principal business office address, telephone number, fax number, and its electronic mail address for billing and notification purposes (“Principal Business Address”). The Principal Business Address may be Franchisee’s home or other place where the administrative affairs of the Business are conducted. The initial Principal Business Address shall be set forth in the Addendum. Franchisee shall at all times keep TNF apprised of the location of its Principal Business Address.

1.5 Reservation of Rights. Franchisee acknowledges that the Franchise granted hereunder is non-exclusive and that TNF and its affiliates retain the rights, among others, without any compensation to Franchisee: (i) to use or operate, and to license others to use or operate any business, under any trademarks including the Marks and System for the operation of Totally Nutz Businesses, at any approved Permanent Site or Event other than at the approved Permanent Site of a Unit of a franchisee or at a Protected Event (as defined in the Unit Rider); (ii) to use and license the use of any proprietary marks or methods (including the Marks) in connection with the sale of products and services similar to those which Franchisee will sell or in connection with the operation of displays located in retail stores, at any location other than at a Unit, which locations are the same as, or similar to, or different from traditional TNF locations, or through alternative channels of distribution including, but not limited to, by way of the Internet, catalog, telemarketing, other direct sales, television, retail store display or through the wholesale sale of products and/or services to unrelated retail outlets or to food distributors or outlets located in stadiums, arenas, airports, convenience stores, Internet sales, turnpike rest stops, grocery stores, or supermarkets, on any terms and conditions as TNF deems advisable, and without granting Franchisee any rights therein; (iii) to acquire, combine with, merge with or be acquired by, any business or person, wherever located, including a business that competes directly with Franchisee’s Totally Nutz Business; (iv) to implement, maintain, and establish mandatory policies and procedures for multi-area marketing programs at any time, including Internet and regional or national accounts, which may include any Permanent Site or Event; and (v) to take any other action which is not precluded under this Franchise Agreement.

1.6 Ownership and Principal Contact of Franchisee. If Franchisee is a corporation, limited liability company, general or limited partnership, or any other legal entity (“Entity”), Franchisee, the following shall apply: (i) Franchisee shall complete and update throughout the term of this Franchise Agreement, as necessary, the “Statement of Ownership” which is attached as Attachment III; (ii) all persons who own more than ten percent (10%) of the beneficial ownership interests in the Entity shall guaranty Franchisee’s performance under this Franchise Agreement by signing the “Owners Agreement” attached as Attachment II; (iii) the Entity shall engage in no other business than the operation of the Totally Nutz Business governed by this Franchise Agreement unless TNF approves such other business in writing (TNF may, in its sole discretion and for any reason, elect to withhold approval); and (iv) Franchisee shall provide to TNF a resolution signed by all members, directors, or partners, as appropriate, designating the principal contact for the Business. Franchisee’s principal contact must be a managing member, manager, general partner, or controlling shareholder or member. This representative shall have the authority to speak for and bind Franchisee in all matters pertaining to this Franchise Agreement, and all matters regarding the Business.



2 TERM

2.1 *Term*. This Franchise Agreement shall become effective as of the “Effective Date” listed on the signature page of this Franchise Agreement. The term of this Franchise Agreement shall be ten years from the Effective Date unless terminated earlier pursuant to Section 9 (“Initial Term”).

2.2 *Renewal Rights*. At the end of the Initial Term, Franchisee shall have the option to renew its rights to operate a Totally Nutz Business for two additional successive ten year terms, by acquiring successor franchise rights, provided TNF does not exercise its rights in accordance with Section 2.4 below and only if Franchisee:

2.2.1 at least 30 days prior to expiration of the Initial Term, executes the then-current form of TNF franchise agreement and related documents (including but not limited to our then-current form of Owners Agreement or other guaranty) used for the sale of TNF Franchises, all of the terms of which may vary materially from those contained in this Franchise Agreement, including, without limitation, higher fees;

2.2.2 has complied with all provisions of this Franchise Agreement during the current term, including the payment on a timely basis of all Product payments and other fees due hereunder. “Complied” shall mean, at a minimum, that Franchisee has not received any written notification from TNF of any breach hereunder more than three times during the term, regardless of whether the breaches have been cured by Franchisee;

2.2.3 upgrades, remodels, or refurbishes any equipment, signage, and each Permanent Site store or other Unit, as is applicable, at the Franchisee’s sole expense (the necessity of which shall be in the sole discretion of TNF) to conform with the then-current Brand Standards Manual (as defined in Section 3.12 below);

2.2.4 Subject to state law, executes a general release, in a form satisfactory to TNF, of all claims against TNF and its affiliates, and their respective officers, directors, employees, and agents arising out of or related to this Franchise Agreement or any other agreement with TNF or its affiliates; and

2.2.5 Pays a successor franchise fee of twenty percent (20%) of the then-applicable franchise fee for new TNF Franchises.

2.3 *Exercise of Option for Successor Franchise*. Franchisee may exercise its option for a successor franchise by giving written notice of its intent to exercise the option to TNF no less than 180 days and no more than 270 days prior to the scheduled expiration of this Franchise Agreement. Franchisee’s successor franchise rights shall become effective by signing the then-current form of TNF franchise agreement and related documents used for the sale of TNF Franchises and by complying with the other conditions of renewal.

2.4 *Conditions of Refusal*. TNF shall not be obligated to offer Franchisee a successor franchise upon the expiration of this Franchise Agreement if Franchisee fails to comply with any of the above conditions of renewal. In that event (except for failure to execute the then-current franchise agreement and related documents or failure to pay the successor franchise fee), TNF shall give notice of expiration at least 180 days prior to the expiration of the term, and the notice shall set forth the reasons



for the refusal to offer successor franchise rights. Upon the expiration of this Franchise Agreement, Franchisee shall comply with the provisions of Section 10 below.

3 PROPRIETARY MARKS AND THE SYSTEM

3.1 Marks. Franchisee acknowledges that TNF has the right to license and control Franchisee's use of the service mark and trademark "Totally Nutz®" and other of the Marks, and that the Marks shall remain under the control of TNF. Franchisee acknowledges that it has not acquired any right, title, or interest in the Marks except for the right to use the Marks in the operation of its Totally Nutz Business as it is governed by this Franchise Agreement. Franchisee agrees not to use any of the Marks as part of an electronic mail address, or as part of any URL, web page, social media site, domain name, locator, link, metatag, or on any sites on the internet and the world wide web, unless authorized in writing by TNF.

3.2 No Use of Other Marks. Franchisee shall use no service mark or trade mark other than the "Totally Nutz®" service mark or any other Marks as may be specified by TNF for use in the identification, marketing, promotion, or operation of a Totally Nutz Business.

3.3 System. Franchisee acknowledges that TNF owns and controls the distinctive plan for the establishment, operation, and promotion of a Totally Nutz Business and all related methods of doing business, previously defined as the System, which include, but are not limited to, TNF's standards and specifications for the Totally Nutz Business, recipes, operational methods including Products, Services, the Franchise Starter Package (defined below), marketing techniques, written promotional materials, advertising, and accounting systems, all of which constitute confidential trade secrets of TNF, and Franchisee acknowledges that TNF has valuable rights in and to these trade secrets. Franchisee additionally acknowledges that it has not acquired any right, title, or interest in the System except for the right to use the System in the operation of its Totally Nutz Business as it is governed by this Franchise Agreement and that Franchisee is obligated to maintain the confidentiality of the System in accordance with Section 3.9 below. Any improvements or additions to the System, TNF-copyrighted materials ("Copyrighted Materials"), website or any other documents or information pertaining to or relating to the System or the Franchise, or any new trade names, trade and service marks, logos, or commercial symbols related to the Totally Nutz Business or Franchise or any advertising and promotional ideas or inventions related to the Totally Nutz Business or Franchise (collectively, the "Improvements") conceived or developed by Franchisee or any person or Entity retained or employed by Franchisee shall become TNF's property, and TNF shall be entitled to use and license others to use the Improvements unencumbered by moral rights. Franchisee agrees to assign and does hereby assign to TNF, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. Franchisee shall fully disclose the Improvements to TNF, without disclosure of the Improvements to others, and shall obtain TNF's written approval prior to using such Improvements. Any such Improvement may be used by TNF and all other TNF franchisees without any obligation to Franchisee for royalties or other fees. TNF may, at its discretion, apply for and own copyrights, patents, trade names, trademarks and service marks relating to any such Improvement, and Franchisee shall cooperate with TNF in securing such rights. TNF may also consider such Improvements as its property and Trade Secrets (as such term is defined in Section 3.12). In return, TNF shall authorize Franchisee to utilize any Improvement that may be developed by other franchisees and is authorized generally for use by other franchisees. If any of the Improvements are copyrightable, they shall be considered "works made for hire" within the meaning of the United States Copyright Act; further, to the extent the Copyrighted Materials are not "works made for



hire,” or rights in the Copyrighted Materials do not automatically accrue to TNF, Franchisee shall irrevocably assign and agree to assign to TNF, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such Copyrighted Materials, which Franchisee and the author of such Copyrighted Materials warrant and represent as being created by and wholly original to the author. Franchisee agrees to execute (and to obtain from any other person or Entity) all documents as reasonably requested by TNF to perfect or document TNF’s interests in the Improvements.

3.4 Mark Infringement. Franchisee shall notify TNF in writing within three days of the date any possible infringement or illegal use by others of a trademark that is the same as or confusingly similar to any of the Marks that comes to its attention. Franchisee acknowledges that TNF shall have the right, in its sole discretion, to determine whether any action will be taken on account of any possible infringement or illegal use. TNF may prosecute the action in TNF’s own name and may join Franchisee as a party to the action if TNF determines it to be reasonably necessary for the continued protection and quality control of the Marks and System. TNF shall bear the reasonable cost of any such action, including attorneys’ fees. Franchisee shall fully cooperate with TNF in any such litigation.

3.5 Franchisee’s Business Name. Franchisee acknowledges that between TNF and Franchisee, TNF has a prior and superior claim to the “Totally Nutz” trade name. Franchisee shall not use the words “Totally Nutz” or “TNF” in the legal name of its Entity used in conducting the Business provided for in this Franchise Agreement. Franchisee also agrees not to register or attempt to register a trade name using the words “Totally Nutz” or “TNF” in Franchisee’s name or that of any other person or Entity, without the prior written consent of TNF. Franchisee shall not identify itself as being “Totally Nutz, Inc.,” “TNE, Inc.,” “Totally Nutz Franchise, Inc.,” “TNF Franchise, Inc.,” “Totally Nutz Development, Inc.,” “TNF Development, Inc.,” or as being associated with TNF in any manner other than as a franchisee or licensee. Franchisee shall, in all advertising and promotion and promotional materials, display its business name only in obvious conjunction with the phrase “an independent TNF Licensee” or “an independent TNF Franchisee” or with other words and in other phrases to identify itself as an independent owner of the Business, as may be required in the Brand Standards Manual.

3.6 Change of Marks. If TNF, in its sole discretion, shall determine it necessary to modify or discontinue use of any proprietary Mark, or to develop additional or substitute marks, Franchisee shall, within a reasonable time after receipt of written notice of a modification or discontinuation from TNF, take such action, at Franchisee’s sole expense, as may be necessary to comply with the modification, discontinuation, addition, or substitution.

3.7 Consents to Use of Marks. Franchisee additionally agrees to execute all additional documents and assurances in connection with the use of the Marks as reasonably requested by TNF and agrees to fully cooperate with TNF or any other franchise owner or licensee of TNF in securing all necessary and required consents of any state agency or legal authority to the use of the Marks or any other name that is or becomes a part of the System.

3.8 Goodwill. All goodwill associated with the Marks and the System, including any goodwill that might be deemed to have arisen through Franchisee’s operation of its Totally Nutz Business or other activities shall inure solely to the benefit of TNF.

3.9 Confidentiality of Proprietary Information. Franchisee agrees to: (a) fully and strictly adhere to all security procedures required by TNF in its sole discretion for maintaining the proprietary



information as proprietary; (b) disclose proprietary information to its employees only to the extent necessary to market Products and TNF Services and for the operation of its Totally Nutz Business in accordance with this Franchise Agreement; (c) not use any proprietary information in any other business or in any manner not specifically authorized or approved in writing by TNF; and (d) exercise the highest degree of diligence and make every effort to maintain the absolute confidentiality of all proprietary information during and after the term of this Franchise Agreement.

3.10 Nondisclosure and Non-competition Agreement. Franchisee is required to have its owners, members, partners, or shareholders, its Designated Managers (as defined in Section 6.1.3 below), principal employees, anyone Franchisee may choose to send to TNF's training, and anyone who has access to the Brand Standards Manual or any of TNF's proprietary information, execute TNF's standard System Protection Agreement (which is an exhibit to the Franchise Disclosure Document and may be updated in the Brand Standards Manual) before performing any work at the Totally Nutz Business or otherwise having access to TNF's proprietary information. A copy of all the signed agreements shall be delivered to TNF within one week of their execution.

3.11 Signage. Franchisee shall display a standard sign, as may be specified by TNF, on/in its Unit indicating that the location/business is independently owned and operated as a franchised business.

3.12 Brand Standards Manual. Franchisee agrees that TNF's operating manuals and other written materials, including information posted on TNF's website and information sent to Franchisee by electronic and regular mail, manuals, written procedures, memoranda, and their supplements loaned to Franchisee by TNF (collectively, "Brand Standards Manual") shall remain the sole property of TNF and must be returned to TNF at TNF's direction. Franchisee, its members, shareholders, partners, and guarantors, if any, acknowledge that the contents of the Brand Standards Manual and Franchisee's knowledge of TNF's processes, services, products, know-how, and the System, are secret, unique, and confidential and contain trade secrets and other material proprietary to TNF. Franchisee acknowledges that its entire knowledge of the operation of the Business is and shall be derived from information disclosed to Franchisee by TNF and that certain of the information is proprietary, confidential, and a Trade Secret of TNF. "Trade Secrets" refer to the whole or any portion of know-how, knowledge, methods, specifications, processes, procedures, or improvements regarding the Business that is valuable and secret in the sense that it is not generally known to competitors of TNF. Franchisee shall maintain the absolute confidentiality of all Trade Secrets during and after the term of this Franchise Agreement, and shall not use any such information in any other business or in any manner not specifically authorized or approved in writing by TNF. Franchisee agrees not to disclose the contents of the Brand Standards Manual to unauthorized persons and to use Franchisee's best efforts to prevent unauthorized disclosure to any person, as this disclosure would cause irreparable harm to TNF and the System. Franchisee understands that the Brand Standards Manual is loaned to Franchisee, and that at all times the Brand Standards Manual remains the sole property of TNF, and Franchisee agrees to return the Brand Standards Manual to TNF on the termination of this Franchise Agreement or at times as may otherwise be directed by TNF. Franchisee shall not copy or otherwise duplicate the Brand Standards Manual or any other proprietary materials. At any time at TNF's discretion, TNF may convert the Brand Standards Manual to an exclusively electronic format and require Franchisee to access the document through the Internet or through an intranet created and supported by TNF. TNF retains the right to modify, change, add to, delete, or supplement the Brand Standards Manual and to specify other systems, procedures or forms in



any manner it deems necessary, and shall notify Franchisee about changes in writing by fax, mail, electronic mail, or postings on TNF's website on the internet.

4 FEES

4.1 Initial Franchise Fee. When you sign this Franchise Agreement, you will pay us the initial franchise fee ("Initial Franchise Fee") stated on Attachment I by means of a cashier's check, money order, or wire transfer. You may, at the time you sign the Franchise Agreement, purchase the rights to open: (1) a single Unit; (2) up to three Units (a "Multi-3 Franchise"); (3) up to five Units (a "Multi-5 Franchise"); or (4) up to ten Units (a "Multi-10 Franchise"). If you purchase the Multi-3 Franchise, Multi-5 Franchise or a Multi-10 Franchise, you will sign the "Multi-Unit Rider," the form of which is attached hereto in Attachment IV. To open additional Units under a Multi-3 Franchise, Multi-5 Franchise or Multi-10 Franchise, you will be required to sign the then-current Unit Rider. The Initial Franchise Fee is uniform, non-refundable, payable and is fully earned when we sign this Franchise Agreement, even if you do not open additional Units; the Initial Franchise Fee is in consideration of all of our pre-opening assistance that we provide to allow you to open your Units and our lost or deferred opportunity to enter into this Franchise Agreement with others, and it offsets some of our expenses for franchisee recruitment.

4.2 Refund of Initial Franchise Fee. If TNF, in its sole and absolute discretion, determines that Franchisee or Franchisee's employee(s) have not successfully completed (or are not making satisfactory progress in) the TNF Training Program (defined in Section 6.1.3 below), then TNF may elect to terminate this Franchise Agreement, thereby canceling all of Franchisee's rights and all of Franchisee's and TNF's obligations under this Franchise Agreement, and/or any other agreements between TNF and Franchisee, by providing Franchisee with written notice of TNF's intent to cancel this Franchise Agreement. If TNF elects to terminate this Franchise Agreement in accordance with this Section, TNF shall refund fifty percent (50%) of the Initial Franchise Fee paid by Franchisee within 30 days of the termination. Franchisee acknowledges that TNF shall be entitled to retain the remaining fifty percent (50%) of the Initial Franchise Fee set forth above, and any other fees paid by Franchisee to TNF, in consideration of TNF's sales, training, and other costs associated with making the franchise sale to Franchisee. Within five business days of receipt of the termination notice, Franchisee covenants and agrees to return the Brand Standards Manual and all associated documents and property belonging to TNF, and Franchisee, and each owner of Franchisee, agrees to execute documentation providing for a general release (except where prohibited by law), in the form required by TNF, of all claims, liabilities, and/or obligations, however arising, known or unknown, against TNF and all other TNF-related persons or entities. Franchisee's indemnity, non-competition, non-solicitation, and confidentiality obligations, and the dispute resolution provisions contained in this Franchise Agreement shall survive the termination of this Franchise Agreement.

4.3 Royalty Fee. Franchisee shall acquire the Products and the Cart/Kiosk Package through TNF, or other affiliates or suppliers designated or approved by TNF. Franchisee agrees to pay us, in the manner provided below (or as the Brand Standards Manual otherwise prescribes), a monthly royalty fee (the "Royalty Fee") equal to six percent (6%) of the Gross Revenue (defined below), which is due on or before the seventh day of each month; this Royalty Fee is an ongoing payment that allows you to use the Marks and the other intellectual property of the System and that pays for our ongoing support and assistance. "Gross Revenue" means the total selling price of all products and services sold at, from or through Franchisee's Totally Nutz Business and all income, revenue, and consideration of every other



kind and nature related to the Totally Nutz Business operation, including all proceeds from any business interruption insurance, whether for cash, barter, or credit and regardless of collection in the case of credit. Gross Revenue does not include: (1) the amount of any tax imposed by any federal, state, municipal, or other governmental authority directly on sales and collected from customers, provided that the amount of any such tax is shown separately and in fact paid by Franchisee to the appropriate governmental authority; (2) products or services provided to employees at no charge in accordance with TNF's policies and procedures; and (3) all customer refunds, valid discounts, and coupons, and credits made by the Totally Nutz Business (these exclusions will not include any reductions for credit card user fees, returned checks or reserves for bad credit or doubtful accounts).

4.4 Cart/Kiosk. You must purchase either a cart or kiosk package ("Cart/Kiosk Package") from us after you sign the Franchise Agreement and prior to opening. The price of the Cart/Kiosk Package is listed in Attachment I, but you may incur additional charges to modify the cart or kiosk to comply with your local or state health regulations. Further, depending on the Cart/Kiosk Package you purchase, you may also be required to purchase a branded tent from us at the then-current cost (currently \$3,000 for a branded pop-up tent and \$4,500 for a pinnacle tent). All amounts paid for the Cart/Kiosk Package are fully earned when paid and are not refundable under any circumstances. Included in the price of the Cart/Kiosk Package is a franchise starter package ("Franchise Starter Package") that will be delivered to you along with your Cart/Kiosk Package.

4.5 Transfer of Cart or Kiosk Equipment. If Franchisee chooses to transfer any cart or kiosk equipment to another Totally Nutz franchisee, then Franchisee will pay Franchisor \$500.00 per transfer at the time of the transfer.

4.6 Technology Fee. We reserve the right, upon 30 days' prior notice to you, to charge you a periodic technology fee for our costs for your email system, cloud-based services, web-based systems and apps, support of firewall and point of sale system, inspection programs, social media accounts, and other technology expenses. The technology fee shall be due on the same date that you are required to pay the Royalty Fee, provided that we may charge a one-time initial or start up technology fee prior to the date that you commence operation or your business. We reserve the right to modify, in our sole discretion, the amount of these fees as necessary to provide additional or fewer technology services.

4.7 Payment Terms. Unless specified otherwise in this Franchise Agreement or in the Brand Standards Manual, all payments to TNF required under this Franchise Agreement shall be made by electronic funds transfer ("EFT"), by Franchisee's credit card in accordance with the terms of the Brand Standards Manual, or other similar means utilizing a TNF-approved computer system or otherwise. The EFT Authorization is attached to the Franchise Disclosure Document. Franchisee agrees to comply with procedures specified by TNF and/or perform such acts and deliver and execute such documents, including authorization for direct debits from Franchisee's business bank operating account to assist in or accomplish payment. Franchisee shall authorize TNF to initiate debit entries and/or credit correction entries to a designated checking or savings account for payments of fees and other amounts payable to TNF and any interest. Franchisee shall make funds available to TNF for withdrawal by electronic transfer no later than the due date for payment. If Franchisee has not timely reported the Gross Revenues to TNF for any reporting period, TNF shall be authorized, at TNF's option, to debit Franchisee's account in an amount equal to: (a) the fees transferred from Franchisee's account for the last reporting period for which a report of the Gross Revenue was provided to TNF as required hereunder; or (b) the amount due based on information retrieved from TNF's approved software. Franchisee shall not subordinate to any



other obligation its obligation to pay the Royalty Fee or any other fee or charge due TNF or any affiliate of TNF under this Franchise Agreement. Franchisee agrees that it shall be responsible for: (i) any EFT transfer fee or similar charge imposed by the bank; and (ii) should any EFT not be honored by Franchisee's bank for any reason, for that payment plus any service charge applied by EFT and the bank. Franchisee agrees that any time an EFT transaction is not honored, TNF is authorized to charge Franchisee's credit or debit card for the full amount previously requested via EFT plus any bank service charges that may apply, and a handling fee of two and one-half percent (2.5%) of the amount previously requested plus a \$50 non-sufficient funds fee, or the highest amount allowed by law, whichever is less. Franchisee also agrees that any time a credit card transaction is not honored, TNF is authorized to charge Franchisee's EFT account for the full amount previously requested via credit card plus any incidental charges that may apply, and a handling fee of two and one-half percent (2.5%) of the amount previously requested plus a \$50 non-sufficient credit fee, or the highest amount allowed by law, whichever is less. Franchisee also agrees that it shall at all times throughout the term of this Franchise Agreement maintain the minimum amounts in Franchisee's EFT account as required by the terms of the Brand Standards Manual, as modified by TNF periodically, and maintain a credit limit on Franchisee's credit card of at least \$5,000. Franchisee's failure to maintain, at all times, an EFT account or credit card account in accordance with this Franchise Agreement shall be a material default of this Franchise Agreement. We have the right to periodically specify (in the Brand Standards Manual or otherwise in writing) different payees and/or payment methods, such as, but not limited to, weekly/biweekly/monthly payment, payment by auto-draft, credit card, and payment by check. If you make any payment to us by credit card for any fee required, we may charge a service charge of up to four percent (4%) of the total charge.

4.8 *Late or Insufficient Payments.* If Franchisee fails to pay any fees or any other amounts owed to TNF or its affiliates when due, in addition to any other amounts due in this Section 4, Franchisee shall pay interest on the unpaid amounts which shall begin to accrue from the date of non-payment on any amounts owed by Franchisee to TNF or its affiliates at the greater of: (a) the Prime Rate (defined below) plus eight percent (8%); or (b) eighteen percent (18%) per annum and shall be applied from the original due date until payment is received in full. If these amounts are higher than the lawful rate under the applicable state law, interest shall accrue at the highest lawful rate allowed under the applicable state law. The interest shall be calculated monthly on any outstanding balance. "Prime Rate" is the announced base rate applicable to corporate loans as stated in the *Wall Street Journal*. If any check, credit card, or electronic funds payment is not successful due to insufficient funds, stop payment, or any similar event, Franchisee shall pay TNF the lesser of: (i) \$50 per occurrence and two and one-half percent (2.5%) of the amount requested; or (ii) the highest amount allowed by state law.

5 ADVERTISING

5.1 *Advertising.*

5.1.1 Franchisee shall obtain TNF's prior written approval of all advertising or other marketing or promotional programs published by any method, including print, broadcast, and electronic media, regarding the Business. Franchisee will submit all such advertising or other marketing or promotional programs for TNF's approval by e-mail, express delivery, or by mail, return receipt requested. Franchisee acknowledges and agrees that TNF may disapprove of any advertising, marketing, or promotional programs submitted to TNF, for any reason, in TNF's sole discretion. Franchisee shall also obtain TNF's prior written approval of all promotional materials provided by vendors. The proposed written advertising or a description of the marketing or promotional program shall be submitted



to TNF at least 30 days prior to publication, broadcast, or use. Franchisee acknowledges that advertising and promoting the Business in accordance with TNF's standards and specifications is an essential aspect of the System, and Franchisee agrees to comply with all advertising standards and specifications. Franchisee shall display all required promotional materials, signs, point of purchase displays, and other marketing materials on or around its Unit in the manner required by TNF. Franchisee shall be responsible to purchase all promotional packages and promotional materials from TNF, its affiliates, or its approved third-party vendors. Franchisee shall not, under any circumstances, use handwritten signs or other advertising materials that have not been approved by TNF in the operation of its Totally Nutz Business. All marketing materials must be produced by TNF or an approved vendor. Under no circumstances may any advertising or marketing material be produced by Franchisee and placed in a Unit without TNF's prior written approval. Franchisee's use of such material without TNF's prior written approval may result in fines up to \$500 for each such unauthorized use. If Franchisee elects to purchase custom advertising materials developed by TNF or its affiliates, Franchisee shall be required to pay TNF, TNF's affiliate, or an approved third-party vendor, a custom advertising fee equal to TNF's, its affiliates', or approved third-party vendor's actual costs related to the custom advertising materials plus an administrative fee of twenty percent (20%). Franchisee shall state in all advertising and marketing materials used by Franchisee (including business cards, order forms, and letterhead) that Franchisee's Totally Nutz Business is independently owned and operated, using language that TNF may specify from time to time.

5.1.2 In addition to the requirements of Section 5.4, Franchisee must participate in any promotional campaigns and advertising or other programs that TNF or its affiliates may periodically establish.

5.2 Brand Building Fund.

5.2.1 TNF has established an advertising fund ("Brand Building Fund") for such advertising as TNF may deem necessary or appropriate in our sole discretion. Franchisee agrees to contribute to the Brand Building Fund \$500 for each full or partial calendar year of the Term. This advertising fee ("Brand Building Fund Contribution") will be payable annually on the anniversary of the execution of your Franchise Agreement. Your Brand Building Fund Contribution is in addition to all other advertising requirements.

5.2.2 TNF and its affiliates assume no direct or indirect liability or obligation to Franchisee regarding the collection of any Brand Building Fund Contributions from other franchisees, or maintaining, directing, or administering the Brand Building Fund. TNF has complete discretion on how the Brand Building Fund will be utilized. TNF may use the Brand Building Fund for local, regional or national marketing, advertising, sales promotion and promotional materials, public and consumer relations, website development and search engine optimization, or any other purpose to promote the Totally Nutz brand. TNF may use any media for disseminating Brand Building Fund advertisements, including direct mail, print ads, the Internet, radio, billboards, and television. TNF may reimburse itself or affiliates from the Brand Building Fund for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes and all other direct or indirect expenses associated with the programs funded by the Brand Building Fund. The Brand Building Fund will not be audited and we have no obligation to provide you with an annual accounting. TNF will not use the Brand Building Fund contributions for advertising that is principally a solicitation for the sale of franchises, but



reserves the right to include a notation in any advertisement or website indicating “Franchises Available” or similar phrasing.

5.3 Section Omitted

5.4 Advisory Council.

We reserve the right to form an advisory council to advise us on advertising policies and to provide input regarding the Brand Building Fund and to promote communications between us and all franchisees. If the advisory council is formed, we may establish bylaws, which will specify the manner in which members are selected. We reserve the right to grant to the advisory council any operation or decision-making powers that we deem appropriate. We reserve the right to form, change, or dissolve the Council, in our sole discretion.

6 SERVICES PROVIDED BY TNF

6.1 Before Opening. Before Franchisee begins making sales through the Totally Nutz Business under this Franchise Agreement, TNF or its designees shall provide the following services:

6.1.1 Counsel Franchisee on necessary start-up and inventory items and assist Franchisee with ordering, through TNF’s affiliates or other suppliers, Products, Cart/Kiosk Package and Franchise Starter Package that are necessary for commencement of operations, including bottled waters, shirts, hats, aprons, cups, straws, and other Products, supplies, and equipment purchased from TNF’s affiliates or other suppliers.

6.1.2 Provide Franchisee with advice about which optional equipment to purchase.

6.1.3 Provide an initial training program for up to two individuals at no charge, provided they attend the same initial training program, at our corporate training center in St. George, Utah (the “TNF Training Program”). In TNF’s sole discretion, certain portions of the TNF Training Program may be conducted online. Franchisee (or, if Franchisee is an Entity, then a managing member, partner or officer of Franchisee designated by Franchisee to participate personally in the Totally Nutz Business) must attend and successfully complete the TNF Training Program prior to making any sales through the Totally Nutz Business. TNF may require, in its sole discretion, any person designated by Franchisee to assume the primary responsibility for operating a Unit of Franchisee (“Designated Manager”) to attend and successfully complete the TNF Training Program prior to making any sales through that Unit. The length and subjects covered in the TNF Training Program may vary in TNF’s discretion based on the type of Unit Franchisee will be operating for its first Unit. If you request additional training or assistance, or if we determine it appropriate that you attend additional training or assistance, you will pay our then-current charge (which is currently up to \$500 per day). If the additional training or assistance requires that we provide you with on-site assistance, you shall also be responsible for all of our travel and living expenses. If more than two individuals attend the TNF Training Program, Franchisee shall pay TNF an additional fee of \$250 for each additional attendee. Franchisee must pay for all airfare, meals, transportation costs, lodging, and incidental expenses associated with training for all of Franchisee’s personnel attending training. During the training course, Franchisee will be instructed in the operation of the Totally Nutz Business, marketing, advertising, management, and hands-on training in operating the Unit. If Franchisee cancels its attendance at the TNF Training Program less than two



weeks before the TNF Training Program, Franchisee shall be required to pay to TNF a cancellation fee in the amount of \$500.

6.1.4 Establish and provide to Franchisee brand standards and specifications for the operation of its Totally Nutz Business in the Brand Standards Manual. At the TNF Training Program, TNF will provide Franchisee with access to the confidential Brand Standards Manual. TNF may change or update these procedures, standards and specifications at TNF's discretion. Franchisee must strictly follow these procedures, standards and specifications in the Brand Standards Manual and in the Franchise Agreement. Failure to do so is grounds for termination of this Franchise Agreement (See Sections 3.3, 3.12, 7.2, and 9.3.1.). Franchisee acknowledges that its compliance with the Brand Standards Manual is vitally important to TNF and other franchisees. While the Brand Standards Manual is designed to protect the reputation of TNF, the goodwill of the Marks, and to maintain quality of operation through the System, it is not designed to control the day-to-day operation of the Totally Nutz Business.

6.2 *After Opening.* During the operation of the Totally Nutz Business, in addition to other obligations set forth elsewhere in this Franchise Agreement, TNF or its designees will provide the following services:

6.2.1 If Franchisee acquires a Multi-3 Franchise, Multi-5 Franchise or a Multi-10 Franchise, provide each of the items set forth in Section 6.1 above for each additional Unit Franchisee opens and operates except the training set forth in Sections 6.1.3.

6.2.2 Provide a reasonable amount of consultation with Franchisee by telephone, facsimile or e-mail correspondence, based on the availability of representatives of TNF and in TNF's discretion. TNF will also provide that additional training or on-site assistance described in Section 7.8.2.

6.2.3 Provide Franchisee with reasonable numbers of samples of new advertising and promotional materials as they are developed by TNF, if requested by Franchisee. TNF reserves the right to charge Franchisee for any of these materials.

6.2.4 Hold national, regional, or local conferences for all TNF franchisees, at certain times at TNF's discretion, to discuss sales techniques, operational standards, and advertising (See Section 7.9 below).

6.2.5 Provide Franchisee a newsletter as may be periodically published by TNF in print or electronic format, in TNF's sole discretion.

6.3 Directors of Regional Support. TNF reserves the right, in its sole discretion, to delegate some or all of its obligations under this Franchise Agreement to a TNF "Director of Regional Support" with regional responsibility over the geographic area in which Franchisee operates at Events or in Permanent Sites. These obligations may include, but are not limited to, initial and ongoing training, site selection assistance for Permanent Sites, inspections, and operations support. Franchisee agrees in advance to any delegation and assignment by TNF of any portion or all of TNF's obligations and rights under this Franchise Agreement. Franchisee acknowledges that it is not a third party beneficiary of any Director of Regional Support Agreement between TNF and any Director of Regional Support.



6.4 Delegation. Franchisee agrees that TNF shall have the right to delegate to third-party designees, whether these designees are TNF's agents or independent contractors with whom TNF has contracted: (1) the performance of any portion or all of TNF's obligations under this Franchise Agreement; and (2) any right that TNF has under this Franchise Agreement. If TNF does so, such third-party designees will be obligated to perform the delegated functions for Franchisee in compliance with this Agreement.

7 OBLIGATIONS OF FRANCHISEE

7.1 Compliance with Applicable Laws. Franchisee agrees to: (i) comply with all applicable laws, ordinances and regulations or rulings of every nature which in any way regulate or affect the operation of its Business, including, without limitation, obtaining all required food handling and other permits, certificates, business licenses, health department approvals and similar items; (ii) pay promptly all taxes and business expenses; and (iii) comply with all laws covering occupational hazards, accommodations for the disabled, including the Americans with Disabilities Act, if applicable, health, workers' compensation insurance, and unemployment insurance. Franchisee agrees, at its expense, to modify its Unit if required to comply with any applicable laws or regulations. Franchisee shall not engage in any activity or practice that result, or may reasonably be anticipated to result, in any public criticism of the System or any part thereof. Franchisee agrees to comply with all applicable laws pertaining to the privacy of customer, employee, and transactional information ("Privacy Laws"). Franchisee also agrees to comply with TNF's standards and policies pertaining to Privacy Laws. If there is a conflict between our standards and policies pertaining to Privacy Laws and actual applicable law, Franchisee will: (a) comply with the requirements of applicable law; (b) immediately give TNF written notice of said conflict; and (c) promptly and fully cooperate with TNF and its counsel in determining the most effective way, if any, to meet our standards and policies pertaining to Privacy Laws within the bounds of applicable law. Franchisee agrees not to publish, disseminate, implement, revise, or rescind a data privacy policy without TNF's prior written consent as to said policy.

7.2 System Compliance. Franchisee shall comply with the System, Brand Standards Manual, and any other systems, procedures and forms that are in effect, or that may come into effect in the future. The Totally Nutz Business, the Franchise Starter Package and Products shall be utilized and each Product shall be prepared and served in accordance with the standards and procedures of TNF. TNF may require Franchisee to add additional products or concepts to the Business in the future, at Franchisee's sole expense. Any required standards exist to protect TNF's interests in the System and the Marks and not for the purpose of establishing any control or duty to take control over those matters that are reserved to Franchisee. The required standards generally will be set forth in the Brand Standards Manual or other written materials. The Brand Standards Manual also will include guidelines or recommendations in addition to required standards. In some instances, the required standards will include recommendations or guidelines to meet the required standards. You may follow the recommendations or guidelines or some other suitable alternative, provided you meet and comply with the required standards. In other instances, no suitable alternative may exist. In order to protect our interests in the System and Marks, we reserve the right to determine if you are meeting a required standard and whether an alternative is suitable to any recommendations or guidelines.

7.3 Inspections. Franchisee consents to reasonable inspections of Franchisee's Totally Nutz Business operations during normal business hours or Event hours at reasonable intervals by a duly authorized representative of TNF. TNF shall have the right to observe Franchisee and its employees



rendering services, to confer with Franchisee's employees and customers, and to generally review the Business operations for compliance with the standards and procedures set forth in the Brand Standards Manual, with or without prior notification to Franchisee.

7.4 Restrictions on Products. Franchisee is prohibited from offering or selling any services or products not authorized by TNF as being a part of the System. However, if Franchisee proposes to offer, conduct, or utilize any services, products, equipment, materials, forms, items, supplies, or services for use in connection with or sale through its Totally Nutz Business that have not been previously approved by TNF as meeting its specifications, Franchisee shall first notify TNF in writing requesting approval. TNF may, in its sole discretion, for any reason, elect to withhold approval; however, in order to make its determination, TNF may require submission of specifications, information, or samples of the products, services, materials, forms, items, or supplies. If TNF requires that samples from a proposed new supplier be delivered to TNF for testing before TNF approves the supplier, Franchisee must reimburse TNF for the costs of conducting any tests that TNF decides are necessary, in its sole discretion. TNF will advise Franchisee within a reasonable time whether the products, services, materials, forms, items, or supplies meet its specifications. Franchisee shall purchase all Products, Cart/Kiosk Package, and Franchise Starter Package required for the operation of its Totally Nutz Business from suppliers designated or approved by TNF or, if there is no designated or approved supplier for a particular item, from suppliers approved in advance by TNF who meet all of TNF's specifications and standards as to quality, composition, finish, appearance, and service, and who shall adequately demonstrate their capacity and facilities to supply Franchisee's needs in the quantities, at the times, and with the reliability requisite to an efficient operation of the Business.

7.5 Insurance. Franchisee shall, at all times during the term of this Franchise Agreement, maintain, by advance payment or payments, general liability, combined single limit, bodily injury, and property damage insurance by an insurance company acceptable to TNF, including premises operations, products liability and all other occurrences against claims of any person, employee, customer, agent or otherwise in an amount of at least \$1 million per occurrence, \$2 million in the aggregate, or other amounts as TNF shall determine in the future, which policy shall, except for employment liability insurance, name TNF and its affiliates, their officers and directors, as additional named insureds against any liability which may accrue against them by reason of the ownership, maintenance, or operation by Franchisee of its Totally Nutz Business. Said policy shall stipulate that TNF shall receive a 30-day prior written notice of cancellation. Original or duplicate copies of all insurance policies, certificates of insurance, endorsements and other proof of insurance acceptable to TNF shall be furnished to TNF together with proof of payment annually and within 30 days of issuance thereof. The insurance company must be authorized to do business in the state where Franchisee's Unit is located, and must be approved by TNF. It must also be rated "A" or better by A.M. Best & Company, Inc. If Franchisee fails to obtain the required insurance and keep the same in full force and effect, TNF may withdraw from Franchisee's EFT account or charge to Franchisee's credit card account the premium cost thereof, which TNF shall then forward to the insurance carrier. However, failure of Franchisee to obtain said insurance constitutes a material breach of this Franchise Agreement entitling TNF to terminate this Franchise Agreement pursuant to the provisions set forth in Section 9. Franchisee will also procure and pay for all other insurance required by state or federal law, including, without limitation, workers' compensation and unemployment insurance. TNF has obtained beneficial rates and insurance coverage for its franchise owners. Franchisee may be required to obtain this insurance in order to provide beneficial coverage throughout the franchise network. If Franchisee fails to obtain or maintain the insurance TNF specifies, TNF may (but need not) obtain such insurance on Franchisee's behalf and, in such event, Franchisee will



reimburse TNF for the cost of the insurance plus an administrative fee equal to twenty percent (20%) of the premium.

7.6 Appearance, Customer Service and Customer Reimbursement. Franchisee and its employees shall: (i) maintain a clean and attractive appearance; (ii) purchase and install all fixtures, furnishings, equipment, supplies and signage in accordance with the Brand Standards Manual and TNF's specifications and requirements; (iii) give prompt, courteous, and efficient service to the public; and (iv) otherwise operate its Totally Nutz Business in strict compliance with the policies, practices, and procedures contained in the Brand Standards Manual to preserve, maintain, and enhance the reputation and goodwill of the System. Franchisee may not alter, change, or modify the System, including the Unit, the Products, or the Franchise Starter Package, in any way without the prior written consent and approval of TNF. All employees of Franchisee servicing the general public must wear specified clothing and adhere to TNF's guidelines for appearance in accordance with the standards set forth in the Brand Standards Manual. TNF also reserves the right, in TNF's discretion, to require that Franchisee play music approved by TNF at Franchisee's Unit. Additionally, if TNF is contacted by a client or other patron of a Totally Nutz Business who wishes to lodge a complaint, TNF reserves the right to address the complaint in order to preserve goodwill and prevent damage to the brand. TNF's right to address complaints may include refunding money or providing other value to the complaining person as part of our addressing the issue, in which case Franchisee agrees to reimburse TNF for these amounts and any other reasonable cost that we incur in responding to a complaint.

7.7 Signs. All signs to be used on, in or in connection with the Business, must be purchased from TNF, its affiliates or other approved supplier, or must be approved in writing by TNF prior to their use by Franchisee.

7.8 Training.

7.8.1 Franchisee (or, if Franchisee is not an individual, then a managing member, partner, or officer of Franchisee designated by Franchisee to participate personally in the Totally Nutz Business) and its Designated Manager(s), if applicable, shall attend and successfully complete TNF's TNF Training Program described in Section 6.1.3 above. Franchisee shall train its employees according to standards and procedures established by TNF. Franchisee must make progress in and complete the TNF Training Program to TNF's satisfaction, or TNF shall have the right to terminate this Franchise Agreement in accordance with Section 4.2.

7.8.2 If TNF determines, in its sole discretion, at any time during the term of this Franchise Agreement, that Franchisee requires additional training, including online training programs designated by TNF, then TNF will provide notice to Franchisee of such necessary additional training. Further, TNF, in its sole discretion, may provide additional training and assistance at Franchisee's reasonable request. TNF will conduct such additional training at a location designated by TNF. If additional training is conducted at a location other than TNF's corporate headquarters, Franchisee shall pay TNF its then-current daily rate for such services (which may be changed on 30 days' notice to Franchisee). Franchisee will also be responsible for paying the cost of food, travel, and lodging incurred by TNF related to any on-site training or assistance provided, or, if the additional training or assistance is not conducted on-site, Franchisee must pay for all travel and living expenses associated with attendance of any of Franchisee's personnel.



7.9 *Conferences and Conventions.* TNF will hold national, regional, or local conferences for all TNF franchisees, at times determined in TNF's discretion, to discuss sales techniques, operational standards, and advertising. Franchisee is required to attend any Franchise Owner annual convention and any other conferences for which TNF determines Franchisee's attendance is mandatory. The cost to attend a Franchise Owner annual convention is the then-current convention fee ("Convention Fee"), which does not include lodging, food, or airfare. The Convention Fee will be withdrawn automatically through EFT or charged to Franchisee's credit card no more than 90 days prior to the conference. The Convention Fee is due regardless of whether or not Franchisee attends an annual convention in any given year; Franchisee will be charged an additional Convention Fee for each additional attendee that Franchisee brings to the convention. Franchisee must pay all of Franchisee's (and, if applicable, Franchisee's employee's) travel and living expenses associated with any convention or conference. . These conferences and conventions will be held at locations chosen by TNF. There will be additional costs for any other conferences or conventions. TNF may preclude Franchisee from attending any conference or convention if Franchisee is in default of this Franchise Agreement or if Franchisee has had two notices of default within 12 months prior to the conference or convention

7.10 *Franchisee Reports.* Franchisee shall maintain during the term of this Franchise Agreement, and shall preserve for a minimum of seven years thereafter, full, complete and accurate records of all sales, marketing activities, closeout sheets, payroll, and accounts payable in accordance with the standard accounting system described by TNF in the Brand Standards Manual or otherwise specified in writing by TNF. In all instances, the accounting and reporting system, and all statements and reports to be submitted by Franchisee, shall conform to U.S. Generally Accepted Accounting Principles applied consistently on a year-to-year basis.

7.10.1 *Submission of Gross Revenue Reports.* Franchisee must furnish TNF with reports of the Gross Revenue of Franchisee's Business on a monthly basis. Reports of Gross Revenue are to be received by TNF on the third business day following the last day of each week. For the purposes of this Franchise Agreement, each week will be considered to start on Sunday and end on Saturday. Franchisee must furnish TNF with any additional financial statements and balance sheets of Franchisee's Business and Franchisee's most recent federal income tax returns within 15 days after Franchisee's receipt of TNF's written request for the information. If requested by TNF, financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. Each report of Gross Revenue and other financial statement must be signed by Franchisee or Franchisee's Treasurer or Chief Financial Officer, attesting that the statement is true and correct, and prepared in accordance with the Brand Standards Manual, this Franchise Agreement, and as otherwise specified in writing by TNF. Reports of Gross Revenue and other financial statements are to be sent to TNF via mail, facsimile or e-mail at Franchisee's transmission cost. TNF shall be permitted to use any information in the reports of Gross Revenue in any manner it desires, including any earnings claim or other document used to promote the sale of franchises.

7.10.2 *Audit of Books and Records.* TNF has the right at any time during business hours and without prior notice, to examine, compile, review, or audit all business records, financial and otherwise, related to Franchisee's Business. Any inspection or audit shall be conducted at TNF's expense. If any inspection or audit discloses a deficiency in amounts of payments owed to TNF pursuant to this Franchise Agreement, then these amounts will become immediately payable to TNF by Franchisee, with interest from the day the payments were due at the rate set forth in Section 4.7. In addition, if Franchisee fails to submit any report or if the deficiency for any audit period equals or



exceeds two percent (2%) of the correct amount of any amounts of payments owed to TNF, Franchisee must pay all reasonable costs and expenses that TNF incurred in connection with the inspection or audit, including the costs and fees of any independent accountant, legal and the travel and living expenses and compensation of any of TNF's employees or agents conducting the inspection or audit, within ten business days of notice thereof. For purposes of this Section, an audit period will be each quarter of the fiscal year. Should the audit disclose an overpayment of any amounts of payments owed to TNF, TNF shall pay Franchisee or credit Franchisee's account, in TNF's sole discretion, the amount of overpayment within 30 days of TNF's verification of the overpayment by Franchisee. If Franchisee fails to submit any reports required hereunder to TNF, and TNF conducts an audit of Franchisee's books and records, Franchisee must pay all reasonable costs and expenses that TNF incurred in connection with the inspection or audit, including the costs and fees of any independent accountant, legal and the travel and living expenses and compensation of any of TNF's employees or agents conducting the inspection or audit, within ten business days of notice thereof.

7.10.3 Failure to Comply with Reporting Requirements. If Franchisee fails to submit any report under this Section 7.10 when due, Franchisee shall pay to TNF \$100 per occurrence and \$100 per week until the report is submitted. Fines collected are paid to the Brand Building Fund, if established, or us. If Franchisee's records and procedures are insufficient to permit a proper determination of Gross Revenue, TNF shall have the right to deliver to Franchisee an estimate, made by TNF, of Gross Revenue for the period under consideration, and Franchisee shall pay to TNF any amount determined by TNF to be due based on such Gross Revenue estimates within five business days of the date of the notice. Any estimated payments shall be deemed the minimum amount of fees due for the required reports, and Franchisee shall remain liable for all fees in excess of these amounts once the actual Gross Revenues related to these reports are determined. Additionally, Franchisee shall be liable for the late fee and interest set forth in Section 4.7 above per each overdue report due to TNF.

7.10.4 Financial Information from Third Parties. Franchisee authorizes TNF to make reasonable inquiries of Franchisee's bank, suppliers, and trade creditors concerning Franchisee's Business, and agrees to direct relevant persons and companies to provide to TNF this information and copies of documents pertaining to its Business as TNF may request.

7.11 Correction of Defects. Should TNF notify Franchisee at any time of defects, deficiencies or unsatisfactory conditions in the appearance or conduct of Franchisee's Totally Nutz Business, Franchisee shall correct immediately any such items. Franchisee shall establish and maintain an image and reputation for the Business consistent with the standards set forth in this Franchise Agreement, the Brand Standards Manual, or as otherwise specified by TNF. Franchisee shall keep its Unit painted, clean and in good order and repair.

7.12 Indemnification. Franchisee and each of your owners listed in Attachment III agrees to indemnify, defend and hold harmless TNF, its parent corporation, its subsidiaries and affiliates, and our and their respective shareholders, owners, directors, officers, employees, agents, successors and assignees ("Indemnified Parties") against, and to reimburse them for all claims, obligations, damages, losses and expenses incurred in connection with any action, suit, proceeding, claim, demand, investigation, or inquiry (formal or informal), or any settlement thereof, directly or indirectly arising out of the operation of the Business, including any claims, obligations, damages, losses or expenses: (i) arising out of Franchisee's breach of this Franchise Agreement; (ii) arising out of Franchisee's employment or other contractual relationship with Franchisee's employees, workers, managers, or



independent contractors, including but not limited to any allegation, claim, finding, or ruling that TNF is an employer or joint employer of Franchisee's employees; (iii) due to any loss of data, including but not limited to customer information, resulting from a breach or such data caused in whole or in part by Franchisee or Franchisee's negligence; (iv) arising out of the use of the Marks and System in any manner not in accordance with this Franchise Agreement, excluding any claims arising from TNF's gross negligence, willful misconduct, bad faith or breach of this Franchise Agreement; (v) Franchisee's violation of any federal, state or local law, statute, rule or regulation, including but not limited to, violation of Privacy Laws; or (vi) arising out of Franchisee's failure to make any payment to any supplier, contractor, or other third-party, wherein TNF incurs any fees, costs, or liabilities on Franchisee's behalf, including fees and costs incurred by TNF to recover amounts due on Franchisee's behalf. For purposes of this indemnification, claims shall mean and include all obligations, actual and consequential damages and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. TNF shall have the right to defend any such claim against it. This indemnity shall continue in full force and effect following and notwithstanding the expiration or termination of this Franchise Agreement.

7.13 *Management Involvement of Franchisee.* TNF recommends that Franchisee (or, if Franchisee is an Entity, then a managing member, majority shareholder, partner, or officer of Franchisee designated by Franchisee to participate personally in the Totally Nutz Business) participate personally in the operation of its Business and be the primary operator of the Business at all times.

7.14 *Modification.* TNF may reasonably change or modify the System, including the Totally Nutz Business, the Products and the Franchise Starter Package, and Franchisee agrees to accept, be bound by, use, implement and display any changes to the System, including changes, additions to, and deletions from the product line. Franchisee will make whatever expenditures are reasonably required to implement changes or modifications. TNF shall have complete ownership and control of any changes, modifications, enhancements or suggestions whether made by TNF or Franchisee.

7.15 *Electronic Information, Communications, and Computer Systems.* Franchisee agrees to acquire or lease, and use any point-of-sale system and to use and accept any credit cards, debit cards, credit card vendors, or other payment systems and payment compliance systems designated by TNF or its affiliates for each Unit that Franchisee operates from a Permanent Site. TNF reserves the right to require the use of tablets and a point-of-sale system and the use and acceptable of credit cards, debit cards, credit card vendors, other payment systems, and payment compliance systems for a Unit that operates from Events or a Permanent Site that is specified by TNF at a later date (which Franchisee may be required to lease, rent, or purchase). Franchisee will be required to purchase an annual software maintenance, support, and upgrade contract from the point-of-sale provider and pay a continuing monthly fee for that maintenance, support, and upgrade contract. TNF or its affiliates are not obligated to provide any ongoing maintenance, repair, upgrades, or updates. The purchase price and monthly fees for the maintenance, support, and upgrade contract are determined by and payable to the point-of-sale provider. TNF may, at any time, change the required point-of-sale system or the required equipment comprising the point-of-sale system, or require that Franchisee obtain and use a different point-of-sale system or different equipment. Franchisee acknowledges and agrees that changes to technology are dynamic and not predictable within the term of this Franchise Agreement. Franchisee agrees to comply with reasonable new standards that TNF establishes. The term "credit card vendors" includes, among other



things, companies that provide services for electronic payment, such as near field communication vendors (for example, “Apple Pay” and “Google Wallet”).

Franchisee is required to maintain Franchisee’s books and records of each Unit on a computer using Quick Books Small Business Accounting Software (QuickBooks Pro or Premier for Windows versions only) and the standardized chart of accounts established by TNF and/or TNF’s affiliates or other software specified in the Brand Standards Manual. Franchisee must have access to the Internet via a high-speed Internet connection where available, create and maintain an email address, and regularly check Franchisee’s electronic mailbox and the portion of TNF’s internet based support sites devoted to franchise operators. Any computer capable of performing a network of ordering and communications is acceptable, although TNF reserves the right to require Franchisee to purchase or lease additional or specific computer hardware and software and to specify other computer-related standards in the future. If Franchisee operates from one or more Permanent Sites, Franchisee must have a computer with this accounting software and high-speed Internet access at each such Permanent Site. TNF reserves the right to independently access Franchisee’s electronic information and data and to collect and use Franchisee’s electronic information and data in any manner TNF chooses to promote development of the System and the sale of franchises.

Although you agree to buy, or lease, and to use, and maintain your computer system according to our standards and specifications, you have the sole and complete responsibility for: (1) the acquisition, operation, maintenance, and upgrading of the computer system; (2) the manner in which your computer system interfaces with our and any third party’s computer system; (3) backing up all necessary data; (4) maintaining and updating an anti-virus software program; (5) complying with all laws that are applicable to the computer system and other technology used in the operation of your Totally Nutz Business, including all data protection or security laws as well as PCI (payment card industry) compliance; and (6) any and all consequences if your computer system is not properly operated, maintained, backed up, and upgraded.

7.16 *Performance Requirements.* For purposes of this Franchise Agreement, the Totally Nutz Business is deemed to open and Franchisee will be deemed to have commenced operations upon the date that Franchisee (or, if Franchisee is not an individual, then a managing member, partner or officer of Franchisee designated by Franchisee to participate personally in the Totally Nutz Business) has completed the TNF Training Program. Franchisee is required to actively market, advertise, promote, develop, and sell the Products at Events or at Permanent Sites, or both, as may be designated in the applicable Unit Rider(s).

7.17 *Web Page.* If Franchisee wishes to advertise online, Franchisee must follow TNF’s online policy contained in the Brand Standards Manual, as may be amended by Franchisor from time to time. Franchisee shall not establish any website or social media page or site, including any web pages or World Wide Web pages. Franchisee may not promote its Totally Nutz Business via any alternate online strategies. TNF reserves the right to establish a System website (“System Website”) for Totally Nutz Businesses which includes local pages for each franchisee. If TNF establishes such a System Website, Franchisee’s page will include information relating to its specific Totally Nutz Business and select content that TNF provides from the System Website. TNF intends that any Franchisee website be accessed solely through the TNF homepage.



7.18 Units/Restrictions on Sale of Equipment.

7.18.1 If Franchisee purchases a Multi-3 Franchise, Multi-5 Franchise, or a Multi-10 Franchise as indicated in the Addendum, Franchisee acknowledges it is purchasing the rights to own and operate multiple Units after signing this Franchise Agreement. Franchisee agrees that it will purchase all proprietary Products, Cart/Kiosk Package(s), and Franchise Starter Package(s) from TNF's affiliates or approved suppliers within the time limits applicable to the type of franchise being purchased and Franchisee acknowledges that when the applicable time limit expires, Franchisee shall be prohibited from owning or operating additional Units without entering into a separate Franchise Agreement with TNF. Franchisee shall use Franchisee's best efforts to open and operate the maximum allowable Units.

7.18.2 Franchisee shall not sell or purchase any Franchise Starter Package at any time to or from a third party, including another current or former TNF franchisee, without TNF's prior written consent. As a condition to any sale from or to another current or former TNF franchisee, Franchisee shall pay to have Franchisee's Unit and other equipment refurbished under the refurbishment program as outlined in the Brand Standards Manual and as modified by TNF periodically in TNF's discretion. Such modification must be completed within 45 days following the transfer, and the transferee may not begin to operate the Totally Nutz Business at a Unit until that Unit is refurbished. If Franchisee is opening Franchisee's first Unit under this Franchise Agreement, Franchisee must purchase a new Cart/Kiosk Package and Franchise Starter Package from TNF and its affiliates for use in that Unit upon opening.

7.19 Protection of Computer, Electronic, and Communications Systems. Franchisee shall be solely responsible for protecting Franchisee's computer, electronic, and communications systems from viruses, computer hackers, and other computer-related and technology-related problems, and Franchisee releases TNF from all claims it may have as a result of viruses, hackers, or other computer-related, or technology-related problems.

7.20 Photo/Video Release. Franchisee acknowledges and authorizes TNF and its affiliates to use Franchisee's likeness in a photograph or video in any and all of TNF's publications, including printed and digital publications and on websites. Franchisee agrees and understands that any photograph or video using Franchisee's likeness will become TNF's property and will not be returned. Franchisee agrees and irrevocably authorizes TNF to edit, alter, copy, exhibit, publish or distribute any photograph or video of Franchisee for any lawful purpose. Franchisee agrees and waives any rights to royalties or any other compensation related to TNF's use of any photograph or video of Franchisee. Franchisee agrees to hold harmless and forever discharge TNF from all claims, demands, and causes of action which Franchisee may have in connection with this authorization. For purposes of this Section, Franchisee shall refer to Franchisee's owners if Franchisee is an Entity.

7.21 Vehicle. Franchisee may need a suitable vehicle and trailer (collectively, the "Vehicle") to transport the cart. Franchisee may use a Vehicle that Franchisee currently owns to provided that: (1) the Vehicle is in good condition with no major dents or scratches or body damage; (2) has the appropriate Totally Nutz branding; and (3) that we approve it prior to use. Franchisee may, but is not required to utilize more than one Vehicle. Franchisee must decorate and the Vehicle in accordance with our then current standards of the System, as provided in the Brand Standards Manual, and at TNF's request, periodically update or improve the decoration of the Vehicle (any such updates or improvements must be made within 30 days of our delivery of notice to you that such updates or improvements must be made). Unless you obtain written authorization from us, you will not: (1) use the Vehicle for any purpose



other than the operation of the Business; (2) place or display on the Vehicle any signs, emblems, lettering and logos that we do not provide or approve from time to time; and (3) sell or otherwise transfer the Vehicle (other than to us) without our prior written approval and without first removing all of the Marks from the Vehicle. You shall allow us to inspect the Vehicle in the frequencies and manners described in the Brand Standards Manual and upon our request.

7.22 *Opening.* You must open the Totally Nutz Business within one year of effective date of this Franchise Agreement, unless you request and receive approval from us to extend this time frame, which approval we may deny in our sole discretion. TNF may terminate this Franchise Agreement if Franchisee fails to open the Totally Nutz Business on time.

7.23 *Pricing.* We may, from time to time, make suggestions to you with regard to your pricing policies in compliance with applicable laws. We retain the right to establish minimum and maximum prices to be charged by you (including pricing relating to multi-area marketing programs and special price promotions), subject to applicable laws, but any exercise of that right will be specifically set forth in writing. It is furthermore understood and agreed that any list or schedule of prices furnished to you by us may, unless otherwise specifically stated as to the minimum or maximum price, be treated as a recommendation only and failure to accept or implement any such suggestion may not in any way affect the relationship between you and us.

7.24 *Privacy Laws.* In the operation of the Totally Nutz Business, Franchisee will receive “Customer Data.” “Customer Data” is information, records, lists or data that contains “Personal Information.” “Personal Information” includes information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, potential consumer, individual or household, as such term may be further defined or amended by applicable federal, state and local statutes, regulations, ordinances and requirements, including but not limited to, the California Consumer Privacy Act. Personal Information is collected, maintained or generated in the operation of the Totally Nutz Business, including through the use of a point of sale system.

Franchisee agrees, at its sole cost and expense, to at all times:

7.24.1 comply with the data protection, collection, maintenance and use requirements for Customer Data set out in the Operations Manual and this Franchise Agreement, including all policies, procedures and controls that Franchisor implements now or in the future;

7.24.2 comply with all applicable federal, state and local statutes, regulations, ordinances and requirements, including but not limited to, the California Consumer Privacy Act, relating to the data protection, collection, maintenance and use of Customer Data (collectively, “Privacy Laws”);

7.24.3 assist and otherwise cooperate with Franchisor to ensure Franchisor’s and Franchisee’s compliance with Privacy Laws;

7.24.4 promptly notify Franchisor in writing of any Security Incident (defined below) that Franchisee becomes aware of or discovers. Franchisee will assist and otherwise cooperate with Franchisor to investigate any such Security Incident and will take all required steps, as determined by



Franchisor, to remedy Franchisee's noncompliance with applicable Privacy Laws, this Agreement or the Operations Manual.

7.24.5 promptly provide Franchisor with the ability to delete, access or copy Customer Data in Franchisee's possession or control;

7.24.6 promptly notify Franchisor of any request regarding Customer Data received by the Franchisee from a "consumer" as defined by applicable Privacy Laws;

7.24.7 adopt policies, procedures, and controls, including those set out in the Operations Manual, if any, that enable Franchisee to respond, and to cause its agents and employees to respond, promptly to any rights request made pursuant to applicable Privacy Laws, including any disclosure request, deletion request, or opt-out request;

7.24.8 adopt policies, procedures, and controls, including those set out in the Operations Manual, if any, that limit access to Customer Data to only those employees that have a need-to-know basis based on specific job function or role. Franchisee will provide data privacy and security training to employees who have access to Customer Data or who operate or have access to system controls and will require employees to adhere to data confidentiality terms providing for the protection of Customer Data in accordance with this Agreement and the Operations Manual; and

7.24.9 maintain Customer Data in confidence in accordance with Section 3.9 and 14.4 of this Franchise Agreement.

8 PURCHASES OF PRODUCTS

8.1 *Inventory.* Franchisee acknowledges that the goodwill associated with the Marks is largely based on the recipes and preparation methods and other proprietary Products and Services, and, therefore, Franchisee's sources of supply for its Products are very important to the operation of Franchisee's Business. Throughout the term of this Franchise Agreement, Franchisee shall purchase Products only from TNF, its affiliates, its approved suppliers or another source approved in writing by TNF. Franchisee shall, during the term of this Franchise Agreement, maintain inventory levels of Products sufficient to meet customer demands and in compliance with TNF's standards and specifications as may be described in the Brand Standards Manual or otherwise designated by TNF. Franchisee must maintain sufficient inventory levels of whatever Products Franchisee chooses to sell. Franchisee acknowledges and agrees that TNF and its affiliates may receive rebates, promotional fees, and other financial considerations from designated and approved suppliers and that TNF and its affiliates have the right to expend these funds in any way TNF and its affiliates deem necessary or appropriate.

8.2 *Limitations on Supply Obligations.* Nothing in this Franchise Agreement shall be construed to be a promise or guarantee by TNF as to the continued existence of a particular Product, nor shall any provision imply or establish an obligation on the part of TNF and its affiliates to sell Products to Franchisee if Franchisee is in arrears on any payment to TNF or its affiliates or otherwise in default under this Franchise Agreement. If Franchisee fails to pay in advance in full for each shipment, TNF or its affiliates shall not be obligated to sell Products to Franchisee unless otherwise specified in writing by an officer of TNF. In addition, TNF may impose interest on any late payments on the terms described in Section 4.7.



8.3 *No Warranties.* Neither TNF nor any of its affiliates makes any warranties, express or implied, regarding merchantability or fitness for a particular purpose of any of the Products purchased by Franchisee from TNF or its affiliates.

8.4 *Changes in Inventory.* It is understood that TNF shall have the right, at any time and without notice, to add items to, withdraw items from, or change the mix of the Products required to be offered for sale by Franchisee through its Totally Nutz Business; to add to or delete from the list of approved suppliers of Products; and to change the prices, discounts, or terms of sale of any Products, however, no changes in prices, discounts, or terms shall affect accepted orders pending with TNF and its affiliates at the time of change. No changes will give Franchisee the right to recover damages against, or be reimbursed by, TNF or its affiliates for any losses suffered by Franchisee, nor will Franchisee be entitled to require TNF and its affiliates to accept return of any of the Products rendered obsolete by these changes. If changes occur, however, the sale by Franchisee of its existing Products that are no longer approved, or Products in its existing stock from a supplier no longer approved, shall not be considered a violation of this Franchise Agreement.

9 BREACH AND TERMINATION

9.1 *Termination by TNF.* TNF may, at its option, terminate this Franchise Agreement before the expiration of its term if Franchisee breaches or violates any term, condition, or provision of this Franchise Agreement in any respect or defaults in the performance or fulfillment of any term or provision of this Franchise Agreement, including, without limitation, those breaches described below.

9.2 *Termination by TNF – No Cure Period.* TNF shall have the right, at its option, to terminate this Franchise Agreement and all rights granted to Franchisee, without affording Franchisee any opportunity to cure the same (subject to any state laws to the contrary, where state law shall prevail) effective upon receipt of notice by Franchisee, upon occurrence of any of the following events:

9.2.1 Franchisee or Franchisee's employees fail to satisfactorily complete the TNF Training Program as provided in Section 4.2.

9.2.2 Franchisee becomes insolvent or is adjudicated bankrupt; or any action is taken by Franchisee, or by others against Franchisee under any insolvency, bankruptcy or reorganization act, (this provision may not be enforceable under federal bankruptcy law, 11 U.S.C. §§ 101, et seq.), or if Franchisee makes an assignment for the benefit of creditors, or a receiver is appointed by or for Franchisee.

9.2.3 Any material judgment (or several judgments which in the aggregate are material) is obtained against Franchisee and remains unsatisfied or of record for 30 days or longer (unless a supersedeas or other appeal bond has been filed); or if execution is levied against Franchisee's Business or any of the property used in the operation of the Business and is not discharged within five days; or if the real or personal property of Franchisee's Business shall be sold after levy thereupon by any sheriff, marshal or constable.

9.2.4 Franchisee is convicted of a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in the sole opinion of TNF, to materially and unfavorably affect the System, Marks, goodwill, or reputation of the System or the Marks.



9.2.5 Franchisee or any of Franchisee's principal owners or employees violates any of the non-competition, non-solicitation, or confidentiality covenants by which Franchisee or its owners and employees are bound.

9.2.6 Franchisee commits three or more breaches of the same or different conditions of this Franchise Agreement during the term of this Franchise Agreement, provided TNF has delivered to Franchisee prior written notice that any subsequent breach of this Franchise Agreement by Franchisee may cause the termination of this Franchise Agreement.

9.2.7 Franchisee uses any of the Marks or other property right, either tangible or intangible, granted by TNF other than in connection with the operation of the Totally Nutz Business.

9.2.8 Franchisee's actions result in a threat or danger to public health or safety. TNF, in its sole discretion, may allow Franchisee up to three days to cure health, safety, or sanitation law violations.

9.2.9 Franchisee: (i) makes any material misrepresentations relating to the acquisition of the Totally Nutz Business, or (ii) engages in conduct that reflects adversely upon the reputation of the Totally Nutz Business or the System.

9.2.10 Franchisee abandons the Business as evidenced by any one of the following:

9.2.10.1 If Franchisee fails to make its first sale within twelve months of execution of this Franchise Agreement or voluntarily abandons its Unit operating at a Permanent Site for a period of five consecutive days or any shorter period that indicates an intent by Franchisee to discontinue operation of its Unit, unless such abandonment is due to fire, flood, earthquake, or other similar causes beyond Franchisee's control or unless such abandonment is due to the seasonal nature of the location of Franchisee's Unit and Franchisee has obtained the prior written consent of TNF to operate on a seasonal basis;

9.2.10.2 Franchisee sells all or substantially all of the Franchise Starter Package required to operate the Business without TNF's advanced written consent.

9.2.11 Franchisee attempts to transfer, hypothecate, pledge, sell, or assign all or any part of this Franchise Agreement, the Business, the Franchisee Entity, or any material portion of the property associated with the Unit or attempts to sublicense to another any of the rights or property licensed to Franchisee hereunder without first receiving written authorization from an officer of TNF.

9.2.12 Franchisee verbally or physically assaults or abuses any other franchisee or any officer, director or employee of TNF after receiving a verbal or written warning against this conduct from TNF regarding this conduct.

9.2.13 Franchisee relocates a Unit from a Permanent Site without complying with the Unit Rider applicable to such Permanent Site.

9.2.14 Franchisee submits on two or more occasions during the term of this Franchise Agreement, or any successor franchise term, a report, financial statement, tax return, schedule, or other information or supporting record which understates its Gross Revenue by more than two percent (2%),



unless Franchisee demonstrates to TNF's satisfaction that the understatement or variance resulted from verifiable inadvertent error.

9.2.15 Franchisee submits reports more than five days late on four or more occasions during the term of this Franchise Agreement, or during the term of any successor franchise, unless due to circumstances beyond the control of Franchisee.

9.2.16 Franchisee signs a letter of intent related to a Permanent Site for a Unit without comply with the Unit Rider applicable to such Permanent Site or otherwise fails to comply with a Unit Rider.

9.2.17 Franchisee defaults under the terms of any other agreement between Franchisee and TNF or any affiliate of TNF, and fails to cure the default within the time period permitted by the other agreement, if any.

9.2.18 Franchisee commits a default under any loan from or equipment lease with TNF, its affiliates, or a third party and fails to cure that default by the date specified in the loan or lease.

9.2.19 Franchisee sells unapproved products or goods from or through the Totally Nutz Business or Franchisee participates in the unauthorized use of proprietary information.

9.3 *Termination by TNF – 10-Day Cure Period.* TNF shall have the right to terminate this Franchise Agreement (subject to any state laws to the contrary, where state laws shall prevail), if Franchisee commits any of the following breaches and fails to cure the same within ten days following TNF's written notice to Franchisee, in which case this Franchise Agreement will terminate without further notice to Franchisee, effective upon expiration of the 10-day period:

9.3.1 Franchisee fails or refuses to maintain and operate its Totally Nutz Business in compliance with this Franchise Agreement, the System, and the Brand Standards Manual, other than in a manner that constitutes a default of Sections 9.2 or 9.4, including, but not limited to, failing to adhere to any remodeling or refurbishment requirements.

9.3.2 Franchisee fails to obtain Products or the Franchise Starter Package from TNF or its affiliates or any other products, equipment or services from approved or designated suppliers or vendors.

9.3.3 Franchisee fails to pay for any Products, the Cart/Kiosk Package, any Unit, or fails to pay any fees or other amounts due to TNF, or any affiliate or assigns of TNF, or Franchisee fails to pay third parties for amounts related to the operation of its Totally Nutz Business within the applicable time period. However, as long as financing from the United States Small Business Administration remains outstanding, Franchisee will be given the same opportunity to cure defaults under any agreement between TNF or its affiliates and Franchisee, as Franchisee is given under this Franchise Agreement.

9.3.4 Franchisee fails to submit to TNF a report of Gross Revenue or other financial statement(s) required to be delivered to TNF by Franchisee, when due under Section 7.10, or fails to submit an Event Report (as defined in the Unit Rider) when due as required under the Unit Rider to the

Franchise Agreement, or fails to submit any other report or statement to TNF or its affiliates required by this Agreement or otherwise requested by TNF or its affiliates, by its due date.

9.3.5 Franchisee denies TNF, or its designee, the right to inspect its Unit or Business operations at any Event, or any Permanent Site.

9.3.6 Franchisee fails to maintain insurance as required by TNF.

9.3.7 Franchisee fails to comply with any federal, state or local law or regulation applicable to the operation of the Business.

9.3.8 Franchisee fails to maintain the EFT Account or Franchisee's credit card account in accordance with this Franchise Agreement.

9.4 Termination by TNF – 30-Day Cure Period. TNF shall have the right to terminate this Franchise Agreement (subject to any state laws to the contrary, where state laws shall prevail), if Franchisee fails to comply with any other term or condition in this Franchise Agreement not specifically listed in Sections 9.2 or 9.3 above and fails to cure the same within 30 days following TNF's written notice to Franchisee, in which case this Agreement will terminate without further notice to Franchisee, effective upon expiration of the 30-day period.

9.5 Termination by Franchisee. Franchisee shall have the right to terminate this Franchise Agreement as the result of a material breach of this Franchise Agreement by TNF, provided Franchisee provides TNF with written notice of the breach and a reasonable opportunity to cure any breach, but in no event shall TNF have less than 30 days to cure any alleged material breach.

10 OBLIGATIONS OF FRANCHISEE UPON TERMINATION OR EXPIRATION

10.1 Post-Termination Obligations. Upon termination or expiration of this Franchise Agreement for any reason, Franchisee shall cease to be a licensed franchisee of TNF and shall:

10.1.1 Immediately pay TNF or its affiliates for all purchases of Units, Products, the Cart/Kiosk Package, and other fees or charges owed to TNF or its affiliates, including a lump sum amount equal to the net present value of Royalty Fees, if any, that would have become due following termination of this Franchise Agreement for the period the Franchise Agreement would have remained in effect but for Franchisee's default. The lump sum due for purposes of this Section 10.1.1 shall be calculated based on the average Royalty Fees paid for the 12 months preceding the termination date of Franchisee's Totally Nutz Business. TNF and Franchisee agree that such payments shall not be construed as a penalty, as such payments are a reasonable, good faith representation of the actual damages sustained by TNF;

10.1.2 Grant TNF the option to purchase all or any part of Franchisee's inventory, equipment, Products, signs and accessories and other personal property relating to the Business as set forth in Section 11.1 and abide by the terms thereof if TNF elects to exercise its option;

10.1.3 Not hold itself or any businesses associated with Franchisee out as a current or former TNF franchisee;



10.1.4 Immediately cease to advertise or in any way use the System, Marks, Units, Products, processes, materials, logos, methods, procedures, commercial property, symbols, or promotional materials provided by or licensed to Franchisee by TNF or in any way connected with the Business;

10.1.5 Remove all unique markings, colors, décor, Marks and other features (“Trade Dress”) that identify each Unit as a Totally Nutz Business, and otherwise take all necessary steps to disassociate itself from the System and TNF, including, but not limited to, the removal of signs and all Trade Dress and destruction of printed materials. Franchisee acknowledges that all telephone numbers, facsimile numbers, social media websites, Internet addresses and e-mail addresses (collectively “Identifiers”) used in the operation of Franchisee’s Totally Nutz Business constitute TNF’s assets, and upon termination or expiration of this Franchise Agreement, Franchisee will take such action within five days to cancel or assign to TNF or TNF’s designee as determined by TNF, all of Franchisee’s right, title and interest in and to such Identifiers and will notify the telephone company and all listing agencies of the termination or expiration of Franchisee’s right to use any Identifiers, and any regular, classified or other telephone directory listing associated with the Identifiers and to authorize a transfer of the same to, or at TNF’s direction. Franchisee agree to take all action required cancel all assumed name or equivalent registrations related to Franchisee’s use of the Marks. Franchisee acknowledges that, TNF has the sole rights to, and interest in, all Identifiers used by Franchisee to promote Franchisee’s Totally Nutz Business and/or associated with the Marks. Franchisee hereby irrevocably appoints TNF, with full power of substitution, as Franchisee’s true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute such directions and authorizations as may be necessary or prudent to accomplish the foregoing. Franchisee further appoints TNF to direct the telephone company, postal service, registrar, Internet service provider, listing agency, website operator, or any other third party to transfer such Identifiers to TNF or TNF’s designee. The telephone company, postal service, registrar, Internet Service Provider, listing agency, website operator, or any other third party may accept such direction by TNF pursuant to this Franchise Agreement as conclusive evidence of TNF’s rights to the Identifiers and TNF’s authority to direct their transfer.

10.1.6 Take all actions as shall be necessary to amend or cancel any assumed name, fictitious or business name or equivalent registration that contains any trade name or mark of TNF or in any way identifies Franchisee as being affiliated with the System;

10.1.7 Notify immediately all of its suppliers, utilities, Events coordinators, Permanent Site landlords, creditors and others with whom it has done business that Franchisee is no longer affiliated with TNF or the System and, notwithstanding Section 10.1.9, provide proof to TNF of this notification within five days of the termination or expiration of this Franchise Agreement;

10.1.8 Return to TNF by first class prepaid United States mail the Brand Standards Manual, all training, advertising and promotional aids and materials, and all other printed materials obtained by Franchisee from TNF pertaining to the operation of its Totally Nutz Business;

10.1.9 Comply with all applicable laws in connection with the closure or de-identification of the Totally Nutz Business, including, without limitation and if applicable, laws which require you to refund payments received for gift certificates and similar prepaid goods and/or services to customers; and



10.1.10 Furnish evidence satisfactory to TNF of compliance with this Section within 30 days after the termination or expiration of this Franchise Agreement.

10.2 *Acknowledgements.* Upon the termination or expiration of this Franchise Agreement for any reason, Franchisee acknowledges and agrees that:

10.2.1 No payment is due to Franchisee from any source for any claimed goodwill or other equity claimed by Franchisee based on Franchisee's operation or ownership of its Totally Nutz Business, or otherwise; and

10.2.2 No fees, charges, or other payments of any kind from Franchisee to TNF or its affiliates are refundable wholly or partially, except as stated in Section 4.2 above.

10.3 Survival. All of the provisions of this Franchise Agreement which by their terms or implication are to remain in force following the expiration or termination of this Franchise Agreement shall survive the termination or expiration of this Franchise Agreement.

10.4 General Procedures. Franchisee must follow any procedures established by TNF to ensure the expiration of this Franchise Agreement or any successor term thereof creates the least disruption possible to the System, including those procedures set forth in the Brand Standards Manual.

11 PURCHASE OPTION

11.1 *Purchase Option.* Upon expiration or termination of this Franchise Agreement, Franchisee grants to TNF the right to acquire, in TNF's sole discretion, all or any part of Franchisee's inventory, equipment, signs and accessories, and other personal property relating to the Business. If TNF elects to exercise its option hereunder, the purchase price for the assets to be transferred will be the sum of fifty percent (50%) of the total Products purchased by Franchisee and fifty percent (50%) of the Gross Revenue of Franchisee during the 12 calendar months immediately preceding the date of termination or expiration and will be adjusted by setting off and reducing the purchase price by any amount then owing by Franchisee to TNF or its affiliates, including any amounts paid by TNF to cure Franchisee's defaults with third parties such as landlords or equipment lessors (the decision to pay such cure amounts to be the sole decision of TNF). If Franchisee is operating a Unit at a Permanent Site, and TNF elects to exercise its option hereunder, the lease of the Permanent Site shall also be transferred to TNF. TNF must exercise its option within 30 days after the expiration or termination by giving written notice to Franchisee of its intent to exercise its option to purchase. Unless otherwise agreed by Franchisee, the purchase price as determined hereunder shall be paid in cash within 30 days after the notice of its election to exercise its option is sent by TNF to Franchisee. All assets must be transferred free and clear of all liens and encumbrances, with all sales and transfer taxes paid by Franchisee. Subject to applicable law, Franchisee and its owners further agree to sign general releases, in a form satisfactory to TNF, of any and all claims against TNF and its affiliates and their respective shareholders, owners, officers, directors, employees, agents, successors, and assigns. If TNF has not notified Franchisee of its election to exercise its option within the 30 day period following expiration or termination, it shall be conclusively presumed TNF elects not to exercise its option and Franchisee is then free to sell or transfer these assets to any person or Entity on terms as Franchisee may so choose. Prior to any such sale, Franchisee must first take those steps required in Section 10 to remove all Trade Dress and Marks from any Unit or equipment sold.



Franchisee shall execute such documents as we reasonable require to effectuate any transfer, assignment, or sale provided herein.

12 TRANSFERS OF THE FRANCHISE

12.1 *Transfer by TNF.* This Franchise Agreement and all rights hereunder are fully assignable and transferable by TNF, and if so assigned or transferred, shall be binding upon and inure to the benefit of TNF's successors and assigns.

12.2 *Transfer by Franchisee.* This Franchise Agreement is personal as to Franchisee, and is being entered into in reliance upon and in consideration of the qualifications and representations of Franchisee and Franchisee's present members, managers, partners, officers, or directors, if Franchisee is an Entity. Therefore, neither this Franchise Agreement, nor any of its rights or privileges, nor any interest in Franchisee if it is an Entity, shall be assigned, sold, transferred, or divided in any manner (each a "Transfer") by Franchisee or anyone else unless the prior written approval of TNF is obtained. Any such Transfer may be conditioned upon, among other things, that Franchisee is in good standing and that the transferee (and, if the transferee is an Entity, its members, managers, partners, officers, and controlling stockholders) has met satisfaction of TNF with respect to the character, business experience, net worth, background, reputation, and credit rating, as well as any other consideration pertinent to us.

12.3 *Conditions to Transfer.* Upon any proposed Transfer, Franchisee agrees to submit to TNF an application in the form specified by TNF for the proposed transferee. A non-refundable "Application Deposit" in the amount of \$1,000 is due to TNF upon submittal of the transfer application. The Application Deposit will be credited toward Franchisee's payment of the Transfer Fee at the time of the approved Transfer. You must reimburse us for any costs or fees we incur related to any Transfer that is not completed, in which case, the Application Deposit will be credited towards those fees and costs.

As a condition of TNF's approving the Transfer, Franchisee shall pay to TNF a "Transfer Fee" equal to twenty-five percent (25%) of the then-current Initial Franchise Fee charged by TNF, \$1,000 of which shall be a non-refundable deposit at the time the transfer application is submitted, and the remaining balance at time of the transfer. In addition, if TNF identifies a buyer for Franchisee's Business, Franchisee shall pay to TNF a resale assistance fee of \$12,500 ("Resale Assistance Fee") to reimburse TNF for its reasonable legal, marketing, sales, accounting, credit, and investigation expenses incurred as a result of the proposed Transfer. The Transfer Fee and the Resale Assistance Fee are payable at the time of the approved Transfer and are non-refundable. Franchisee shall submit to TNF and obtain TNF's approval for all advertising related to the Transfer. Prior to TNF approving of any proposed Transfer, the following additional conditions shall be met:

12.3.1 Franchisee shall not be in default under this Franchise Agreement at the time Franchisee requests the right to enter into a Transfer or at the time of the Transfer. All accounts payable and other monetary obligations to TNF and its affiliates shall be paid in full.

12.3.2 Franchisee shall pay to have Franchisee's Unit and other equipment refurbished under the refurbishment program as outlined in the Brand Standards Manual and as modified by TNF periodically in TNF's discretion. Such modification must be completed within 45 days following the Transfer, and the transferee may not begin to operate the Totally Nutz Business at a Unit until that Unit is refurbished.



12.3.3 The terms and conditions of the proposed Transfer, including all financial terms, shall be provided in writing to TNF at least 15 business days prior to the proposed effective date of the Transfer, and approved in writing by TNF.

12.3.4 The transferee shall agree that all obligations of Franchisee in connection with the Business shall be assumed by the transferee.

12.3.5 The transferee shall have signed the then-current form of TNF franchise agreement and related documents, including but not limited to our then-current form of Owners Agreement or other guaranty, any and all of the provisions of which may contain terms that are significantly different than the terms set forth in this Franchise Agreement, and shall terminate at the end of the term of this Franchise Agreement.

12.3.6 The transferee shall complete the TNF Training Program or such other initial training program required of new franchise owners. Transferee is also responsible for all food, travel, and lodging expenses associated with the attendance at the initial training program. TNF may, in its sole discretion, waive the requirement that the transferee complete the TNF Training Program or other initial training program, in whole or in part.

12.3.7 Unless precluded by applicable state law, Franchisee shall execute a general release in favor of TNF and its affiliates of any claims it may have against TNF and its affiliates, officers and directors relating to the Business, this Franchise Agreement, any agreement between Franchisee and TNF's affiliates, and the franchise relationship between TNF and Franchisee.

12.3.8 Franchisee shall reimburse us upon receipt of our invoice for any broker or other placement fees we incur as a result of the Transfer.

12.3.9 Franchisee has first complied with the provisions of Section 12.8.

12.4 *TNF's Assistance in Transfers.* Franchisee acknowledges and agrees that TNF assumes no responsibility, express or implied, to assist Franchisee in any way in selling or transferring Franchisee's Totally Nutz Business, and that TNF has no obligation to assist Franchisee or any other franchisee with respect to a Transfer.

12.5 *Registration of Proposed Franchise Sale.* If Franchisee elects to attempt to enter into a Transfer with a person or Entity that is not affiliated with Franchisee or another franchisee of TNF, Franchisee must first notify TNF in writing of its intention by completing the sales registration paperwork ("Sales Registration Form") as is required by TNF, in TNF's sole discretion, at least 45 days before Franchisee begins marketing any potential Transfer ("Sales Registration Period").

12.6 *Transfer to an Entity.* If a proposed Transfer only is among existing shareholders, partners, or members of Franchisee's Entity, or to an Entity owned by you, TNF shall not charge a Transfer Fee or have any right to exercise its right of first refusal only with respect to that particular Transfer. Each certificate evidencing an ownership of an Entity shall have endorsed upon its face that assignment or transfer thereof is subject to the restrictions of this Franchise Agreement. Franchisee shall be required to reimburse TNF for any legal fees and costs it incurs in connection with any Transfer made under this Section 12.6.



12.7 *Involuntary Transfers.* Involuntary or unauthorized Transfers by Franchisee are not binding on TNF and are grounds for the termination of this Franchise Agreement. Franchisee agrees that using this Franchise Agreement as security for a loan, or otherwise encumbering this Franchise Agreement is prohibited, unless TNF specifically consents to any action in writing prior to the proposed transaction. Franchisee shall not grant a sub-franchise under this Franchise Agreement nor otherwise seek to license or permit others to use this Franchise Agreement or any of the rights derived by Franchisee under it. Any attempt to enter into a Transfer shall be grounds for the termination of this Franchise Agreement, unless the Transfer is authorized in writing by TNF and done in compliance with this Franchise Agreement.

12.8 *First Right of Refusal.*

12.8.1 Before you enter into any Transfer, you must first offer to enter into the Transfer with TNF on the same terms and conditions specified in a bona fide written offer from a qualified third party, provided that TNF may substitute the cash equivalent for any portion of the purchase price to be paid by noncash consideration. Franchisee shall notify TNF in writing of the terms and conditions of each proposed Transfer, including: (i) the interest proposed to be transferred; (ii) the purchase price or other consideration; (iii) any financing terms being extended by Franchisee; (iv) the date of the proposed Transfer; and (v) all other pertinent provisions of the proposed Transfer. In addition, a copy of any contract, agreement, memorandum of sale, deposit receipt, or letter of intent shall also be forwarded to TNF as soon as it is received by Franchisee. Following its receipt of all pertinent data and documents concerning the proposed Transfer, including any additional data concerning the transaction requested by TNF from Franchisee, TNF shall have 30 days in which to advise Franchisee in writing of TNF's election to enter into the Transfer on the same terms and conditions agreed to by the prospective transferee. Should TNF elect to acquire the interest proposed to be transferred pursuant to its right of first refusal, Franchisee and TNF shall cooperate to consummate the Transfer. The date for the completion of the Transfer can be extended at TNF's option for up to 30 days beyond the date originally indicated for the completion of the Transfer in order to allow the completion of the Transfer in a manner more convenient to TNF.

12.8.2 If TNF does not elect to exercise its rights hereunder, Franchisee may complete the proposed Transfer on the terms and conditions set forth in its notice to TNF subject to TNF's right to approve the proposed transferee and the terms and conditions set forth under Section 12.3 above. However, if there are any material changes in the terms and conditions of the proposed Transfer after Franchisee notifies TNF of the proposed Transfer, including any changes in the terms and conditions occurring after TNF notifies Franchisee of its election not to purchase the interest pursuant to its right of first refusal, and any of those changes are less favorable to Franchisee, Franchisee shall notify TNF of the changes in writing and TNF shall have an additional ten days within which to elect to enter into the Transfer on the revised terms and conditions. If the proposed Transfer is not completed for any reason after TNF elects not to enter into the Transfer, TNF's right of first refusal is reinstated as to any later proposed Transfer. TNF has the right to assign its right of first refusal to a third party.

12.9 *Death or Disability.* Upon the death or incapacity of an individual Franchisee, or general partner of a Franchisee, the heirs or personal representative shall have the right to continue the Business, if, within 120 days of the death or incapacity (or any longer period required by the laws of the state where the franchise is located), the heirs appoint a representative to act for the heirs in all matters pertaining to TNF. The heirs or personal representative, instead of operating the franchise themselves



under the procedures stated in this Franchise Agreement, may choose to Transfer the Business. If such a decision is made, the Transfer must occur within 180 days of the death or incapacity, and the Transfer procedures set forth above will apply.

12.10 *Transfer by Court Order.* If a court of competent jurisdiction orders an individual Franchisee to transfer to his or her spouse all or any part of Franchisee's interest in the Business, or any of the Business assets, such an order shall constitute a Transfer under the terms of this Franchise Agreement and shall cause the transferee to be subject to all of the terms and conditions concerning Transfers set forth in this Franchise Agreement.

13 RELATIONSHIP OF THE PARTIES

13.1 *Independent Contractors.* Franchisee is an independent contractor. Nothing in this Franchise Agreement or in the franchise relationship constitutes Franchisee and TNF as partners or agents of, or joint venturers with each other. Neither party is liable for the debts, liabilities, taxes, duties, obligations, defaults, compliance, intentional acts, wages, negligence, errors, or omissions of the other. The parties shall not hold themselves out by action or inaction contrary to this Section and shall indemnify each other for any liability, cost, or expense including attorney fees, incurred by either of them for any act, omission, finding, or result to the contrary. No employee of Franchisee shall be deemed an employee of TNF, and each employee shall be so notified. Franchisee shall in all public records, relationships with other persons, and on letterhead and business forms, indicate its independent ownership of the Totally Nutz Business and that it is solely a franchisee of TNF. All employees or independent contractors hired by or working for Franchisee will be Franchisee's employees or independent contractors alone and will not, for any purpose, be deemed TNF's employees or subject to TNF's control, most particularly with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state or federal governmental agency. TNF and Franchisee will each file its own tax, regulatory and payroll reports, and be responsible for all employee benefits and workers compensation payments with respect to its respective employees and operations, and will save and indemnify the other of and from any liability of any nature whatsoever by virtue thereof. TNF will not have the power to hire or fire Franchisee's employees. As used in this Franchise Agreement, TNF shall also mean TNF's predecessors and affiliates, and TNF's officers, directors, shareholders, employees, agents, or others with whose conduct TNF is chargeable. Neither party shall act or have the authority to act as the agent for the other, and neither Franchisee nor TNF shall guarantee the obligations of the other or in any way become obligated for the debts or expenses of the other unless otherwise agreed to in writing. Franchisee alone is responsible for all employment decisions and functions of Franchisee's Totally Nutz Business, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, taxes, safety, work schedules, work conditions, recordkeeping, supervision, and discipline of employees, regardless of whether Franchisee has received advice from TNF on these subjects or not. TNF will have no liability for any action or settlement related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, taxes, safety, work schedules, work conditions, recordkeeping, supervision, and discipline of employees and Franchisee agrees to indemnify TNF for any such liabilities TNF incurs. Upon our request, you and each employee will sign an employment relationship acknowledgment form within seven days stating that you alone are the employer and operate Franchisee's Totally Nutz Business. You will use your legal name on all documents for use with employees and contractors,



including but not limited to, employment applications, time cards, pay checks, and employment and independent contractor agreements, and will not use the Marks on these documents.

13.2 *Control.* Franchisee acknowledges and agrees, and will never contend otherwise, that Franchisee alone will exercise day-to-day control over all operations, activities and elements of the Totally Nutz Business and that under no circumstance shall TNF do so or be deemed to do so. Franchisee further acknowledges and agrees, and will never contend otherwise, that the various requirements, restrictions, prohibitions, specifications and procedures of System which Franchisee is required to comply with under this Franchise Agreement, whether set forth in the Brand Standards Manual or otherwise, do not directly or indirectly constitute, suggest, infer or imply that TNF controls any aspect or element of the day-to-day operations of the Totally Nutz Business, which Franchisee alone controls, but only constitute standards Franchisee must adhere to when exercising control of the day-to-day operations of the Totally Nutz Business.

14 COVENANTS

14.1 *Non-Competition During Term.* Franchisee acknowledges that, in addition to the license of the Marks hereunder, TNF has also licensed commercially valuable information which comprises and is a part of the System, including proprietary processes, operations, marketing, and related information and materials and that the value of this information derives not only from the time, effort and money which went into its compilation, but from the usage of the same by all franchisees of TNF using the Marks and System. Franchisee therefore agrees that other than the Business licensed in this Franchise Agreement, neither Franchisee, any Designated Manager of the Business nor any of Franchisee's officers, directors, shareholders, partners, members or managers, nor any member of his, her or their immediate families, will during the term of this Franchise Agreement:

14.1.1 have any direct or indirect controlling interest as a disclosed or beneficial owner in a "Competitive Business" as defined below;

14.1.2 perform services as a director, officer, partner, manager, employee, consultant, representative, agent, or otherwise for a Competitive Business; or

14.1.3 divert or attempt to divert any business related to, or any customer or account of the Business, TNF's business, any affiliates' business, or any franchised Business of another franchisee licensed by TNF to use the Marks and System, by direct inducement or otherwise, to any Competitive Business.

The term "Competitive Business" as used in this Franchise Agreement will mean any business offering or selling products or services offered by Totally Nutz Businesses or any business offering and granting franchises or licenses for a similar type business; however, Franchisee, its owners, members, partners, principals, and if an individual, members of his or her immediate family, will not be prohibited from owning less than two percent (2%) of the outstanding shares of a publicly traded security.

14.2 *Post-Termination Covenant Not to Compete.* Franchisee and its officers, directors, shareholders, or partners agree that, for a period of two years after termination or expiration of this Franchise Agreement, neither Franchisee, any Designated Manager of the Business, nor Franchisee's officers, directors, shareholders, managers, members, or partners will have any direct or indirect interest in a Competitive Business, as defined above, located or operating: (i) within a 25-mile radius of the



Franchisee's Permanent Site or the Permanent Site of any Franchisee-owned, franchised or company-owned Totally Nutz Business; (ii) at the same Event(s), wherever located, served by Franchisee, TNF or any other TNF franchisee; or (iii) within a 25-mile radius of any location or site that Franchisee held an Event during the term of this Franchise Agreement. This restriction will not apply to the ownership of less than two percent (2%) of the outstanding shares of a publicly traded security. Franchisee and its officers, directors, shareholders, managers, members, or partners expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting those skills. As a result, adherence to this restriction will not deprive them of their personal goodwill or ability to earn a living.

14.3 Post-Termination Restriction on Solicitation of Business. Upon termination or expiration of this Franchise Agreement for any reason, Franchisee and its owners, officers, directors, shareholders, or partners agree that, for two years commencing on the effective date of termination or expiration, or the date on which Franchisee ceases to conduct business, whichever is later, neither Franchisee, any Designated Manager of the Business, nor Franchisee's officers, directors, shareholders, managers, members or partners shall divert or attempt to divert any business related to, or any customer or account of the Totally Nutz Business, TNF's business, any affiliates' business, or any franchised Business of another franchisee licensed by TNF to use the Marks and System to any Competitive Business by any direct inducement or otherwise.

14.4 Confidentiality of Proprietary Information. Franchisee will treat all information it receives which comprises or is a part of the System licensed hereunder as proprietary and confidential and will not use this information in an unauthorized manner or disclose the same to any unauthorized person without first obtaining TNF's written consent. Franchisee acknowledges that the Marks and the System have valuable goodwill attached to them, that the protection and maintenance thereof is essential to TNF, and that any unauthorized use or disclosure of the Marks and System will result in irreparable harm to TNF. All data that Franchisee collects, creates, provides or otherwise develops (including, but not limited to customer information) is (and will be) owned exclusively by TNF, and TNF has the right to use such data in any manner that it deems appropriate. TNF hereby licenses use of such data back to Franchisee, at no additional cost, solely for the term of this Franchise Agreement and solely for Franchisee's use in the Totally Nutz Business. Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to disclosure of confidential information: (i) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; (ii) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; (iii) made in cases of suit for retaliation based on the reporting of a suspected violation of law, disclosure of confidential information to an attorney and for use of the confidential information in such court proceeding, so long as any document containing the confidential information is filed under seal and confidential information is not otherwise disclosed except pursuant to court order.

14.5 Prohibition Against Reshipment. Franchisee shall not in any manner reship, transship, distribute, or sell any Products or other items purchased from or through TNF, its affiliates or its approved suppliers to any reseller of said items, including other TNF franchisees or licensees. Franchisee shall sell items purchased from or through TNF, its affiliates and its approved suppliers only to consumers using a Unit pursuant to a Unit Rider signed by TNF and Franchisee and only from or through Franchisee's Totally Nutz Business.



14.6 *Interpretation.* ALL PARTIES TO THIS FRANCHISE AGREEMENT ACKNOWLEDGE THAT THIS SECTION HAS BEEN FULLY NEGOTIATED AND HAS BEEN ENTERED INTO FREELY. If any provision of this Section shall be held to be invalid by any tribunal, the terms of said invalid provision shall be modified to the least possible extent to make the provision valid. This Section shall not be interpreted against either party as drafter.

14.7 *Confidentiality Agreement.* TNF also reserves the right to require that Franchisee cause each of its officers, directors, partners, shareholders, managers, members, Designated Managers, employees, and, if Franchisee is an individual, immediate family members, to execute a nondisclosure, non-compete, and non-solicitation agreement containing the above restrictions in the form required by TNF.

15 DISPUTE RESOLUTION

15.1 *Mediation.* Except for controversies, disputes or claims related to or based on the Marks or the enforcement of covenants not to compete, not to solicit, and not to disclose which may immediately be brought in a court permitted in accordance with Section 15.6 below, all controversies, disputes or claims (collectively “Claims” or individually a “*Claim*”) between TNF, its officers, directors, shareholders, sales people, subsidiaries and affiliates and their shareholders, officers, directors, agents, employees, and attorneys (in their respective capacities) and Franchisee (and its owners and guarantors, if applicable) arising out of or related to: (i) this Franchise Agreement or any other agreement between the parties or any provision of the agreements; (ii) the relationship of the parties to this Franchise Agreement; (iii) the validity of this Franchise Agreement or any other agreement between the parties or any provision of the agreements; or (iv) any part of the System, shall first be submitted by the parties to non-binding mediation under the auspices of the American Arbitration Association (“AAA”), and the AAA’s Commercial Mediation Rules then in effect, in the principal city closest to our principal place of business, (currently St. George, Utah), to be conducted at the offices of TNF or another location designated by TNF. The cost of the mediator shall be split equally among the parties with each party bearing its own costs related to the mediation, including attorneys’ fees. The parties agree to in good faith attempt to resolve the Claim through mediation. If the parties are unable to resolve a Claim through mediation, then Section 15.2 shall apply.

15.2 *Arbitration.* Except for controversies, disputes or claims related to or based on the Marks or the enforcement of covenants not to compete, not to solicit, and not to disclose, if any Claim is not resolved by mediation, it shall be submitted for final and binding arbitration to AAA on demand of either party. Such arbitration proceedings shall be conducted in the principal city closest to our principal place of business (currently St. George, Utah), and shall be heard by one arbitrator in accordance with the then current Commercial Arbitration Rules of AAA. The arbitrator shall be a resident of the State of Utah and fluent in English. Any party to an arbitration proceeding may apply to the arbitrator for reasonable discovery from the other. In this Franchise Agreement, “reasonable discovery” means a party may submit no more than ten interrogatories, including subparts, 25 requests for admission, 25 document requests, and three depositions per side of the dispute. The foregoing discovery rights and limitations shall control over any contradictory discovery rules of AAA, unless the parties agree otherwise. If the AAA or any successor thereto is no longer in existence at the time that arbitration is commenced, you and we will agree on another arbitration organization to conduct the arbitration proceeding in accordance with the provisions of this Franchise Agreement.



15.3 *Scope of Arbitration.* The parties shall bear their own cost of arbitration prior to a ruling and shall share equally in the cost of the mediator or mediation service; however, the arbitrator shall have the right to award or include in the award any relief which he or she deems proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, and attorneys' fees and costs, in accordance with Section 16.4 of this Franchise Agreement, provided that the arbitrator shall not award exemplary or punitive damages. The award and decision of the arbitrator shall be conclusive and binding upon all parties to this Franchise Agreement and judgment upon the award may be entered in any court of competent jurisdiction. Each party waives any right to contest the validity or enforceability of such award. TNF and Franchisee agree that, in connection with any arbitration proceeding, each shall file any compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within 30 days after the date of the filing of the claim to which it relates. This provision shall continue in full force and effect following and notwithstanding the expiration or termination of this Franchise Agreement.

15.4 *Limitations on Proceedings.*

15.4.1 TNF and Franchisee agree that mediation and arbitration will be conducted on an individual basis only. Neither party shall commence any mediation or arbitration with a third party against the other, or join with any third party in any mediation or arbitration involving TNF and Franchisee. Further, neither TNF nor Franchisee shall attempt to consolidate or otherwise combine in any manner, a mediation or arbitration proceeding involving TNF and Franchisee with another mediation or arbitration of any kind, nor shall TNF or Franchisee attempt to certify a class or participate as a party in a class action against the other.

15.4.2 The foregoing notwithstanding, in the event Franchisee controls, is controlled by, or is in active concert with another franchisee of TNF, or there is a guarantor of some or all of the Franchisee's obligations to TNF, then the joinder of those parties to any mediation or arbitration between TNF and Franchisee shall be permitted, and in all events, the joinder of an owner, director, officer, manager, partner or other representative or agent of TNF or Franchisee shall be permitted.

15.5 *Governing Law/Consent to Venue and Jurisdiction.* All Claims between TNF and Franchisee shall be governed by the Federal Arbitration Act ("FAA") and no procedural arbitration issues are to be resolved pursuant to any state statutes, regulations or common law. Except to the extent governed by the FAA, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, this Franchise Agreement shall be interpreted under the laws of the state of Utah and any dispute between the parties shall be governed by and determined in accordance with the substantive laws of the state of Utah, which laws shall prevail if there is any conflict of law, except that any Utah law regulating the sale of franchises or governing the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section. Franchisee and TNF have negotiated regarding a forum in which to resolve any disputes which may arise between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving Franchisee, its officers, directors, managers or partners (collectively, "Franchisee Affiliates") and TNF, its affiliates and their respective officers, directors and sales employees (collectively, "TNF Affiliates"), the parties agree that the exclusive venue for disputes between them shall be in the state and federal courts of Utah or under the auspices of the AAA at a location designated by TNF located within the state of Utah, and each party waives any objection they may have to the personal jurisdiction of or venue in the state and federal courts



of Utah or under the auspices of the AAA at a location designated by TNF located within the state of Utah. TNF, TNF Affiliates, Franchisee and Franchisee Affiliates each waive their rights to a trial by jury.

15.6 Injunctive Relief. Notwithstanding the above mediation and arbitration provisions, TNF shall have the right in a proper case to seek injunctive relief and any damages incidental thereto from a court of competent jurisdiction in the event of a breach of a covenant not to disclose, not to compete, or not to solicit. Franchisee agrees that TNF may obtain this injunctive relief, without posting a bond or bonds in excess of a total of \$1,000, but upon due notice, and Franchisee's sole remedy in the event of the entry of any injunctive relief will be the dissolution of the injunctive relief, if warranted, upon hearing duly had; however, all claims for damages by reason of the wrongful issuance of any such injunction are expressly waived by Franchisee. Any such action will be brought as provided in Section 15.4 above and the prevailing party shall be entitled to its costs and attorneys' fees.

15.7 Limitations on Actions. Except for payments owed by one party to the other, and unless prohibited by applicable law, any legal action or arbitration proceeding brought or instituted regarding any dispute based on or related to this Franchise Agreement or regarding any breach of the terms of this Franchise Agreement must be brought or instituted within a period of two years from the date of discovery of the conduct or event that forms the basis of the legal action or proceeding or the applicable limitation on the period of time by which claims must be brought under applicable law, whichever is less.

15.8 Survival. We and you agree that the provisions of this Section 15 shall apply during the term of this Franchise Agreement and following the termination, expiration, or non-renewal of this Franchise Agreement.

16 MISCELLANEOUS

16.1 Waiver. Waiver by TNF of any particular default by Franchisee shall not affect or impair TNF's rights regarding any later default by Franchisee or any of TNF's rights to declare the same or later acts a breach or default.

16.2 Modifications. No modification of any term of this Franchise Agreement shall be valid unless made in writing and executed by both TNF and Franchisee; however, the Brand Standards Manual may be modified by TNF, and shall be fully enforceable against Franchisee.

16.3 Notices. All notices permitted or required under this Franchise Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery upon delivery by any courier or overnight delivery service upon written verification of receipt; (ii) by facsimile transmission when confirmed by facsimile transmission log or verification report; or (iii) by certified or registered mail, return receipt requested, five days after deposit in the mail, addressed, if to TNF, at the address set forth at the beginning of this Franchise Agreement, and, if to Franchisee, at the Principal Business Address, or at such other addresses as TNF or Franchisee may designate from time to time.

16.4 Attorneys' Fees and Costs.

16.4.1 Subject to Section 16.4.2 below, Franchisee shall reimburse TNF for its costs and expenses, including, without limitation, attorneys' fees, which TNF incurs in pursuit of its rights



following a breach or event of default of or by Franchisee whether or not the pursuit of rights involves litigation or arbitration.

16.4.2 The prevailing party in any litigation or arbitration action arising out of, or related to, this Franchise Agreement (including an action to compel arbitration) is entitled to recover all of its reasonable costs and expenses incurred in the action, including reasonable accounting, expert witness, attorneys' and arbitrator's fees, and costs of collecting monies owed, in addition to all other amounts and damages awarded. If both parties are awarded a judgment in any dollar amount, the court or arbitrator, as applicable, shall determine the prevailing party taking into consideration the merits of the claims asserted by each party, the amount of the judgment received by each party, and the relative equities between the parties.

16.5 Headings; Construction. Headings used in this Franchise Agreement are for reference and convenience purposes only and are not to be used in construing the provisions of this Franchise Agreement. As used in this Franchise Agreement, the male or female gender shall include the other and the neuter. The singular shall include the plural and the plural shall include the singular as appropriate.

16.6 Beneficiaries. The parties intend to confer no benefit or right on any person or Entity not a party to this Franchise Agreement and no third parties shall have any right or claims, benefit, or right as a third party beneficiary under this Franchise Agreement or any provision hereof. Similarly, Franchisee is not entitled to claim any rights or benefits including those of a third party beneficiary, under any contract, understanding or agreement between TNF and any other person or entities, unless that contract, understanding or agreement specifically refers to Franchisee by name or to a class which Franchisee belongs and specifically grants rights or benefits to Franchisee or to the concerned class.

16.7 Entity Authority. If Franchisee is an Entity, the person or persons signing this Franchise Agreement for Franchisee warrant to TNF that he, she or they have the requisite corporate authority to sign this Franchise Agreement. At the request of TNF, the concerned entity signatory agrees to promptly provide TNF with a certified copy of the resolution or other document authorizing the execution of this Franchise Agreement and naming the officers or other positions of the Entity that are authorized to sign this Franchise Agreement for the Entity.

16.8 Payments. TNF may, in writing, unilaterally waive any obligation or requirement of Franchisee under this Franchise Agreement. No payment by Franchisee or receipt by TNF of any amount less than that required to be paid under this Franchise Agreement, or otherwise, to TNF or any person or Entity affiliated with TNF, shall be deemed to be anything except payment on account, regardless of any endorsement to the contrary contained on any such payment or in any oral or written communication transmitted in connection therewith.

16.9 Set Off. Franchisee shall not be allowed to set off amounts owed to TNF for Product purchases, Totally Nutz Business and other equipment purchases, fees or other amounts due hereunder, against any monies owed to Franchisee, nor shall Franchisee in any event withhold any amounts due to any alleged nonperformance by TNF hereunder, which right of set off is expressly waived by Franchisee. TNF shall be allowed to set off amounts owed to Franchisee against monies owed to TNF by Franchisee.

16.10 Joint and Several Liability. If two or more persons, corporations, partnerships, or other entities or any combination thereof, sign this Franchise Agreement, the liability of each shall be joint and several. All shareholders of a corporation, members of a limited liability company, all parties of a

general partnership and all members of any association or other unincorporated entity which constitute or comprise Franchisee hereunder, are jointly and severally liable for the performance of Franchisee hereunder.

16.11 Successors In Interest. This Franchise Agreement is binding upon the heirs, administrators, personal representatives, assigns and successors in interest to the parties to this Franchise Agreement.

16.12 Integration. The parties intend this Franchise Agreement and all attached Attachments, Exhibits and Riders to be the full and complete agreement between TNF and Franchisee and the entire integration of all their understandings of every nature concerning the matters contained in this Franchise Agreement or in any way related thereto, whether occurring before or contemporaneously with the execution of this Franchise Agreement. No agreements, representations, negotiations, promises, commitments, inducements, assurances, terms, conditions, or covenants of any nature exist between the parties except as specifically set forth in this Franchise Agreement, whether pertaining to this Franchise Agreement or to any future, further or additional rights of the parties. No amendment, change or variance from this Franchise Agreement shall be binding on either party unless executed in writing. Nothing in this Franchise Agreement is intended to disclaim any representations made by TNF in the franchise disclosure document provided to Franchisee.

16.13 Invalidity. If any provision of this Franchise Agreement is held invalid by any tribunal in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision shall be deemed part of this Franchise Agreement as though originally included. The remaining provisions of this Franchise Agreement shall not be affected by such modifications.

16.14 Cross-Default and Cross Termination Provisions.

16.14.1 A default by Franchisee under this Franchise Agreement will be deemed a default of all agreements between Franchisee and TNF. A default by Franchisee under any other agreement between Franchisee and TNF will be deemed a default under this Franchise Agreement. A default by the guarantor(s) of this Franchise Agreement or any other agreement of guaranty will be deemed a default of this Franchise Agreement.

16.14.2 If this Franchise Agreement is terminated as a result of a default by Franchisee, TNF may, at its option, elect to terminate any or all other agreements between Franchisee and TNF. If any other agreement between Franchisee and TNF is terminated as a result of a default by Franchisee, TNF may, at its option, elect to terminate this Franchise Agreement. It is agreed that an incurable or uncured default under this Franchise Agreement or any other agreement between Franchisee and TNF will be grounds for termination of this Franchise Agreement and/or all agreements between Franchisee and TNF without additional notice or opportunity to cure.

16.15 Covenant of Good Faith. If applicable law implies a covenant of good faith and fair dealing in this Franchise Agreement, the parties agree that the covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Franchise Agreement. Additionally, if applicable law shall imply the covenant, you agree that: (i) this Franchise Agreement (and the relationship of the parties that is inherent in this Agreement) grants TNF the discretion to make decisions, take actions and/or refrain from taking actions not inconsistent with its explicit rights and



obligations under this Franchise Agreement that may affect favorably or adversely Franchisee's interests; (ii) TNF will use its judgment in exercising the discretion based on its assessment of its own interests and balancing those interests against the interests of its franchisees generally (including itself and its affiliates if applicable), and specifically without considering Franchisee's individual interests or the individual interests of any other particular franchisee; (iii) TNF will have no liability to Franchisee for the exercise of TNF's discretion in this manner, so long as the discretion is not exercised in bad faith; and (iv) in the absence of bad faith, no trier of fact in any arbitration or litigation shall substitute its judgment for TNF's judgment so exercised

16.16 *Acknowledgment.* BEFORE SIGNING THIS FRANCHISE AGREEMENT, FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. FRANCHISEE REPRESENTS, COVENANTS, AGREES AND ACKNOWLEDGES THAT:

16.16.1 NEITHER TNF NOR ITS AGENTS HAVE MADE ANY REPRESENTATIONS OR WARRANTIES CONCERNING FRANCHISEE'S SUCCESS AS A FRANCHISEE AND TNF DISCLAIMS ANY WARRANTY OR REPRESENTATION AS TO THE POTENTIAL SUCCESS OF THE BUSINESS OPERATIONS UNDER THIS FRANCHISE AGREEMENT.

16.16.2 THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED IN THIS FRANCHISE AGREEMENT INVOLVES SUBSTANTIAL RISKS, FINANCIAL AND OTHERWISE, THAT ARE INHERENT IN THE BEGINNING OF ANY NEW BUSINESS, WHICH RISKS ARE FRANCHISEE'S ALONE, AND SUCH SUCCESS DEPENDS UPON FRANCHISEE'S ABILITY AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS; AND

16.16.3 NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS STATED IN THIS DOCUMENT, IS BINDING ON TNF IN CONNECTION WITH THE SUBJECT MATTER OF THIS FRANCHISE AGREEMENT.

16.16.4 FRANCHISEE DID NOT SIGN THIS AGREEMENT IN RELIANCE ON THE CONTINUED PARTICIPATION OR EMPLOYMENT OF ANY OF TNF'S SHAREHOLDERS, DIRECTORS, OFFICERS OR EMPLOYEES. TNF MAY CHANGE ITS OWNERSHIP AND/OR ASSIGN THIS FRANCHISE AGREEMENT AND ANY OTHER AGREEMENT TO A THIRD PARTY WITHOUT RESTRICTION. UPON TNF'S ASSIGNMENT OF THIS FRANCHISE AGREEMENT TO A THIRD PARTY TNF SHALL NO LONGER HAVE ANY PERFORMANCE OR OTHER OBLIGATIONS TO FRANCHISEE UNDER THIS AGREEMENT.

(Signatures on following page)



The parties have executed this Franchise Agreement to be made effective as of the ___ day of _____, 20__.

TNF:

FRANCHISEE:

TOTALLY NUTZ FRANCHISE, LLC

By: _____

Title: _____

Individually
Print Name: _____

Individually
Print Name: _____

OR:
(if an Entity)

Company Name

By: _____

Title: _____



ATTACHMENT I
TO
FRANCHISE AGREEMENT
ADDENDUM TO TOTALLY NUTZ FRANCHISE, LLC
FRANCHISE AGREEMENT



[041621033122](tel:041621033122)
[56958474;5](tel:569584745)
[62878045;3](tel:628780453)

**ATTACHMENT I
TO FRANCHISE AGREEMENT**

**ADDENDUM TO TOTALLY NUTZ FRANCHISE, LLC
FRANCHISE AGREEMENT**

THIS ADDENDUM to the Totally Nutz Franchise, LLC (“TNF”) Franchise Agreement (“**Franchise Agreement**”) is made effective as of the date of the Franchise Agreement between TNF and the franchisee named below (“**Franchisee**”).

1. Type of Franchise. The type of franchise to be acquired under the Franchise Agreement is:

_____ Single; _____ Multi-3; _____ Multi-5; _____ Multi-10

2. Initial Franchise Fee. The Franchisee shall pay to TNF an Initial Franchise Fee pursuant to Section 4.1 of the Franchise Agreement of:

_____ \$27,500; _____ \$39,500; _____ \$59,500; _____ \$69,900

3. Additional Unit Locations. Contemporaneously with this Addendum, a Unit Rider will be executed by TNF and Franchisee permitting Franchisee to open and operate the first Unit under the Franchise Agreement. If Franchisee is acquiring a Multi-3 Franchise, Franchisee shall have the option to open and operate up to two additional Units. If Franchisee is acquiring a Multi-5 Franchise, Franchisee shall have the option to open and operate up to four additional Units. If Franchisee is acquiring a Multi-10 Franchise, Franchisee shall have the option to open and operate up to nine additional Units. A separate Unit Rider shall be executed for each additional Unit Franchisee opens and operates.

4. Principal Business Address. Franchisee’s Principal Business Address, referenced in Section 1.4 of the Franchise Agreement is:

5. Cart/Kiosk Package. The Franchisee shall pay a Cart/Kiosk Package Fee pursuant to Section 4.4 of the Franchise Agreement of:

\$ _____ Traveler Cart Package (Venue)

~~\$ _____ Event Cart Package (Mobile)~~

\$ _____ Kiosk Package (10’x10’)

~~\$ _____ Kiosk Package (10’x12’)~~



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(Signatures on following page)



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Fully executed this _____ day of _____, 20__.

TNF:

FRANCHISEE:

TOTALLY NUTZ FRANCHISE, LLC

By: _____

Title: _____

Individually
Print Name: _____

Individually
Print Name: _____

OR:
(if an Entity)

Company Name

By: _____

Title: _____



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ATTACHMENT II
TO
FRANCHISE AGREEMENT
OWNERS AGREEMENT



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ATTACHMENT II
TO FRANCHISE AGREEMENT
OWNERS AGREEMENT

As a condition to the execution by Totally Nutz Franchise, LLC (“we” or “us”), of a Franchise Agreement with _____ (“Franchisee”), each of the undersigned individuals (“Owners”), who constitute all of the owners of a direct or indirect beneficial interest in Franchisee, as well as their respective spouses, covenant and agree to be bound by this Owners Agreement (“Owners Agreement”).

1. Acknowledgments.

1.1 Franchise Agreement. Franchisee entered into a franchise agreement with us effective as of _____, 20__ (“Franchise Agreement”). Capitalized words not defined in this Owners Agreement will have the same meanings ascribed to them in the Franchise Agreement.

1.2 Role of Owners. Owners are the beneficial owners or spouses of the beneficial owners of all of the equity interest, membership interest, or other equity controlling interest in Franchisee and acknowledge there are benefits received and to be received by each Owner, jointly and severally, and for themselves, their heirs, legal representatives and assigns. Franchisee’s obligations under the Franchise Agreement, including the confidentiality and non-compete obligations, would be of little value to us if Franchisee’s owners were not bound by the same requirements. Under the provisions of the Franchise Agreement, Owners are required to enter into this Owners Agreement as a condition to our entering into the Franchise Agreement with Franchisee. Owners will be jointly and severally liable for any breach of this Owners Agreement.

2. Non-Disclosure and Protection of Confidential Information.

2.1 Under the Franchise Agreement, we will provide Franchisee with specialized training, proprietary trade secrets, and other Confidential Information relating to the establishment and operation of a franchised business. The provisions of the Franchise Agreement governing Franchisee’s non-disclosure obligations relating to our Confidential Information are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with each obligation as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners Agreement as we may seek against Franchisee under the Franchise Agreement. Any and all information, knowledge, know-how, techniques, and other data, which we designate as confidential, will also be deemed Confidential Information for purposes of this Owners Agreement.

2.2 Owners acknowledge that they could circumvent the purpose of Section 2.1 by disclosing Confidential Information to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). Owners also acknowledge that it would be difficult for us to prove whether Owners disclosed the Confidential Information to family members. Therefore, each Owner agrees that he or she will be presumed to have violated the terms of Section 2.1 if any member of his or her immediate family uses or discloses the Confidential Information or engages in any activities that would constitute a



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violation of the covenants listed in Section 3, below, if performed by Owners. However, Owners may rebut this presumption by furnishing evidence conclusively showing that Owners did not disclose the Confidential Information to the family member.

3. Covenant Not To Compete and To Not Solicit.

3.1 Non-Competition and Non-Solicitation During and After the Term of the Franchise Agreement. Owners acknowledge that as a participant in our system, they will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures and techniques which we have developed. The provisions of the Franchise Agreement governing Franchisee's restrictions on competition and solicitation both during the term of the Franchise Agreement and following the expiration or termination of the Franchise Agreement are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with and perform each such covenant as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners Agreement as we may seek against Franchisee under the Franchise Agreement.

3.2 Construction of Covenants. The parties agree that each such covenant related to non-competition and non-solicitation will be construed as independent of any other covenant or provision of this Owners Agreement. If all or any portion of a covenant referenced in this Section 3 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in a final decision to which we are a party, Owners agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 3.

3.3 Our Right to Reduce Scope of Covenants. Additionally, we have the right, in our sole discretion, to unilaterally reduce the scope of all or part of any covenant referenced in this Section 3 of this Owners Agreement, without Owners' consent (before or after any dispute arises), effective when we give Owners written notice of this reduction. Owners agree to comply with any covenant as so modified.

4. Guarantee.

4.1 Payment. Owners will pay us (or cause us to be paid) all monies payable by Franchisee under the Franchise Agreement on the dates and in the manner required for payment in the relevant agreement.

4.2 Performance. Owners unconditionally guarantee full performance and discharge by Franchisee of all of Franchisee's obligations under the Franchise Agreement on the date and times and in the manner required in the relevant agreement.

4.3 Indemnification. Owners will indemnify, defend and hold harmless us, all of our affiliates, and the respective shareholders, directors, partners, employees, and agents of such entities, against and from all losses, damages, costs, and expenses which we or they may sustain, incur, or become liable for by reason of: (a) Franchisee's failure to pay the monies payable (to us or any of our affiliates) pursuant to the Franchise Agreement, or to do and perform any other act, matter, or thing required by the Franchise Agreement; or (b) any action by us to obtain performance by Franchisee of any act, matter, or thing required by the Franchise Agreement.



4.4 No Exhaustion of Remedies. Owners acknowledge and agree that we will not be obligated to proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any remedy, including any legal or equitable relief against Franchisee, before proceeding to enforce the obligations of the Owners as guarantors under this Owners Agreement, and the enforcement of such obligations can take place before, after, or contemporaneously with, enforcement of any of Franchisee's debts or obligations under the Franchise Agreement.

4.5 Waiver of Notice. Without affecting Owners' obligations under this Section 4, we can extend, modify, or release any of Franchisee's indebtedness or obligation, or settle, adjust, or compromise any claims against Franchisee, all without notice to the Owners. Owners waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by Franchisee.

4.6 Effect of Owner's Death. Upon the death of an Owner, the estate of such Owner will be bound by the obligations in this Section 4, but only for defaults and obligations hereunder existing at the time of death; and the obligations of any other Owners will continue in full force and effect.

5. Transfers.

Owners acknowledge and agree that we have granted the Franchise Agreement to Franchisee in reliance on Owners' business experience, skill, financial resources and personal character. Accordingly, Owners agree not to sell, encumber, assign, transfer, convey, pledge, merge or give away any direct or indirect interest in this Franchisee, unless Owners first comply with the sections in the Franchise Agreement regarding Transfers. Owners acknowledge and agree that any attempted Transfer of an interest in Franchisee requiring our consent under the Franchise Agreement for which our express written consent is not first obtained will be a material breach of this Owners Agreement and the Franchise Agreement.

6. Notices.

6.1 Method of Notice. Any notices given under this Owners Agreement shall be in writing and delivered in accordance with the provisions of the Franchise Agreement.

6.2 Notice Addresses. Our current address for all communications under this Owners Agreement is:

Totally Nutz Franchise, LLC
69 E. 2580 S.
St. George, Utah 84790

The current address of each Owner for all communications under this Owners Agreement is designated on the signature page of this Owners Agreement. Any party may designate a new address for notices by giving written notice to the other parties of the new address according to the method set forth in the Franchise Agreement.

7. Enforcement of This Owners Agreement.



7.1 Dispute Resolution. Any claim or dispute arising out of or relating to this Owners Agreement shall be subject to the dispute resolution provisions of the Franchise Agreement. This agreement to engage in such dispute resolution process shall survive the termination or expiration of this Owners Agreement.

7.2 Choice of Law; Jurisdiction and Venue. This Owners Agreement and any claim or controversy arising out of, or relating to, any of the rights or obligations under this Owners Agreement, and any other claim or controversy between the parties, will be governed by the choice of law and jurisdiction and venue provisions of the Franchise Agreement.

7.3 Provisional Remedies. We have the right to seek from an appropriate court any provisional remedies, including temporary restraining orders or preliminary injunctions to enforce Owners' obligations under this Owners Agreement. Owners acknowledge and agree that there is no adequate remedy at law for Owners' failure to fully comply with the requirements of this Owners Agreement. Owners further acknowledge and agree that, in the event of any noncompliance, we will be entitled to temporary, preliminary, and permanent injunctions and all other equitable relief that any court with jurisdiction may deem just and proper. If injunctive relief is granted, Owners' only remedy will be the court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, Owners expressly waive all claims for damages they incurred as a result of the wrongful issuance.

8. Miscellaneous.

8.1 No Other Agreements. This Owners Agreement constitutes the entire, full and complete agreement between the parties, and supersedes any earlier or contemporaneous negotiations, discussions, understandings or agreements. There are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Owners Agreement, other than those in this Owners Agreement. No other obligations, restrictions or duties that contradict or are inconsistent with the express terms of this Owners Agreement may be implied into this Owners Agreement. Except for unilateral reduction of the scope of the covenants permitted in Section 3.3 (or as otherwise expressly provided in this Owners Agreement), no amendment, change or variance from this Owners Agreement will be binding on either party unless it is mutually agreed to by the parties and executed in writing. Time is of the essence.

8.2 Severability. Each provision of this Owners Agreement, and any portions thereof, will be considered severable. If any provision of this Owners Agreement or the application of any provision to any person, property or circumstances is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Owners Agreement will be unaffected and will still remain in full force and effect. The parties agree that the provision found to be invalid or unenforceable will be modified to the extent necessary to make it valid and enforceable, consistent as much as possible with the original intent of the parties (i.e. to provide maximum protection for us and to effectuate the Owners' obligations under the Franchise Agreement), and the parties agree to be bound by the modified provisions.

8.3 No Third-Party Beneficiaries. Nothing in this Owners Agreement is intended to confer upon any person or entity (other than the parties and their heirs, successors and assigns) any rights or remedies under or by reason of this Owners Agreement.



8.4 Construction. Any term defined in the Franchise Agreement which is not defined in this Owners Agreement will be ascribed the meaning given to it in the Franchise Agreement. The language of this Owners Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Owners Agreement refer to whatever number or gender the context requires. If more than one party or person is referred to as you, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation

8.5 Binding Effect. This Owners Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This Owners Agreement is binding on the parties and their respective heirs, executors, administrators, personal representatives, successors and (permitted) assigns.

8.6 Successors. References to “TNF” or “**the undersigned,**” or “you” include the respective parties' heirs, successors, assigns or transferees.

8.7 Nonwaiver. Our failure to insist upon strict compliance with any provision of this Owners Agreement shall not be a waiver of our right to do so. Delay or omission by us respecting any breach or default shall not affect our rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Owners Agreement shall be cumulative.

8.8 No Personal Liability. You agree that fulfillment of any and all of our obligations written in the Franchise Agreement or this Owners Agreement, or based on any oral communications which may be ruled to be binding in a court of law, shall be our sole responsibility and none of our owners, officers, agents, representatives, nor any individuals associated with us shall be personally liable to you for any reason.

8.9 Owners Agreement Controls. In the event of any discrepancy between this Owners Agreement and the Franchise Agreement, this Owners Agreement shall control.

(Signatures on following page)



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IN WITNESS WHEREOF, the parties have entered into this Owners Agreement as of the effective date of the Franchise Agreement.

OWNERS:

[Insert Name of Owner]

[Insert Name of Spouse]

[Insert Name of Owner]

[Insert Name of Spouse]

[Insert Name of Owner]

[Insert Name of Spouse]

[Insert Name of Owner]

[Insert Name of Spouse]

Totally Nutz Franchise, LLC hereby accepts the agreements of the Owner(s) hereunder.

TOTALLY NUTZ FRANCHISE, LLC

By: _____

Title: _____

ATTACHMENT III
TO
FRANCHISE AGREEMENT
STATEMENT OF OWNERSHIP



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**ATTACHMENT III
TO FRANCHISE AGREEMENT
STATEMENT OF OWNERSHIP**

Franchisee: _____

Trade Name (if different from above): _____

Form of Ownership
(Check One)

Individual Partnership Corporation Limited Liability Company

If a Partnership, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.

If a Corporation, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

If a Limited Liability Company, give the state and date of formation, the name of the manager(s), and list the names and addresses of every member and the percentage of membership interest held by each member.

State and Date of Formation: _____

Management (managers, officers, board of directors, etc.):

Name	Title

Members, Stockholders, Partners:

Name	Address	Percentage of Stock



Identification of Designated Manager. Your Designated Manager, if applicable, is

_____.

Franchisee acknowledges this Statement of Ownership applies to the Unit authorized under the Franchise Agreement.

Use additional sheets if necessary. Any and all changes to the above information must be reported to TNF in writing.

FRANCHISEE:

Date: _____

_____ Individually

_____ Individually

OR:
(if an Entity)

_____ Company Name

Date: _____

By: _____

Title: _____



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ATTACHMENT IV
TO
FRANCHISE AGREEMENT
UNIT RIDERS TO FRANCHISE AGREEMENT



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**MOBILE UNIT RIDER TO
TOTALLY NUTZ FRANCHISE, LLC FRANCHISE AGREEMENT**

THIS RIDER (“Rider”) is entered into and made effective as of the date set forth on the signature page hereof, by and between Totally Nutz Franchise, LLC (“TNF”) and the franchisee named on the signature page of this Rider (“Franchisee”). This Rider relates to that certain TNF Franchise Agreement dated _____, 20__ (“Franchise Agreement”), and supplements the terms of the Franchise Agreement in relation to the mobile Unit addressed herein. To the extent this Rider conflicts with the terms of the Franchise Agreement, the terms of this Rider shall control.

1. **Rider Number.** Depending on the type of franchise acquired by Franchisee, Franchisee may be authorized to operate more than one Unit. Each Unit is evidenced by a Unit Rider. This Rider evidences the _____ Unit of _____ total Units Franchisee is authorized to open and operate.

2. **Defined Terms.** All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Franchise Agreement.

3. **Type of Unit.** Franchisee and TNF agree that pursuant to the Franchise Agreement and for one of Franchisee’s Units which Franchisee is authorized to operate under the Franchise Agreement and the Addendum to the Franchise Agreement, Franchisee will open and operate a mobile Unit which shall only be operated from Events.

4. **Events.** The following provisions shall apply:

a. Subject to subpart b. below, Franchisee shall select its own Events at which to operate its mobile Unit. However, Franchisee may elect to operate its mobile Unit at an Event which TNF has previously secured and made available to Franchisee or other franchisees of TNF. TNF has no obligation to locate Events for Franchisee or to offer such Events to Franchisee. Scheduling of Events is the sole responsibility of Franchisee.

b. Subject to the approval of TNF, Franchisee may operate at any Event except for a Protected Event, as defined below, of another franchisee. Franchisee may protect one or more Events at which Franchisee is operating its mobile Unit as set forth below in subpart c. If Franchisee establishes an Event as a Protected Event, it shall also have a right of first refusal to add additional mobile Units at the Event, provided Franchisee is in good standing, follows TNF’s stated process for posting Event information onto TNF’s current intranet system, and has the right either to acquire additional mobile Units or to expand the TNF Product offering at the Event. By way of example only, if Franchisee has a Protected Event and is only operating one mobile Unit and is only selling Products, and the event coordinator wishes to have three mobile Units selling Products, then Franchisee shall have the first right to fulfill the Event coordinator’s needs. However, Franchisee acknowledges and agrees that should it elect to forego the opportunity to expand either the product offering or the number of mobile Units at the Event, or should Franchisee not be able to increase the number of mobile Units at the Event because it does not have the right to open and operate additional mobile Units, TNF may appoint itself, any of its affiliates, or another franchisee to fulfill the Event coordinator’s needs, and the party who fulfills that need may apply for Protected Event status covering its participation at the Event.



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c. A “**Protected Event**” is an Event for which a franchisee: (1) obtains a written contract to operate one or more mobile Units at the Event with the appropriate Event personnel; (2) operates a mobile Unit at the most recent occurrence of the Event; (3) posts required information regarding the Event on TNF’s current intranet system, which shall include the Event dates, name and contact information for the organizer, costs, number of mobile Units desired by the organizer, and expected crowds; (4) receives TNF’s approval; and (5) maintains protection of the Event by operating one or more mobile Units at each occurrence of the Protected Event, continuing to have the approval of the appropriate Event personnel, complying with the procedures set forth in the Brand Standards Manual, and doing nothing to cause TNF to revoke the Protected Event status.

d. Franchisee may not transfer its rights to a Protected Event to another franchisee, without prior written consent of TNF. If a Protected Event Franchisee is transferring franchise rights pursuant to Section 12 of the Franchise Agreement, the rights in any Protected Event may be transferred as well, if the transfer fully complies with Section 12 of the Franchise Agreement.

e. Franchisee must furnish TNF with monthly reports listing all Events at which Franchisee operated its mobile Unit (an “**Event Report**”). An Event Report must include the name of the Event, the sponsor of the Event, the address of the Event, the date of the Event, the hours of operation of the mobile Unit at the Event, a statement of Franchisee’s Gross Revenues from the Event, and the name and contact information of the Event coordinator or organizer. Franchisee must also post certain information regarding the Event on TNF’s current intranet system as required under the Franchise Brand Standards Manual. The information provided on the Event Report must match the information submitted on TNF’s current intranet system.

f. In operating its mobile Unit, Franchisee may, but is not required to, use an electronic cash register or point-of-sale system. If Franchisee chooses to use an electronic cash register or point-of-sale system, Franchisee will be required to use the system designated by TNF. If Franchisee chooses to use an electronic cash register or point-of-sale system, Franchisee is required to pay the purchase price for the system, and, beginning one year after the purchase of the system, obtain an annual software maintenance, support, and upgrade contract and pay the monthly fee for such contract. The purchase price and monthly fees for the software maintenance, support, and upgrade contract are determined by the provider of the system, and not by TNF, and, accordingly, the same may be adjusted from time to time by the provider. Notwithstanding the foregoing, TNF reserves the right to require Franchisee to use an electronic cash register or point-of-sale system designated by TNF for use in the mobile Unit (which TNF may require Franchisee to lease, rent, or purchase), to change the required point-of-sale system and to require Franchisee to use and purchase other computer hardware or software in the future in the mobile Unit, in which event Franchisee shall purchase such hardware or software within 30 days after being instructed to do so by TNF.

5. **Services Provided by TNF Before Opening of Unit.** In addition to pre-opening services to be provided by TNF as set forth in Section 6.1 of the Franchise Agreement, TNF or its designees shall provide the following services to Franchisee related to its mobile Unit:

- a. Provide advice about how to use the mobile Unit;
- b. Provide advice on the specifications for the design and layout of the mobile Unit;



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c. Provide advice on the amount of the initial inventory of Products to be purchased by Franchisee in accordance with the Franchise Agreement; and

d. Provide Franchisee with criteria for acceptable Events, but Franchisee is solely responsible for selecting its own Events. TNF disclaims any liability related to Franchisee's selection, negotiation, and acquisition of Events.

6. **Additional Obligations of Franchisee.** In addition to those obligations of Franchisee set forth in the Franchise Agreement, Franchisee agrees to purchase its mobile Unit and all necessary initial Products and equipment from TNF, TNF's affiliate and approved suppliers upon the signing of this Rider; provided, however, if such mobile Unit is Franchisee's initial Unit, Franchisee shall purchase the mobile Unit within two weeks of the signing of the Franchise Agreement.

7. **Termination.** This Rider and Franchisee's right to operate the mobile Unit hereunder shall terminate as of the date of termination of the Franchise Agreement, regardless of when this Rider is executed.

(Signatures on following page)



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The parties have executed this Rider to be made effective as of the _____ day of _____, 20__.

TNF:

FRANCHISEE:

TOTALLY NUTZ FRANCHISE, LLC

By: _____

Title: _____

_____ Individually

Print Name: _____

_____ Individually

Print Name: _____

OR:
(if an Entity)

_____ Company Name

By: _____

Title: _____



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**PERMANENT SITE UNIT RIDER TO
TOTALLY NUTZ FRANCHISE, LLC FRANCHISE AGREEMENT**

THIS RIDER (“Rider”) is entered into and made effective as of the date set forth on the signature page hereof, by and between Totally Nutz Franchise, LLC (“TNF”) and the franchisee named on the signature page of this Rider (“**Franchisee**”). This Rider relates to that certain TNF Franchise Agreement dated _____, 20____ (“**Franchise Agreement**”), and supplements the terms of the Franchise Agreement in relation to the Unit addressed herein. To the extent this Rider conflicts with the terms of the Franchise Agreement, the terms of this Rider shall control.

1. **Rider Number.** Depending on the type of franchise acquired by Franchisee, Franchisee may be authorized to operate more than one Unit. Each Unit is evidenced by a Unit Rider. This Rider evidences the _____ Unit of _____ total Units Franchisee is authorized to open and operate.

2. **Defined Terms.** All capitalized terms not otherwise defined herein shall have the meaning ascribed to it in the Franchise Agreement.

3. **Type of Unit.** Franchisee and TNF agree that, pursuant to the Franchise Agreement and for one of Franchisee’s Units which Franchisee is authorized to operate under the Franchise Agreement and the Addendum to the Franchise Agreement, Franchisee will open and operate a Permanent Site.

4. **Permanent Sites.** Franchisee shall obtain TNF’s prior written approval for the Permanent Site at which Franchisee will operate its Unit. Franchisee shall not operate its Unit at any location outside of the selected and approved Permanent Site without prior written approval of TNF. For a Permanent Site to be considered, Franchisee must complete and submit a “**Proposal**” regarding the Permanent Site prior to signing a letter of intent (“**Letter of Intent**”) related to the lease of the Permanent Site, and submit photographs of the Permanent Site, a budget for build out, if any, a break-even analysis, and other materials that TNF may request. TNF will not approve any sites that do not meet TNF’s criteria or are deemed by TNF to be too close to an existing Permanent Site or a Unit of another franchisee. Franchisee acknowledges and agrees that Franchisee is not granted exclusive or protected rights to any particular geographic area or territory, and is not granted the exclusive right to any particular markets or customers. However, TNF will consider the proximity of Franchisee’s Unit when evaluating the Permanent Site of another franchisee submitted for TNF’s approval. For the proximity of an existing Permanent Site to be considered, the franchisee operating a Unit at that Permanent Site must not be in default of its franchise agreement and must be operating in good standing. TNF may also consider criteria such as the demographics of the area of the Permanent Site. TNF will continually update the other criteria it considers and will share this information with Franchisee as developed. TNF will make its decision whether to approve or disapprove of a Permanent Site within 15 days of the complete submission of the Proposal.

5. **Letter of Intent and Lease for Permanent Sites.** The initial Letter of Intent and the lease for the Permanent Site at which Franchisee seeks to operate the Unit must be approved in writing by TNF before being executed. Franchisee shall submit to TNF for TNF’s approval the Letter of Intent, lease, and any other materials related to the lease that TNF may request. Factors TNF may consider when reviewing the Letter of Intent and lease include the monthly payments and signage and/or décor restrictions, or any other factors that affect the System and its brand identity. TNF may sign the lease for the Permanent Site and sublease to the Franchisee or may require that the lease be negotiated and/or



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signed by Franchisee. Any sublease to Franchisee will be on the same terms and conditions as the master lease, except that TNF may impose a security deposit. Any landlord charge-backs shall be paid by Franchisee. TNF will provide Franchisee will guidance in connection with the purchase or lease of a suitable Permanent Site. TNF will approve or disapprove of the Letter of Intent and the lease within five business days of TNF's receipt of the Letter and Intent and the lease and any other requested materials. If TNF does not approve or disapprove the Letter of Intent or the lease within five business days after TNF's receipt, the Letter of Intent or the lease will be deemed disapproved. If TNF disapproves of a Letter of Intent or a lease, Franchisee will need to locate another Permanent Site and receive TNF's acceptance of the Letter of Intent and lease for the alternative Permanent Site. Franchisee must execute the lease for a Permanent Site, at Franchisee's expense, within 60 days after TNF approves the lease, unless TNF chooses to sign the lease and sublease to Franchisee. Contemporaneously with the lease for the Permanent Site at which the Unit will be operated, Franchisee and the lessor shall agree to and execute the Lease Addendum, attached to the Franchise Disclosure Document, and Franchisee and TNF shall agree to and execute the Collateral Assignment of Lease, attached to the Franchise Disclosure Document. Franchisee must provide to TNF the names and contact information for the landlord and/or management companies of any Permanent Site, as applicable. TNF reserves the right to contact the landlord and/or management company for the purposes of assessing Franchisee's performance and customer satisfaction. Franchisee acknowledges that Franchisee has the ultimate responsibility in choosing and obtaining the Permanent Site for Franchisee's Unit. TNF's consultation and approval of the Permanent Site, the Letter of Intent and the lease is not a promise or guarantee that the Permanent Site, Unit, or their location will be successful or profitable. Franchisee agrees to indemnify, defend and hold harmless the Indemnified Parties against, and to reimburse them for all claims, obligations and damages described in Section 7.12 of the Franchise Agreement, all third party obligations and all claims and liabilities directly or indirectly related to TNF's approval or failure to approve any Permanent Site, Letter of Intent or lease.

6. **Relocation of Permanent Site.** Franchisee shall not relocate its Unit from an approved Permanent Site without the prior written approval of TNF. If TNF approves Franchisee to relocate its Unit, Franchisee shall comply with the above provisions related to obtaining approval for a Permanent Site and the lease for a Permanent Site when relocating, and shall provide to TNF a site submittal workbook regarding the new Permanent Site, including photographs of the new Permanent Site, a budget for construction, a break-even analysis, the proposed lease, and any further materials TNF may request.

7. **Services Provided by TNF before Opening of Unit.** In addition to pre-opening services to be provided by TNF to Franchisee as set forth in Section 6.1 of the Franchise Agreement, TNF or its designees shall provide the following services to Franchisee related to its Unit:

- a. Provide Franchisee with location and store opening assistance for the Unit, including lease review and training;
- b. Provide advice on the specifications for the design and layout of a Unit;
- c. Provide advice on the amount of the initial inventory of Products to be purchased by Franchisee in accordance with the Franchise Agreement;
- d. If Franchisee is opening its first Unit at a Permanent Site, TNF may, in its sole discretion, provide additional initial training, which Franchisee must attend and successfully complete.



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8. **Additional Obligations of Franchisee.** In addition to those obligations of Franchisee listed in the Franchise Agreement, Franchisee shall have the following obligation to purchase at its costs and expense, and in accordance with the Brand Standards Manual, certain materials, equipment, fixtures, furnishings, supplies, signage and décor necessary to construct the Unit at a Permanent Site and the required initial and ongoing Products, Cart/Kiosk Package, and Franchise Starter Package from TNF or its affiliates and approved suppliers.

9. **Termination.** This Rider and Franchisee's right to operate the Unit hereunder shall terminate as of the date of termination of the Franchise Agreement, regardless of when this Rider is executed.

The parties have executed this Rider to be made effective as of the ____ day of _____, 20__.

TNF:

FRANCHISEE:

TOTALLY NUTZ FRANCHISE, LLC

By: _____

Individually

Title: _____

Print Name: _____

Date: _____

Individually

Print Name: _____

OR:
(if an Entity)

Company Name

By: _____

Title: _____



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EXHIBIT B
FINANCIAL STATEMENTS



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TOTALLY NUTZ FRANCHISE, LLC

FINANCIAL STATEMENTS

WITH REPORT OF INDEPENDENT AUDITORS

DECEMBER 31, 2021, 2020 and 2019



TOTALLY NUTZ FRANCHISE, LLC

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Independent Auditors' Report

To the Members
of Totally Nutz Franchise, LLC

Opinion

We have audited the accompanying financial statements of Totally Nutz Franchise, LLC, “(the Company)” which comprise the balance sheets as of December 31, 2021, 2020 and 2019, and the related statements of operations, members’ equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Totally Nutz Franchise, LLC as of December 31, 2021, 2020 and 2019, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor’s Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

Auditor’s Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor’s report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design 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. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Kezas & Dunlavy

St. George, Utah
March 15, 2022

TOTALLY NUTZ FRANCHISE, LLC

BALANCE SHEETS

December 31, 2021, 2020 and 2019

Assets	2021	2020	2019
Current assets:			
Cash and cash equivalents	\$ 84,687	\$ 88,140	\$ 86,001
Cash and cash equivalents, restricted	-	101,500	-
Accounts receivable, less allowance for doubtful accounts of \$0 at December 31, 2021, 2020 and 2019	30,223	12,841	20,257
Related party receivable	32,500	-	-
Inventory	-	31,500	18,194
Deferred contract costs current portion	12,001	12,001	10,890
Total current assets	<u>159,411</u>	<u>245,982</u>	<u>135,342</u>
Deferred contract costs	82,355	85,906	69,763
Intangible asset, net	-	194	1,360
Total assets	<u>\$ 241,766</u>	<u>\$ 332,082</u>	<u>\$ 206,465</u>
Liabilities and Members' Equity			
Current liabilities:			
Credit cards payable	\$ 3,754	\$ 2,748	\$ 10,421
Accrued expenses	14,120	12,375	-
Related party payables	22,280	19,285	33,982
Loan payable	-	14,100	-
Deferred revenue current portion	23,291	23,291	20,291
Total current liabilities	<u>63,445</u>	<u>71,799</u>	<u>64,694</u>
Long term liabilities:			
Deferred revenue	216,113	345,740	135,151
Total liabilities	<u>279,558</u>	<u>417,539</u>	<u>199,845</u>
Members' equity:			
Members' capital	9,761	12,711	26,529
Accumulated members' equity	(47,553)	(98,168)	(19,909)
Total members' equity	<u>(37,792)</u>	<u>(85,457)</u>	<u>6,620</u>
Total liabilities and members' equity	<u>\$ 241,766</u>	<u>\$ 332,082</u>	<u>\$ 206,465</u>

The accompanying notes are an integral part of these financial statements.

TOTALLY NUTZ FRANCHISE, LLC
STATEMENTS OF OPERATIONS
Years ended December 31, 2021, 2020 and 2019

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Revenue:			
Franchise fees	\$ 55,677	\$ 121,904	\$ 118,820
Equipment sales	104,463	95,000	109,745
Royalty fees	70,666	20,416	58,600
Brand building fund fees	7,384	6,137	14,958
Other income	<u>1,638</u>	<u>1,865</u>	<u>7,584</u>
Total revenue	239,828	245,322	309,707
Cost of sales	<u>132,712</u>	<u>204,561</u>	<u>121,881</u>
Gross profit	107,116	40,761	187,826
General and administrative expenses	66,244	97,578	150,212
Marketing expenses	4,163	20,276	41,655
Amortization expense	194	1,166	4,667
Operating income (loss)	<u>36,515</u>	<u>(78,259)</u>	<u>(8,708)</u>
Other income (expense)			
Other income	14,100	-	-
Interest expense	<u>-</u>	<u>-</u>	<u>(34)</u>
Net income (loss)	<u>\$ 50,615</u>	<u>\$ (78,259)</u>	<u>\$ (8,742)</u>

The accompanying notes are an integral part of these financial statements.

TOTALLY NUTZ FRANCHISE, LLC
STATEMENTS OF MEMBERS' EQUITY
December 31, 2021, 2020 and 2019

	Members' Capital	Accumulated Members' Equity	Total
Balances at December 31, 2018	\$ 27,011	\$ 28,869	\$ 55,880
Adoption of ASC 606	-	(40,036)	(40,036)
Members' distributions	(482)	-	(482)
Net loss	-	(8,742)	(8,742)
	26,529	(19,909)	6,620
Balances at December 31, 2019	26,529	(19,909)	6,620
Members' distributions	(13,818)	-	(13,818)
Net loss	-	(78,259)	(78,259)
	12,711	(98,168)	(85,457)
Balances at December 31, 2020	12,711	(98,168)	(85,457)
Members' distributions	(2,950)	-	(2,950)
Net income	-	50,615	50,615
	9,761	(47,553)	(37,792)
Balances at December 31, 2021	\$ 9,761	\$ (47,553)	\$ (37,792)

The accompanying notes are an integral part of these financial statements.

TOTALLY NUTZ FRANCHISE, LLC

STATEMENTS OF CASH FLOWS

December 31, 2021, 2020 and 2019

	2021	2020	2019
Cash flows from operating activities:			
Net income (loss)	\$ 50,615	\$ (78,259)	\$ (8,742)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Amortization expense	194	1,166	4,667
Forgiveness of Debt	(14,100)	-	-
Change in operating assets and liabilities:			
Accounts receivable	(17,382)	7,416	8,921
Related party receivable	(32,500)	-	30,791
Inventory	31,500	(13,306)	(18,194)
Deferred contract costs	3,551	(17,254)	28,068
Credit cards payable	1,006	(7,673)	(7,659)
Accrued expenses	1,745	12,375	-
Related party payables	2,995	(14,697)	33,982
Deferred revenue	(129,627)	213,589	(45,615)
Net cash provided by (used in) operating activities	(102,003)	103,357	26,219
Cash flows from financing activities:			
Proceeds from loan	-	14,100	-
Members' distributions	(2,950)	(13,818)	(482)
Net cash provided by (used in) financing activities	(2,950)	282	(482)
Net change in cash and cash equivalents	(104,953)	103,639	25,737
Cash and cash equivalents at beginning of period	189,640	86,001	60,264
Cash and cash equivalents at end of period	\$ 84,687	\$ 189,640	\$ 86,001
Cash paid for interest	\$ -	\$ -	\$ 34
Cash paid for taxes	\$ -	\$ -	\$ -
Schedule of non-cash financing activities:			
Forgiveness of PPP Loan	\$ 14,100	\$ -	\$ -

The accompanying notes are an integral part of these financial statements.

TOTALLY NUTZ FRANCHISE, LLC
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2021, 2020 and 2019

(1) Nature of Operations and Summary of Significant Accounting Policies

(a) Nature of Operations

Totally Nutz Franchise, LLC ("the Company"), was organized as a limited liability company under the laws of the State of Utah in May 2014 and commenced operations in June 2014. Totally Nutz Franchise, LLC is a franchisor of businesses that sell fresh roasted cinnamon glazed nuts at various venues, events, and malls. Totally Nutz Businesses may be operated from mobile self-contained units, nontraditional fixed-location kiosks, and retail stores.

The Company has developed a proprietary system for establishing, operating, managing, and marketing the franchised businesses. The Company offers four types of franchises; a Single unit, a "Multi-3" unit which allows up to 3 businesses, a "Multi-5" unit which allows up to 5 businesses, and a "Multi-10" unit which allows up to 10 businesses.

The company uses the accrual basis of accounting, and a 12-month accounting period ending December 31 of each year.

(b) Accounting Standards Codification

The Financial Accounting Standards Board ("FASB") has issued the FASB Accounting Standards Codification ("ASC") that became the single official source of authoritative U.S. generally accepted accounting principles ("GAAP"), other than guidance issued by the Securities and Exchange Commission (SEC), superseding existing FASB, American Institute of Certified Public Accountants, emerging Issues Task Force and related literature. All other literature is not considered authoritative. The ASC does not change GAAP; it introduces a new structure that is organized in an accessible online research system.

(c) Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosures. Actual results could differ from those estimates.

(d) Reclassification

Certain items in the prior year have been reclassified to conform to the current year's presentation.

(e) Cash and Cash Equivalents

Cash equivalents include all highly liquid investments with maturities of three months or less at the date of purchase. Also included within cash equivalents are deposits in-transit from banks for payments related to third-party credit card and debit card transactions. Restricted cash and cash equivalents consisted of initial franchise and equipment fees paid for a 2020 franchise sale for a Florida Territory. The fees were being held in an escrow account until the franchisee could be approved for a work visa and the Company's pre-opening obligations for the franchise sale had been satisfied. The Company adopted ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*, prospectively in 2019. There were no adjustments to prior periods.

(f) Accounts Receivable

Accounts receivable are recorded for amounts due based on the terms of executed franchise agreements for franchise sales, royalty fees, and upon provision/shipment and invoicing of services or materials from the Company's offices. Accounts receivable are recorded at the invoiced amount and do not bear interest although a finance charge may be

TOTALLY NUTZ FRANCHISE, LLC
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2021, 2020 and 2019

applied to such receivables that are past the due date. The allowance for doubtful accounts is the Company's best estimate of the amount of probable credit losses in the Company's existing accounts receivable. The Company determines the allowance based on historical collections, customers' current creditworthiness, age of the receivable balance both individually and in the aggregate, and general economic conditions that may affect the customer's ability to pay. All account balances are reviewed on an individual basis. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. When recoveries of receivables previously charged off are made, they are recognized as income when payment is received. As of December 31, 2021, 2020, and 2019, management has determined that all receivables are collectible.

(g) Inventory

Inventory consists of equipment and is measured at the lower of cost or net realizable value. The cost of inventory is determined based on the first-in, first out method.

(h) Property and Equipment

Property and equipment are stated at historical cost and are depreciated using the straight-line method over the estimated useful lives of related assets. The useful lives generally range 5-7 yrs.

(i) Long Lived Assets

Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized for the difference between the carrying amount of the asset and the fair value of the asset.

(j) Intangible Assets

The Company has adopted Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 350, Intangibles - Goodwill and Other that requires that goodwill and intangible assets with indefinite lives (such as intellectual property) no longer be amortized to earnings but be tested for impairment at least annually. Intangible assets with finite lives are amortized over their estimated useful lives. The useful life of an intangible asset is the period over which the asset is expected to contribute directly or indirectly to future cash flows. Intangible assets with finite lives are reviewed for impairment if events or changes in circumstances indicate that the carrying value might not be recoverable.

Intangible asset consists of website design costs amortized over three years using the straight-line method.

(k) Revenue Recognition

The Company's revenues consist of fees from franchisees such as initial franchise fees, royalties, brand building fund, and transfer fees. The franchise agreements offered under the Company's Uniform Franchise Disclosure Document have a term of ten years for Single unit, "Multi-3", "Multi-5", and "Multi-10" franchises; and may be extended for two additional ten-year terms. The initial franchise fee is \$27,500 for a single unit, \$39,500 for a "Multi-3" unit, \$59,500 for a "Multi-5" unit, and \$69,900 for a "Multi-10" unit.

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, "Revenue from Contracts with Customers (Topic 606)". The ASU and all subsequently issued clarifying

TOTALLY NUTZ FRANCHISE, LLC
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2021, 2020 and 2019

ASUs replaced most existing revenue recognition guidance in U.S. GAAP. The ASU also required expanded disclosures relating to the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

The Company adopted the new standard as of January 1, 2019, the first day of the Company’s fiscal year using the modified retrospective method. This method allows the standard to be applied retrospectively through a cumulative catch up adjustment recognized upon adoption. As such, the comparative information in the Company’s financial statements for years prior to 2019 has not been restated and continues to be reported under the accounting standards in effect for those periods. The cumulative adjustment recorded upon adoption of ASC 606 resulted in a decrease to beginning retained earnings of \$40,036, an increase in deferred contract costs of \$101,021 and an increase in deferred revenue of \$141,057. The implementation of ASC 606 also results in an increase in the franchise fees revenue and contract costs included in cost of sales. Under previous revenue recognition guidance, franchise fees and equipment sales revenue and contract costs would have been \$51,820 less \$6,205 more and \$28,068 less, respectively. Net income would have also been lower by \$17,547.

The following table summarizes the impact on the balance sheet of implementation of ASC 606 as of January 1, 2019:

	Prior to implementation of ASC 606:	After implementation of ASC 606:	Net Increase (Decrease)
Deferred contact costs (asset)	7,700	108,721	101,021
Deferred revenue (liability)	60,000	201,057	141,057
Equity	55,880	15,844	(40,036)

The following table summarizes the impact on the income statement of implementation of ASC 606 for the period ended December 31, 2019:

	Prior to implementation of ASC 606:	After implementation of ASC 606:	Net Increase (Decrease)
Franchise fees (revenue)	67,000	118,820	51,820
Equipment sales (revenue)	101,205	95,000	(6,205)
Contract costs (expense)	42,822	70,890	28,068
Net income	125,383	142,930	17,547

As part of the adoption of the ASU, the Company elected the following transition practical expedients: to apply the standard only to contracts that are not completed at the initial date of application.

On January 1, 2020, the Company also adopted another practical expedient that was issued with ASU No. 2021-02, “Franchisors – Revenue from Contracts with Customers (Subtopic 952-606)” to account for pre-opening services as distinct from the franchise license and to recognize pre-opening services as a single performance obligation. The cumulative adjustment recorded upon adoption of the practical expedient resulted in de minimis changes to beginning retained earnings, deferred commissions and deferred revenue.

ASC 606 provides that revenues are to be recognized when control of promised goods or services is transferred to a customer in an amount that reflects the consideration expected to be received for those goods or services. The standard does not impact the Company’s recognition of royalties from locations operated by a franchisee, which are based on

TOTALLY NUTZ FRANCHISE, LLC
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2021, 2020 and 2019

a percentage of monthly gross revenue and recognized at the time the underlying sales occur. The standard does change the timing for recognition of the Company’s initial franchise fees and equipment fees. The Company’s policy through December 31, 2018 was to recognize initial fees when significant obligations under the franchise agreements were considered substantially performed. Significant obligations were considered substantially performed for retail stores when the franchise had completed training and site selection. Significant obligations were considered substantially performed for non-traditional fixed kiosks and mobile units when the franchisee had completed the initial training and all equipment had been provided. Beginning in January 2019, a portion of the initial franchise fees have been recognized as the Company satisfies the franchise right performance obligation over the franchise term, which is generally 10 years.

The allocation of the initial franchise fee is to treat the distinct pre-opening service performance obligation as having a stand-alone selling price basis value of \$20,500 for a single unit and \$29,500 for a multi-unit, respectively. The allocation of the initial franchise fee to the franchise right performance obligation is to take the total price of the upfront fees paid and then subtract the total of the stand-alone selling basis value for the distinct performance obligation above from the total. Fees for Initial Equipment Packages vary based on the package being purchased and are recognized with the pre-opening services performance obligation.

For performance obligations related to the franchise right, control transfers to the customer evenly over the time period of the contract. For the distinct pre-opening service obligation which includes training and continuing consultation, website and marketing fees, control transfers to the customer at a point in time upon completion of services, generally about a month after training.

The following table disaggregates the Company’s revenue based on the timing of satisfaction of performance obligations for the years ended December 31, 2021, 2020 and 2019:

	2021	2020	2019
Performance obligations satisfied over time	\$ 26,177	\$ 42,404	\$ 18,321
Performance obligations satisfied at a point in time	131,000	174,500	195,499
Total net franchise fees and equipment sales	<u>\$ 157,177</u>	<u>\$ 216,904</u>	<u>\$ 213,820</u>

Revenue from materials and services such as additional training is recognized upon provisioning/shipment and invoicing.

(l) Income Taxes

The entity is structured as a limited liability company (LLC) under the laws of the State of Utah and has elected to be taxed as an “S” Corporation. Accordingly, the income or loss of the Company will be included in the income tax returns of the members. Therefore, there is no provision for federal and state income taxes.

The Company follows the guidance under Accounting Standards Codification (“ASC”) Topic 740, Accounting for Uncertainty in Income Taxes. ASC Topic 740 prescribes a more-likely-than-not measurement methodology to reflect the financial statement impact of uncertain tax positions taken or expected to be taken in the tax return. If taxing authorities were to disallow any tax positions taken by the Company, the additional income taxes, if any, would be imposed on the members rather than the Company. Accordingly, there would be no effect on the Company’s financial statements.

The Company’s income tax returns are subject to examination by taxing authorities for a period of three years from the date they are filed. The company was organized and began operations in 2014; accordingly, as of December 31, 2021, the following tax years are subject to examination:

TOTALLY NUTZ FRANCHISE, LLC
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2021, 2020 and 2019

Jurisdiction	Open Years for Filed Returns	Return Filed in 2021
Federal	2018 - 2020	2020
Utah	2018 - 2020	2020

(m) Advertising Costs

The Company expenses advertising costs as incurred. Advertising expenses for the years ended December 31, 2021, 2020, and 2019 were \$4,163, \$20,276, and \$41,655, respectively.

(n) Financial Instruments

For certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, prepaid expenses, and accounts payable the carrying amounts approximate fair value due to their short maturities. The amounts shown for notes payable also approximate fair value because current interest rates and terms offered to the Company for similar debt are substantially the same.

(o) Concentration of Risk

The Company maintains its cash in bank deposit accounts that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risks on cash or cash equivalents.

(2) Intangible Asset

Intangible asset consists of the following as of December 31:

	2021	2020	2019
Website	\$ 14,000	\$ 14,000	\$ 14,000
	14,000	14,000	14,000
Less accumulated amortization	(14,000)	(13,806)	(12,640)
	<u>\$ -</u>	<u>\$ 194</u>	<u>\$ 1,360</u>

Amortization expense for the years ended December 31, 2021, 2020, and 2019 was \$194, \$1,166, and \$4,667, respectively.

(3) Deferred Commissions and Revenue

Deferred revenue as of December 31, 2021, 2020 and 2019 in accordance with the Company's new revenue policy is \$239,404, \$369,031 and \$155,442 respectively. The current portion of deferred revenue is \$24,291, \$23,291 and \$20,291, as of December 31, 2021, 2020 and 2019, respectively. Associated deferred contract costs are \$94,356, \$129,407 and \$80,653, respectively. The current portion of deferred contract costs is \$12,265, \$12,001 and \$10,890, respectively. \$31,500 of deferred contract costs were in inventory as of December 31, 2020 as carts had been purchased for new franchisees, but had not been delivered by December 31, 2020.

(4) Accrued Expenses

Accrued expenses as of December 31, 2021 consist of payment due for a cart for a 2021 franchise sale and payment to a contractor for December 2021. Accrued expenses as of December 31, 2020 consist of commissions payable for a 2020 franchise sale.

TOTALLY NUTZ FRANCHISE, LLC
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2021, 2020 and 2019

(5) Loan Payable

On April 17, 2020 the Company received a promissory note in the amount of \$14,100. This loan was made pursuant to the Paycheck Protection Program (the “PPP”) created by Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The PPP loan could be forgiven if the Company complied with certain criteria provided by the Small Business Association (SBA). The note bore 1% interest with a maturity date of April 17, 2022. The Company received approval for full forgiveness subsequent to the 2020 year-end on January 19, 2021. The loan was included in current liabilities as of December 31, 2020. Subsequent to receiving full loan forgiveness, the loan balance has been recognized as other income during the year ended December 31, 2021.

(6) Affiliated Businesses

As a result of common ownership, the Company is affiliated with Totally Nuts, LLC, (“TNL”). TNL has licensed the Company to use the know-how, recipes, trademarks and other intellectual property involved in selling and operating Totally Nutz franchises. TNL operates businesses similar to the franchises offered by the Company.

The Company’s principals also operate a company called German Nut Roasters (“GNR”) which sells roasting equipment. GNR is the Company’s approved supplier of the nut roasting equipment and packaging.

(7) Related Party Transactions

The Company purchases supplies and nut roasting equipment for franchisees from GNR. The Company paid GNR \$0, \$344, and \$0 for the years ended December 31, 2021, 2020, and 2019, respectively. As of December 31, 2021, GNR owed the Company \$32,500 for a franchisee’s equipment fee that was deposited into GNR’s account by mistake.

During 2019 TNL advanced the Company cash to cover operating expenses of \$88,982. The Company repaid TNL \$55,000 of the advances leaving a remaining balance due of \$33,982 as of December 31, 2019. During 2021 and 2020 the Company repaid another \$3,005 and \$14,697, respectively. The remaining balance due as of December 31, 2021 is \$16,280. The advances are due on demand, bear no interest and have no repayment terms.

TNL purchased refurbished kiosk units from the Company for \$30,000 at the end of 2018. TNL was invoiced in December 2018 and paid subsequent to year-end in January 2019.

The Company shares its office space with the affiliated businesses. Each of the affiliated entities pays rent to a holding company owned by the members which owns the office building. The Company’s rent expense was \$24,000, \$36,000, and \$0 for the years ended December 31, 2021, 2020, and 2019, respectively. The Company owed the holding company for three months of rent at the end of 2021. A payable of \$6,000 for the rent payable is included in related party payables.

(8) Commitments and Contingencies

(a) Litigation

The Company may be subject to various claims, legal actions and complaints arising in the ordinary course of business. In accounting for legal matters and other contingencies, the Company follows the guidance in ASC Topic 450 Contingencies, under which loss contingencies are accounted for based upon the likelihood of incurrence of a liability. If a loss contingency is “probable” and the amount of loss can be reasonably estimated, it is accrued. If a loss contingency is “probable” but the amount of loss cannot be reasonably estimated, disclosure is made. If a loss contingency is “reasonably possible,” disclosure is made, including the potential range of loss, if determinable. Loss contingencies that are “remote” are neither accounted for nor disclosed.

TOTALLY NUTZ FRANCHISE, LLC
NOTES TO THE FINANCIAL STATEMENTS
December 31, 2021, 2020 and 2019

In the opinion of management, all matters are of such kind, or involve such amounts, that unfavorable disposition, if any, would not have a material effect on the financial position of the Company.

(9) Covid-19 Contingency

On March 11, 2020, the World Health Organization classified the outbreak of a new strain of the coronavirus (“COVID-19”) as a pandemic. The COVID-19 outbreak in the United States began in mid-March 2020 and has continued through 2020 and 2021 and subsequent to the fiscal year end. It is continuing to disrupt supply chains and affect production and sales across a range of industries. Management believes the pandemic has had a material effect on the Company’s operations, reducing revenue from both new and existing franchisees. The extent of the impact of COVID-19 on the Company’s future operational and financial performance continues to evolve and will depend on certain ongoing developments, including the duration and spread of the outbreak, impact on the Company’s customers and vendors all of which are uncertain and cannot be reasonably estimated. At this point, the full extent to which COVID-19 may impact the Company’s future financial condition or results of operations is uncertain.

(10) Date of Management’s Review

Management has reviewed and evaluated subsequent events through March 15, 2022, the date on which the financial statements were issued.

UNAUDITED FINANCIAL STATEMENTS

~~THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT.~~

~~PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.~~



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EXHIBIT C

LIST OF CURRENT AND FORMER FRANCHISEES



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LIST OF CURRENT AND FORMER FRANCHISEES

Current Franchisees as of December 31, ~~2020~~2021:

Last Name	First Name	Entity Name	Address	City	State	Zip Code	Phone	E-mail
Furnia ¹	Todd	Arizona Roasters, Inc.	1333 S 230 th Dr.	Buckeye	AZ	85326	623-694-2694	arizonaroasters@totallynutz.com
Walterman ²	Dave & Amy	Pacific Nut Roasters	1060 Summerplace Ct.	Corona	CA	92881	562-587-8719	PacificNutRoasters@totallynutz.com
Goree	Tim & McKennah	TKM3 Roasting Company	464 Americano Way	Fairfield	CA	94533	707-410-0511	TKM3-Info@TKM3.net
Jeffords	Tom & Megan	Trail Blazing Nut Roasters, Inc	6354 Snedigar Rd.	Oakdale	CA	95361	209-502-1818	trailblazingnutroasters@totallynutz.com
Fuentes	Juan Antonio	Empress25 LLC	4770 Franklin Dr.	Boulder	CO	80301	720-725-7857	Freshtastynuts@totallynutz.com
Williams	Jennifer	Nutty Girl, LLC	675 N. Highland Ave NE, Unit 403	Atlanta	GA	30306	203-331-6330	Nuttygirl@totallynutz.com
Kuykendall	Kim	sweet nutin	552 Winder Trail	Canton	GA	30114	678-520-9794	sweetnutin@totallynutz.com
Fulling	Dan & Laurel	Hoosier Nut Roasters Inc.	14704 Fernwood Dr.	Carmel	IN	46033	317-502-0150	HoosierNutRoasters@totallynutz.com
Urbaniak ³	Greg & Cathi	Urban Nut Roasters	4 Fleetwood Dr.	Chelmsford	MA	01824	978-944-5327	Urbannutroasters@totallynutz.com
<u>Stuart</u>	<u>Caitlin</u>	<u>Stuart Snacks</u>	<u>2648 Lacrosse Place</u>	<u>Waldorf</u>	<u>MD</u>	<u>20603</u>	<u>314-359-1000</u>	<u>stuartsnacks@totallynutz.com</u>
Centazzo ⁴	Candice	Candice's Candy LLC	209 Stephanie St. B132	Henderson	NV	89012	702-846-9443	Candice'sCandy@TotallyNutz.com
Felsing	James & Requelle	IM Nutz, LLC	11767 Kingsland Ave.	Las Vegas	NV	89138	702-772-1023	IMNutz@TotallyNutz.com
Abella	Nelson & Merci	Abella Gourmet Nutz	25 Lewis Pl.	Claremont	NH	03743	704-802-2512	AbellaGourmetNuts@yahoo.com
Park	Dawn		460 Van Renssalaer Ct., FL 1	Ridgefield	NJ	07657	917-273-8111	Johndawn.kim@gmail.com
Halle	Kyle & Alicia	Halle Family First LLC	PO Box 1004	Devils Lake	ND	58301	701-840-6363	HalleFamilyFirst@totallynutz.com
Allen	Forrest Brown	BA Nut Corporation	3004 Sunset Blvd.	Oklahoma City	OK	73120	405-818-6391	BANut@totallynutz.com
Howell	Doug	Wearenutz, LLC	195 Bethel Ridge Rd.	Avella	PA	15312	724-747-0099	Wearenutz@totallynutz.com
Ziegler	Jack & Margaret	Ziegler's Gourmet Nutz, inc	66 Jackson Dr	Lancaster	PA	17503	717-475-6660	zieglersgourmetnutz@gmail.com
Kline	Dave & AnnMarie	Two Branches, Inc	2214 Shannon Mills Dr	RenFrew	PA	16053	469-222-4186	twobranches@totallynutz.com
McLeod	Mark & Stephanie	Sugar Nutz, LLC	1000 Rawlinson Pl	Columbia	SC	29209	808-224-5270	sugarnutz@totallynutz.com
Meadows	Craig & Karen	Amberjack Enterprises,	10670 Gabriel Cove West	Cordova	TN	38016	661-213-7561	amberjackenterprises@totallynutz.com



Last Name	First Name	Entity Name	Address	City	State	Zip Code	Phone	E-mail
		LLC						
Lanham ⁵	Brant & Lauren	Lanham LLC	103 Howes Pl.	Hendersonville	TN	37075	615-519-7693	lanham@totallynutz.com
Villarreal	Raymond	Get A Round 2 It, LLC	1301 Barthelow Dr. #22A	College Station	TX	77840	979-595-5937	totallynutzbc@gmail.com
Kirkpatrick	Barry	Lone Star Nut Roasters, Inc.	18259 CR 1341	Flint	TX	75762	903-530-1170	LoneStarNutRoasters@totallynutz.com
Doll ⁶	Dave	Dollicious treats, Inc	2852 Evening Mist	Little Elm	TX	75068	407-232 1269	dollicioustreats@totallynutz.com
DuRoy	Ed	ElleBella Bunny	1523 Starpoint Ln.	Wylie	TX	75098	214-517-2711	ellebellabunny@totallynutz.com
Howle	Ken & Patti		1331 Hounslow Dr.	Manakin Sabot	VA	23103	804-314-4328	Kdh50@yahoo.com
Wolf	Rodrigo	The Happy Nut Co.	2018 156th Avenue NE, Bldg. F, Ste 100	Bellevue	WA	98007	622-770-4	thehappynutco@totallynutz.com

- 1 Operates 2 franchises in Arizona
- 2 Operates 3 franchises in California
- 3 Operates 2 franchises in Massachusetts
- 4 Operates 3 franchises in Nevada
- 5 Operates 6 franchises in Tennessee and 1 franchise in Washington
- 6 Operates 2 franchises in Texas

Franchisees with Unopened Outlets as of December 31, 2019-2021:

Last Name	First Name	Entity Name	Address	City	State	Zip Code	Phone	E-mail
Furnia	Todd	Arizona Roasters, Inc.	1333 S 230 th Dr.	Buckeye	AZ	85326	623-694-2694	arizonaroasters@totallynutz.com
Jeffords ¹	Tom & Megan	Trail Blazin Nut Roasters, Inc	6354 Snedigar Rd	Oakdale	CA	95361	209-502-8	trailblazingnutroasters@totallynutz.com
Alakbarov	Babak	Burein Aksoy	429 Lenox Ave., Suite 514	Miami Beach	FL	33139	994-504-552244	babekelekberov@yahoo.com.tr
Kuykendall	Kim	sweet nutin	552 Winder Trail	Canton	GA	30114	678-520 9794	sweetnutin@totallynutz.com
Fulling	Dan & Laurel	Hoosier Nut Roasters Inc.	14704 Fernwood Dr.	Carmel	IN	46033	317-502-0150	HoosierNutRoasters@totallynutz.com
Felsing ²	James & Requelle	IM Nutz, LLC	11767 Kingsland Ave.	Las Vegas	NV	89138	702-772-1023	IMNutz@Totallynutz.com
Abella	Nelson & Merci	Abella Gourmet Nutz	25 Lewis Pl.	Claremont	NH	03743	704-802-2512	AbellaGourmetNuts@yahoo.com
Halle	Kyle & Alicia	Halle Family First LLC	PO Box 1004	Devils Lake	ND	58301	701-840-6363	HalleFamilyFirst@totallynutz.com
Ziegler ³	Jack & Margaret	Ziegler's Gourmet Nutz, inc	66 Jackson Dr	Lancaster	PA	17503	717-475 6660	zieglersgourmetnutz@gmail.com
McLeod	Mark & Stephanie	Sugar Nutz, LLC	1000 Rawlinson Pl	Columbia	SC	29209	808-224 5270	sugarnutz@totallynutz.com
Meadows	Craig & Karen	Amberjack Enterprises, LLC	10670 Gabriel Cove West	Cordova	TN	38016	661-213-7561	amberjackenterprises@totallynutz.com
Lanham	Brant &	Lanham LLC	116 River Rd.	Henderson-	TN	37075	615-	lanham



Last Name	First Name	Entity Name	Address	City	State	Zip Code	Phone	E-mail
	Lauren			ville			519-7693	@totallynutz.com
Villarreal ⁴	Raymond	Get A Round 2 It, LLC	1301 Barthelow Dr. #22A	College Station	TX	77804	979-595-5937	totallynutzbc@gmail.com
Kirkpatrick ⁵	Barry	Lone Star Nut Roasters, Inc.	18259 CR 1341	Flint	TX	75762	903-530-1170	LoneStarNutRoasters@totallynutz.com
Doll	Dave	Dollicious treats, Inc	2852 Evening Mist	Little Elm	TX	75068	407-232 1269	dollicioustreats@
DuRoy ⁶	Ed	ElleBella-Bunny	1523 Starpoint Ln.	Wylie	TX	75098	214-517-2711	ellebellabunny@totallynutz.com
Yadlin	Rodrigo Wolf		Contralmirante Fernandez Vial, Casa 13, Lo Barnechea	Santiago, Chile		10209	562-277-04300	rodrigowolfyadlin@gmail.com

1. Operates 2 franchises in Arizona
2. Operates 2 franchises in Massachusetts,
3. Operates 3 franchises in Nevada
4. 4,5,6 Operates 2 franchises in Tennessee



EXHIBIT D

**STATE ADMINISTRATORS AND
AGENTS FOR SERVICE OF PROCESS**



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**STATE ADMINISTRATORS AND
AGENTS FOR SERVICE OF PROCESS**

<p><u>CALIFORNIA</u></p> <p><u>State Administrator:</u> California Department of Financial Protection and Innovation One Sansome Street, Suite 660, San Francisco, CA 94104 415-972-8559 1-866-275-2677</p> <p><u>Agent for Service of Process:</u> California Commissioner of Financial Protection and Innovation 320 W. 4th Street, #750 Los Angeles, CA 90013 (866) 275-2677</p>	<p><u>ILLINOIS</u></p> <p>Illinois Attorney General Chief, Franchise Division 500 S. Second Street Springfield, IL 62706 (217) 782-4465</p> <p><u>INDIANA</u></p> <p>Secretary of State Securities Division Room E-018 302 W. Washington Street Indianapolis, IN 46204 (317) 232-6681</p>	<p><u>NEW YORK</u></p> <p><u>Administrator:</u></p> <p>NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21st Floor New York, NY 10005 (212) 416-8285416-8222</p> <p><u>Agent for Service of Process:</u></p> <p>Secretary of State 99 Washington Avenue Albany, NY 12231 (518) 473-2492</p>
<p><u>HAWAII</u></p> <p>Commissioner of Securities of the State of Hawaii 335 Merchant St., Room 203 Honolulu, HI 96813 (808) 586-2722</p> <p><u>Agent for Service of Process:</u></p> <p>Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division 335 Merchant St., Room 203 Honolulu, HI 96813 (808) 586-2722</p>	<p><u>MARYLAND</u></p> <p>Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202 (410) 576-6360</p> <p><u>Agent for Service of Process:</u></p> <p>Maryland Securities Commissioner 200 St. Paul Place Baltimore, MD 21202-2020</p>	<p><u>NORTH DAKOTA</u></p> <p>North Dakota Securities Department State Capitol, Fifth Floor, Dept. 414 600 E. Boulevard Avenue Bismarck, ND 58505-0510 (701) 328-4712</p>
<p><u>VIRGINIA</u></p> <p>State Corporation Commission Division of Securities and Retail Franchising</p>	<p><u>MICHIGAN</u></p> <p>Michigan Department of Attorney General Consumer Protection Division 525 W. Ottawa Street Lansing, MI 48913 (517) 373-7117</p> <p><u>MINNESOTA</u></p> <p>Department of Commerce Commissioner of Commerce 85 Seventh Place East, Suite 280 St. Paul, MN 55101-3165 (651) 539-1600</p>	<p><u>RHODE ISLAND</u></p> <p>State of Rhode Island Department of Business Regulation 1511 Pontiac Avenue, Bldg. 68-2 Cranston, RI 02920 (401) 462-9527</p> <p><u>SOUTH DAKOTA</u></p> <p>Division of Insurance Securities Regulation 124 South Euclid, Suite 104 Pierre, SD 57501 (605) 773-3563</p>



1300 E. Main Street, 9th Floor
Richmond, VA 23219

Agent for Service of Process:

Clerk of the State Corporation
Commission
1300 E. Main Street, 1st Floor
Richmond, VA 23219

WASHINGTON

Department of Financial Institutions
Securities Division
150 Israel Road SW
Tumwater, WA 98501
(360) 902-8760

WISCONSIN

Department of Financial Institutions
Division of Securities
201 W. Washington Avenue
Madison, WI 53703
(608) 266-3364

Rev. 100318



EXHIBIT E

FRANCHISE DISCLOSURE QUESTIONNAIRE



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FRANCHISE DISCLOSURE QUESTIONNAIRE

As you know, Totally Nutz Franchise, LLC (“we” or “us”), and you are preparing to enter into a Franchise Agreement for the operation of a Totally Nutz Franchise. The purpose of this questionnaire is to determine whether any statements or promises were made to you that we have not authorized or that may be untrue, inaccurate, or misleading, to be certain that you have been properly represented in this transaction, and to be certain that you understand the limitations on claims you may make by reason of the purchase and operation of your franchise. **You cannot sign or date this questionnaire the same day as the Receipt for the Franchise Disclosure Document, but you must sign and date it the same day you sign the Franchise Agreement.** Please review each of the following questions carefully and provide honest responses to each question. If you answer “No” to any of the questions below, please explain your answer in the table provided below.

- 1. Yes__ No__ Have you received and personally reviewed the Franchise Agreement and each attachment or exhibit attached to it that we provided?

- 2. Yes__ No__ Have you received and personally reviewed the Franchise Disclosure Document and each attachment or exhibit attached to it that we provided?

- 3. Yes__ No__ Did you sign a receipt for the Franchise Disclosure Document indicating the date you received it?

- 4. Yes__ No__ Do you understand all the information contained in the Franchise Disclosure Document and Franchise Agreement?

- 5. Yes__ No__ Have you reviewed the Franchise Disclosure Document and Franchise Agreement with a lawyer, accountant, or other professional advisor, or have you had the opportunity for such review and chosen not to engage such professionals?

- 6. Yes__ No__ Have you had the opportunity to discuss the benefits and risks of developing and operating a Totally Nutz Franchise with an existing Totally Nutz franchisee?

- 7. Yes__ No__ Do you understand the risks of developing and operating a Totally Nutz Franchise?

- 8. Yes__ No__ Do you understand the success or failure of your Totally Nutz Franchise will depend in large part upon your skills, abilities, and efforts, and those of the persons you employ, as well as many factors beyond your control such as competition, interest rates, the economy, inflation, labor and supply costs, and other relevant factors?

- 9. Yes__ No__ Do you understand all disputes or claims you may have arising out of or relating to the Franchise Agreement must be arbitrated in Utah, if not resolved informally or by mediation?

- 10. Yes__ No__ Do you understand that you must satisfactorily complete the initial training program before we will allow your Totally Nutz Franchise to open or consent to a transfer of the Totally Nutz Franchise to you?

- 11. Yes__ No__ Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the costs involved in operating a Totally Nutz Franchise that is not contained in the Franchise Disclosure Document or that is



contrary to, or different from, the information contained in the Franchise Disclosure Document?

12. Yes__ No__ Do you agree that no employee or other person speaking on our behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement and any addendum, concerning advertising, marketing, media support, marketing penetration, training, support service, or assistance that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
13. Yes__ No__ Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the actual, average or projected profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a Totally Nutz Franchise will generate that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
14. Yes__ No__ Do you understand that the Franchise Agreement, including each attachment or exhibit to the Franchise Agreement, contains the entire agreement between us and you concerning the Totally Nutz Franchise, meaning any prior oral or written statements not set out in the Franchise Agreement or the attachments or exhibits to the Franchise Agreement will not be binding?
15. Yes__ No__ Do you understand that we are relying on your answers to this questionnaire to ensure that the franchise sale was made in compliance of state and federal laws?

YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.

Signature of Franchise Applicant

Signature of Franchise Applicant

Name (please print)

Name (please print)

Date: _____

Date: _____



EXPLANATION OF ANY NEGATIVE RESPONSES (REFER TO QUESTION NUMBER):

Question Number	Explanation of Negative Response



EXHIBIT F

BRAND STANDARDS MANUAL

TABLE OF CONTENTS

	Section	Number of Pages
1.	Introduction	1
	Welcome to the Totally Nutz family	1
	Contact information	1
	Regulatory considerations	1
	Confidentiality statement	1
	The Nutz support team and business entities	1
	Our story	1
	Totally Nutz vision	2
2.	OPS Standards	
	Our brand and logo	1
	Use of logo	1
	Almonds	2
	Pecans	2
	Peanuts	2
	Nutz cost factor	1
	Nuts - where to get 'em	1
	Pre-mix - the 'Secret Sauce'	1
	Cinnamon almond recipe	1
	Cinnamon pecan recipe	1
	Cinnamon peanuts recipe	1
	Displaying merchandise	4
	T.N. Roasters	4
	The cart	1
	Electrical requirements	2
	Schematics	4
	The uniform	6
	Health Department	3
	Insurance requirements	3
	Getting a business license	1
	Event professionalism	3
	Event best practices	4
	Venue professionalism	3
	Venue best practices	4
	Cash management	5
	Accounting and recordkeeping	3
	Inventory control	3
	Co-branding opportunities	1
	Acquiring events	5
	Acquiring venues	3
3.	Events	
	Booking events	2
	Handy resources for finding events	1
	Choosing events	2
	The application process	1



	Event profile	1
	Securing a location within the event	1
	Sharing the event with other operators	1
	Tickets at events	1
	T.N. Inventory sheets	2
	Event sales log	1
	Reporting sales	1
	Event setup	4
	Setup procedures	2
	Master checklist	2
	Approved counter top display	2
	Closing for the night	2
	Cleaning up	2
	Taking care of your equipment	2
	Preventing theft	2
4.	Other Important Stuff	
	Extra equipment	3
	EZ up tents	1
	Holiday sales and gift packs	3
5.	Transfer/Resale	
	Statement of franchise intent	7
	Non-exclusive brokerage agreement	3
	Confidentiality agreement	2
	Mutual waiver and release	5
Total Number of Pages:		148



TOTALLY NUTZ
BRAND STANDARDS MANUAL
TABLE OF CONTENTS

Welcome to the Totally Nutz Franchise Family!

Regulatory Considerations

Confidentiality Statement

The Nutz Support Team and Business Entities

Our Story

Totally Nutz Vision

Our Brand

Logo

Use of Logo

Family as Employees?

Getting the Help you Need

Almonds - the Health Benefits and Nutritional Information

Pecans - the Health Benefits and Nutritional Information

Almonds - Cost Factor

Pecans - Cost Factor

Nuts - Where to Get Them

Totally Nutz Pre-mix Story: ‘The Secret Sauce’

Cinnamon Almond Recipe

Cinnamon Pecan Recipe

Our Roasters

Supplies Checklist: Events

Supplies Checklist: Venues

The Cart:

- Electrical Requirements
- Schematics

Health Department

Insurance Requirements

Getting a Business License



The Uniform:

- Care and Handling

Event Professionalism

Event Best Practices

Venue Professionalism

Venue Best Practices

Displaying Merchandise

Cash Management and Accounting

Record Keeping

Inventory Control

Co-Branding Opportunities

Acquiring Events

Acquiring Venues

Acquiring a Kiosk Location

Setting Up: Event

Setting Up: Venue

Daily Operating Procedures

Closing Procedures

Cleaning Instructions

Taking Care of Your Equipment

Preventing Theft

Who You Gonna Call?

EZ Up Quote

Extra Equipment

Holiday Sales

Gift Packs



EXHIBIT G
STATE ADDENDA
AND AGREEMENT RIDERS



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**ADDENDUM TO FRANCHISE AGREEMENT, SUPPLEMENTAL AGREEMENTS,
AND FRANCHISE DISCLOSURE DOCUMENT FOR CERTAIN STATES FOR
TOTALLY NUTZ FRANCHISE, LLC**

The following modifications are made to the Totally Nutz Franchise, LLC (“**Franchisor**,” “us,” “we,” or “our”) Franchise Disclosure Document (“**FDD**”) given to franchisee (“**Franchisee**,” “you,” or “your”) and may supersede, to the extent then required by valid applicable state law, certain portions of the Franchise Agreement between you and us dated _____, 20__ (“**Franchise Agreement**”). When the term “**Franchisor’s Choice of Law State**” is used, it means Utah. When the term “**Supplemental Agreements**” is used, it means: none.

Certain states have laws governing the franchise relationship and franchise documents. Certain states require modifications to the FDD, Franchise Agreement and other documents related to the sale of a franchise. This State Specific Addendum (“**State Addendum**”) will modify these agreements to comply with the state’s laws. The terms of this State Addendum will only apply if you meet the requirements of the applicable state independently of your signing of this State Addendum. The terms of this State Addendum will override any inconsistent provision of the FDD, Franchise Agreement or any Supplemental Documents. This State Addendum only applies to the following states: California, Hawaii, Illinois, Iowa, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Ohio, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

If your state requires these modifications, you will sign this State Addendum along with the Franchise Agreement and any Supplemental Agreements.

CALIFORNIA

The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the Franchise be delivered together with the FDD.

California Corporations Code Section 31125 requires us to give to you a FDD approved by the Department of Financial Protection and Innovation before we ask you to consider a material modification of your Franchise Agreement.

The Franchise Agreement contains provisions requiring binding arbitration with the costs being awarded to the prevailing party. The arbitration will occur in Utah. The Franchise Agreement contains a mediation provision. Mediation will occur in Utah with the parties each bearing their own costs of mediation and sharing equally the filing fee and mediator’s fees. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of the Franchise Agreement restricting venue to a forum outside the State of California.

The Franchise Agreement requires the application of the law of the State of Utah. This provision may not be enforceable under California law.

Neither Franchisor nor any other person listed in Item 2 of the FDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the



Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination, transfer, or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the California Franchise Investment Law, the California Franchise Investment Law will control.

The Franchise Agreement provides for termination upon bankruptcy. Such provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. SEC. 101 et seq.).

The Franchise Agreement contains a covenant not to compete provision which extends beyond the termination of the Franchise. Such provisions may not be enforceable under California law.

The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable. The provision for liquidated damages contained in the Franchise Agreement may not be enforceable.

You must sign a general release of claims if you renew or transfer your Franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516).

Our website has not been reviewed or approved by the California Department of Financial Protection and Innovation. Any complaints concerning the content of this website may be directed to the California Department of Financial Protection and Innovation at www.dfpi.ca.gov.

Item 1 of the FDD is revised to include the following under Industry-Specific Laws:

Because you collect information from customers, it may contain personal information of individuals which is protected by law. You are also responsible for complying with all applicable current and future federal, state and local laws, regulations and requirements, including the California Consumer Privacy Act (as applicable), pertaining to the collection, protection, use, sale, disposal and maintenance of such personal information. Personal information includes information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, potential consumer, individual or household, as such term may be further defined or amended by applicable federal, state, and local laws, regulations and requirements. You may also be required to comply with opt-in requirements on your website.

Item 6 of the FDD is amended to state the highest interest rate allowed by law in California is 10% annually.

Sections 16.16.1 through 16.16.3 of the Franchise Agreement and the Franchise Disclosure Questionnaire in Exhibit E to the FDD are deleted. California Corporations Code Sections 31201 and 31512 prohibit statements and documents that serve to disclaim a franchisor's representations or which have the effect of requiring a franchisee to waive its rights under the Franchise Investment Law or that require a franchisee to acknowledge information that is not required to be disclosed in the FDD or is duplicative of disclosures already made elsewhere.



The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the commissioner.

HAWAII

The following is added to the Cover Page:

THIS FRANCHISE WILL BE/HAS BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED IN THIS FRANCHISE DISCLOSURE DOCUMENT IS TRUE, COMPLETE AND NOT MISLEADING.

THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO YOU OR SUBFRANCHISOR AT LEAST SEVEN (7) DAYS PRIOR TO THE EXECUTION BY YOU OR SUBFRANCHISOR OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN (7) DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY YOU, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH US AND YOU.

Registered agent in the state authorized to receive service of process:

Commissioner of Securities of the State of Hawaii
Department of Commerce and Consumer Affairs
Business Registration Division
335 Merchant Street, Room 203
Honolulu, Hawaii 96813

The status of the Franchisor's franchise registrations in the states which require registration is as follows:



041621
56958474;5
[62878045;3](#)

~~G~~-033122 G-3

1. States in which this proposed registration is effective are listed on the third page of the FDD on the page entitled, "State Effective Dates".

2. States which have refused, by order or otherwise, to register these Franchises are:

None

3. States which have revoked or suspended the right to offer the Franchises are:

None

4. States in which the proposed registration of these Franchises has been withdrawn are:

None

ILLINOIS

Sections 4 and 41 and Rule 608 of the Illinois Franchise Disclosure Act states that court litigation must take place before Illinois federal or state courts and all dispute resolution arising from the terms of this Agreement or the relationship of the parties and conducted through arbitration or litigation shall be subject to Illinois law. The FDD, Franchise Agreement and Supplemental Agreements are amended accordingly.

The governing law or choice of law clause described in the FDD and contained in the Franchise Agreement and Supplemental Agreements is not enforceable under Illinois law. This governing law clause shall not be construed to negate the application of Illinois law in all situations to which it is applicable.

Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void." The Franchise Agreement is amended accordingly. To the extent that the Franchise Agreement would otherwise violate Illinois law, such Agreement is amended by providing that all litigation by or between you and us, arising directly or indirectly from the Franchise relationship, will be commenced and maintained in the state courts of Illinois or, at our election, the United States District Court for Illinois, with the specific venue in either court system determined by appropriate jurisdiction and venue requirements, and Illinois law will pertain to any claims arising under the Illinois Franchise Disclosure Act.

Item 17.v, Choice of Forum, of the FDD is revised to include the following: "provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act."

Item 17.w, Choice of Law, of the FDD is revised to include the following: "provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act".

The termination and non-renewal provisions in the Franchise Agreement and the FDD may not be enforceable under Sections 19 and 20 of the Illinois Franchise Disclosure Act.



Under Section 705/27 of the Illinois Franchise Disclosure Act, no action for liability under the Illinois Franchise Disclosure Act can be maintained unless brought before the expiration of three (3) years after the act or transaction constituting the violation upon which it is based, the expiration of one (1) year after you become aware of facts or circumstances reasonably indicating that you may have a claim for relief in respect to conduct governed by the Act, or 90 days after delivery to you of a written notice disclosing the violation, whichever shall first expire. To the extent that the Franchise Agreement is inconsistent with the Illinois Franchise Disclosure Act, Illinois law will control and supersede any inconsistent provision(s).

Fee Deferral

Payment of the Initial Franchise Fee is deferred until all of our initial obligations under the Franchise Agreement or Supplemental Agreements have been fulfilled by us and you have commenced doing business pursuant to the Franchise Agreement. This requirement has been imposed by the Illinois Attorney General's Office based on our financial condition.

INDIANA

Item 8 of the FDD is amended to add the following:

Under Indiana Code Section 23-2-2.7-1(4), we will not accept any rebates from any person with whom you do business or associate in relation to transactions between you and the other person, other than for compensation for services rendered by us, unless the rebate is properly accounted for and submitted to you.

Item 17 of the FDD is amended to add the following:

Indiana Code 23-2-2.7-1(7) makes it unlawful for us to unilaterally terminate your Franchise Agreement unless there is a material violation of the Franchise Agreement and termination is not in bad faith.

Indiana Code 23-2-2.7-1(5) prohibits us to require you to agree to a prospective general release of claims subject to the Indiana Deceptive Franchise Practices Act.

The "Summary" column in Item 17.r. of the FDD is deleted and the following is inserted in its place:

No competing business for 1 (one) year from the Totally Nutz Business location or one of Franchisee's Protected Event locations.

The "Summary" column in Item 17.t. of the FDD is deleted and the following is inserted in its place:

Notwithstanding anything to the contrary in this provision, you do not waive any right under the Indiana Statutes with regard to prior representations made by us.

The "Summary" column in Item 17.v. of the FDD is deleted and the following is inserted in its place:

Litigation regarding Franchise Agreement in Indiana; other litigation in Franchisor's Choice of Law State. This language has been included in this Franchise Disclosure Document as a condition to registration. The Franchisor and the Franchisee do not agree with the above



language and believe that each of the provisions of the Franchise Agreement, including all venue provisions, is fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement and all other documents signed by them, including but not limited to, all venue, choice of law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

The “Summary” column in Item 17.w. of the FDD is deleted and the following is inserted in its place:

Indiana law applies to disputes covered by Indiana franchise laws; otherwise Franchisor’s Choice of Law State law applies.

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of the FDD, the Franchise Agreement, or Franchisor’s Choice of Law State law, if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the Franchise without good cause or in bad faith, good cause being defined under law as including any material breach of the Franchise Agreement, will supersede the provisions of the Franchise Agreement relating to termination for cause, to the extent those provisions may be inconsistent with such prohibition.
3. Any provision in the Franchise Agreement that would require you to prospectively assent to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by the Indiana Deceptive Franchise Practices Law is void to the extent that such provision violates such law.
4. The covenant not to compete that applies after the expiration or termination of the Franchise Agreement for any reason is hereby modified to the extent necessary to comply with Indiana Code 23-2-2.7-1 (9).
5. The following provision will be added to the Franchise Agreement:

No Limitation on Litigation. Despite the foregoing provisions of this Agreement, any provision in the Agreement which limits in any manner whatsoever litigation brought for breach of the Agreement will be void to the extent that any such contractual provision violates the Indiana Deceptive Franchise Practices Law.

IOWA

Any provision in the Franchise Agreement or Compliance Questionnaire which would require you to prospectively assent to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by the Iowa Business Opportunity Promotions Law (Iowa Code Ch. 551A) is void to the extent that such provision violates such law.

The following language will be added to the Franchise Agreement:



NOTICE OF CANCELLATION

_____ (enter date of transaction)

You may cancel this transaction, without penalty or obligation, within three (3) business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence or business address, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Totally Nutz Franchise, LLC , 69 E. 2580 S., St. George, Utah 84790, or send a fax to Totally Nutz Franchise, LLC at 435-986-0222 not later than midnight of the third business day after the Effective Date.

I hereby cancel this transaction.

Franchisee: _____

By: _____

Print Name: _____

Its: _____

Date: _____

MARYLAND

AMENDMENTS TO FRANCHISE DISCLOSURE DOCUMENT AND FRANCHISE AGREEMENTS

Item 17 of the FDD and the Franchise Agreement are amended to state: "The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law."

Representations in the Franchise Agreement are not intended to, nor shall they act as, a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.



Item 17 of the FDD and sections of the Franchise Agreement are amended to state that you may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the Franchise.

The Franchise Agreement and Franchise Disclosure Questionnaire are amended to state that all representations requiring prospective franchisees to assent to a release, estoppel, or waiver of liability are not intended to, nor shall they act as, a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C.A Sec. 101 et seq.).

Item 11 is revised to state “Maryland regulations require that a franchisee be able to obtain an accounting of the advertising fund. We will provide franchisee with an annual accounting for the Brand Building Fund that shows how the Brand Building Fund proceeds have been spent for the previous year upon written request.”

Franchise Fee Deferral:

Item 5 of the FDD and the Franchise Agreement are hereby amended to state: Based upon the Franchisor’s financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the Franchise Agreement.

MICHIGAN

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

- (a) A prohibition on your right to join an association of franchisees.
- (b) A requirement that you assent to a release, assignment, novation, waiver, or estoppel which deprives you of rights and protections provided in this act. This shall not preclude you, after entering into a Franchise Agreement, from settling any and all claims.
- (c) A provision that permits us to terminate a Franchise prior to the expiration of its term except for good cause. Good cause shall include your failure to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits us to refuse to renew your Franchise without fairly compensating you by repurchase or other means for the fair market value at the time of expiration of your inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to



us and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the Franchise business are not subject to compensation. This subsection applies only if: (i) the term of the Franchise is less than five (5) years; and (ii) you are prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the Franchise or you do not receive at least six (6) months' advance notice of our intent not to renew the Franchise.

(e) A provision that permits us to refuse to renew a Franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside the State of Michigan. This shall not preclude you from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

(g) A provision which permits us to refuse to permit a transfer of ownership of a Franchise, except for good cause. This subdivision does not prevent us from exercising a right of first refusal to purchase the Franchise. Good cause shall include, but is not limited to:

(i) the failure of the proposed transferee to meet our then-current reasonable qualifications or standards.

(ii) the fact that the proposed transferee is a competitor of us or our subfranchisor.

(iii) the unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) your or proposed transferee's failure to pay any sums owing to us or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

(h) A provision that requires you to resell to us items that are not uniquely identified with us. This subdivision does not prohibit a provision that grants to us a right of first refusal to purchase the assets of a Franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants us the right to acquire the assets of a Franchise for the market or appraised value of such assets if you have breached the lawful provisions of the Franchise Agreement and have failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits us to directly or indirectly convey, assign, or otherwise transfer our obligations to fulfill contractual obligations to you unless provision has been made for providing the required contractual services.

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.

Any questions regarding this notice should be directed to:



State of Michigan
Department of Attorney General
Consumer Protection Division
Attn: Franchise
670 Law Building
525 W. Ottawa Street
Lansing, Michigan 48913
Telephone Number: (517) 373-7117

MINNESOTA

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Minnesota:

1. Any provision in the Franchise Agreement which would require you to assent to a release, assignment, novation or waiver that would relieve any person from liability imposed by Minnesota Statutes, Sections 80C.01 to 80C.22 will be void to the extent that such contractual provision violates such law.
2. Minnesota Statute Section 80C.21 and Minnesota Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside of Minnesota. In addition, nothing in the FDD or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of Minnesota.
3. Minn. Rule Part 2860.4400J prohibits a franchisee from waiving his rights to a jury trial or waiving his rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or consenting to liquidated damages, termination penalties or judgment notes. Any provision in the Franchise Agreement which would require you to waive your rights to any procedure, forum or remedies provided for by the laws of the State of Minnesota is deleted from any agreement relating to Franchises offered and sold in the State of Minnesota; provided, however, that this paragraph will not affect the obligation in the Franchise Agreement relating to arbitration.
4. With respect to Franchises governed by Minnesota law, we will comply with Minnesota Statute Section 80C.14, Subds. 3, 4 and 5, which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement; and that consent to the transfer of the Franchise will not be unreasonably withheld.
5. Item 13 of the FDD is hereby amended to state that we will protect your rights under the Franchise Agreement to use the Marks, or indemnify you from any loss, costs, or expenses arising out of any third party claim, suit or demand regarding your use of the Marks, if your use of the Marks is in compliance with the provisions of the Franchise Agreement and our System standards.
6. Minnesota Rule 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release. As a result, the FDD and the Franchise Agreement, which require you to sign a



general release prior to renewing or transferring your Franchise, are hereby deleted from the Franchise Agreement, to the extent required by Minnesota law.

7. The following language will appear as a new paragraph of the Franchise Agreement:

No Abrogation. Pursuant to Minnesota Statutes, Section 80C.21, nothing in the dispute resolution section of this Agreement will in any way abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80.C.

8. Minnesota Statute Section 80C.17 states that no action for a violation of Minnesota Statutes, Sections 80C.01 to 80C.22 may be commenced more than three (3) years after the cause of action accrues. To the extent that the Franchise Agreement conflicts with Minnesota law, Minnesota law will prevail.
9. Item 6 of the FDD and Section 4.5 of the Franchise Agreement is hereby amended to limit the Insufficient Funds Charge to \$30 per occurrence pursuant to Minnesota Statute 604.113.

NEW YORK

1. The following information is added to the cover page of the Franchise Disclosure Document:

THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade



regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the “Summary” sections of Item 17(c), titled **“Requirements for franchisee to renew or extend,”** and Item 17(m), entitled **“Conditions for franchisor approval of transfer”**:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”:

You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the “Summary” sections of Item 17(v), titled **“Choice of forum”**, and Item 17(w), titled **“Choice of law”**:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

NORTH DAKOTA

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring that you sign a general release, estoppel or waiver as a condition of renewal and/or assignment may not be enforceable as they relate to releases of the North Dakota Franchise Investment Law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring resolution of disputes to be outside North Dakota may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements relating to choice of law may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to liquidated damages and/or termination penalties may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.



Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of trial by jury may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of exemplary and punitive damages may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Item 17(r) of the FDD and Section 14 of the Franchise Agreement disclose the existence of certain covenants restricting competition to which Franchisee must agree. The Commissioner has held that covenants restricting competition contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. The FDD and the Franchise Agreement are amended accordingly to the extent required by law.

OHIO

The following language will be added to the front page of the Franchise Agreement:

You, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date you sign this agreement. See the attached notice of cancellation for an explanation of this right.

Initials _____ Date _____



NOTICE OF CANCELLATION

_____ (enter date of transaction)

You may cancel this transaction, without penalty or obligation, within five (5) business days from the above date. If you cancel, any payments made by you under the agreement, and any negotiable instrument executed by you will be returned within ten (10) business days following the seller’s receipt of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your business address all goods delivered to you under this agreement; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of them without further obligation. If you fail to make the goods available to the seller, or if you agree to return them to the seller and fail to do so, then you remain liable for the performance of all obligations under this agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Totally Nutz Franchise, LLC , 69 E. 2580 S., St. George, Utah 84790, or send a fax to Totally Nutz Franchise, LLC at 435-986-0222 not later than midnight of the fifth business day after the Effective Date.

I hereby cancel this transaction.

Franchisee:

Date: _____

By: _____

Print Name: _____

Its: _____

RHODE ISLAND

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.” The FDD, the Franchise Agreement, and the Supplemental Agreements are amended accordingly to the extent required by law.

The above language has been included in this FDD as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement and the Supplemental Agreements, including all choice of law provisions, are fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement, the Supplemental Agreements, and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

SOUTH DAKOTA

Fee Deferral



Item 5 and 7 of the Franchise Disclosure Document and the Franchise Agreement are hereby amended to state that the Initial Franchise Fee will be deferred until the Franchisor has completed all of its pre-opening obligations and the franchise is open for business. The following language will be added to the franchise agreement:

**TOTALLY NUTZ FRANCHISE, LLC
ACKNOWLEDGEMENT OF DEFERRAL OF INITIAL FRANCHISE FEE**

_____ (“Franchisee”) entered into a Franchise Agreement with Totally Nutz Franchise, LLC (“Franchisor”) on _____, 20__ for the operation of a Totally Nutz franchise in South Dakota. As a condition for Franchisor’s registration to offer franchises for sale in South Dakota, the South Dakota Department of Labor and Regulation, based on Franchisor’s financial condition, required Franchisor to defer the initial franchise fee for the purchase of such franchise until Franchisor has fulfilled all of its initial obligations under the Franchise Agreement and Franchisee has commenced doing business. This is an acknowledgement that such initial franchise fee has been deferred by Franchisor until such time.

FRANCHISOR:

TOTALLY NUTZ FRANCHISE, LLC
an Utah limited liability company

Date: _____

By: _____

FRANCHISEE:

Date: _____

By: _____

VIRGINIA

Item 17(h). The following is added to Item 17(h):

“Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement or Supplemental Agreements involve the use of undue influence by the Franchisor to induce a franchisee to surrender any rights given to franchisee under the Franchise, that provision may not be enforceable.”

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the FDD for Totally Nutz Franchise, LLC for use in the Commonwealth of Virginia shall be amended as follows:



Additional Disclosure. The following statements are added to Item 8 and Item 17.h.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

Franchise Fee Deferral

The Virginia State Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

Items 5 and 7 of the Franchise Disclosure and the Franchise Agreement are hereby amended to state that the Initial Franchise Fee will be deferred until franchisee has (a) received all initial training that it is entitled to under the franchise agreement or offering circular, and (b) is open for business.

WASHINGTON ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT, FRANCHISE AGREEMENT, FRANCHISE DISCLOSURE QUESTIONNAIRE, AND RELATED AGREEMENTS

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement and Supplemental Agreements in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site shall be either in the state of Washington or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial



may not be enforceable. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

Franchise Fee Deferral

The State of Washington has imposed a financial condition under which the initial franchise fees due will be deferred until the franchisor has fulfilled its initial pre-opening obligations under the Franchise Agreement and the franchise is open for business. Because the franchisor has material pre-opening obligations with respect to each franchised business, the State of Washington will require that the franchise fees be released proportionally with respect to each franchised business.

WISCONSIN

The Wisconsin Fair Dealership Law, Chapter 135 of the Wisconsin Statutes supersedes any provision of the Franchise Agreement if such provision is in conflict with that law. The Franchise Disclosure Document, the Franchise Agreement and the Supplemental Agreements are amended accordingly.



APPLICABLE ADDENDA

If any one of the preceding Addenda for specific states (“Addenda”) is checked as an “Applicable Addenda” below, then that Addenda shall be incorporated into the Franchise Disclosure Document, Franchise Agreement and any other specified agreement(s) entered into by us and the undersigned Franchisee. To the extent any terms of an Applicable Addenda conflict with the terms of the Franchise Disclosure Document, Franchise Agreement and other specified agreement(s), the terms of the Applicable Addenda shall supersede the terms of the Franchise Agreement.

- | | | |
|-------------------------------------|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> California | <input type="checkbox"/> Michigan | <input type="checkbox"/> Rhode Island |
| <input type="checkbox"/> Hawaii | <input type="checkbox"/> Minnesota | <input type="checkbox"/> South Dakota |
| <input type="checkbox"/> Illinois | <input type="checkbox"/> New York | <input type="checkbox"/> Virginia |
| <input type="checkbox"/> Iowa | <input type="checkbox"/> North Dakota | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Indiana | <input type="checkbox"/> Ohio | <input type="checkbox"/> Wisconsin |
| <input type="checkbox"/> Maryland | | |

Dated: _____, 20__

FRANCHISOR:

TOTALLY NUTZ FRANCHISE, LLC

By: _____

Title: _____

FRANCHISEE:

By: _____

Title: _____

REV. 031516



EXHIBIT H

CONTRACTS FOR USE WITH THE TOTALLY NUTZ FRANCHISE

The following contracts contained in Exhibit H are contracts that Franchisee is required to utilize or execute after signing the Franchise Agreement in the operation of the Totally Nutz Business. The following are the forms of contracts that Totally Nutz Franchise, LLC uses as of the Issuance Date of this Franchise Disclosure Document. If they are marked "Sample," they are subject to change at any time.



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EXHIBIT H-1

TOTALLY NUTZ FRANCHISE

SAMPLE GENERAL RELEASE AGREEMENT

WAIVER AND RELEASE OF CLAIMS

This Waiver and Release of Claims ("Release") is made as of _____, 20__ by _____, a(n) _____ ("Franchisee"), and each individual holding an ownership interest in Franchisee (collectively with Franchisee, "Releasor") in favor of Totally Nutz Franchise, LLC , a Utah limited liability company ("Franchisor," and together with Releasor, the "Parties").

WHEREAS, Franchisor and Franchisee have entered into a Franchise Agreement ("Agreement") pursuant to which Franchisee was granted the right to own and operate a Totally Nutz business;

WHEREAS, [Franchisee has notified Franchisor of its desire to transfer the Agreement and all rights related thereto, or an ownership interest in Franchisee, to a transferee/enter into a successor franchise agreement/amend the Agreement] or [the Agreement is being terminated/indicate other reason for the requirement of this waiver and release], and Franchisor has consented to such [transfer/successor franchise agreement/amendment/termination/other reason]; and

WHEREAS, as a condition to Franchisor's consent to [transfer the Agreement/enter into a successor franchise agreement/amend the Agreement/terminate the Agreement/other reason], Releasor has agreed to execute this Release upon the terms and conditions stated below.

NOW, THEREFORE, in consideration of Franchisor's consent, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, Releasor hereby agrees as follows:

1. **Representations and Warranties.** Releasor represents and warrants that it is duly authorized to enter into this Release and to perform the terms and obligations herein contained, and has not assigned, transferred, or conveyed, either voluntarily or by operation of law, any of its rights or claims against Franchisor or any of the rights, claims, or obligations being terminated and released hereunder. Each individual executing this Release on behalf of Franchisee represents and warrants that he/she is duly authorized to enter into and execute this Release on behalf of Franchisee. Releasor further represents and warrants that all individuals that currently hold a direct or indirect ownership interest in Franchisee are signatories to this Release.

2. **Release.** Releasor and its subsidiaries, affiliates, parents, divisions, successors and assigns, and all persons or firms claiming by, through, under, or on behalf of any or all of them, hereby release, acquit, and forever discharge Franchisor, any and all of its affiliates, parents, subsidiaries, or related companies, divisions, and partnerships, and its and their past and present officers, directors, agents, partners, shareholders, employees, representatives, successors and assigns, and attorneys, and the spouses of such individuals (collectively, the "Released Parties"), from any and all claims, liabilities, damages, expenses, actions, or causes of action which Releasor may now have or has ever had, whether known or unknown, past or present, absolute or contingent, suspected or unsuspected, of any nature whatsoever, including without limiting the generality of the foregoing, all claims, liabilities, damages,



expenses, actions, or causes of action directly or indirectly arising out of or relating to the execution and performance of the Agreement and the offer and sale of the franchise related thereto, except to the extent such liabilities are payable by the applicable indemnified party in connection with a third party claim.

3. Nondisparagement. Releasor expressly covenants and agrees not to make any false representation of facts, or to defame, disparage, discredit, or deprecate any of the Released Parties or otherwise communicate with any person or entity in a manner intending to damage any of the Released Parties, their business, or their reputation.

4. Confidentiality. Releasor agrees to hold in strictest confidence and not disclose, publish, or use the existence of, or any details relating to, this Agreement to any third party without Franchisor's express written consent, except as required by law.

5. Miscellaneous.

a. Releasor agrees that it has read and fully understands this Release and that the opportunity has been afforded to Releasor to discuss the terms and contents of said Release with legal counsel and/or that such a discussion with legal counsel has occurred.

b. This Release shall be construed and governed by the laws of the State of Utah.

c. Each individual and entity that comprises Releasor shall be jointly and severally liable for the obligations of Releasor.

d. In the event that it shall be necessary for any Party to institute legal action to enforce or for the breach of any of the terms and conditions or provisions of this Release, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.

e. All of the provisions of this Release shall be binding upon and inure to the benefit of the Parties and their current and future respective directors, officers, partners, attorneys, agents, employees, shareholders, and the spouses of such individuals, successors, affiliates, and assigns. No other party shall be a third-party beneficiary to this Release.

f. This Release constitutes the entire agreement and, as such, supersedes all prior oral and written agreements or understandings between and among the Parties regarding the subject matter hereof. This Release may not be modified except in a writing signed by all of the Parties. This Release may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

g. If one or more of the provisions of this Release shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Release, but this Release shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

h. Releasor agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as any Released Party may reasonably require to consummate, evidence, or confirm the Release contained herein in the matter contemplated hereby.



(Signatures on following page)



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IN WITNESS WHEREOF, Releasor has executed this Release as of the date first written above.

FRANCHISEE:

_____, a

By: _____

Printed Name: _____

Title: _____

FRANCHISEE'S OWNERS:

Date _____

Signature

Typed or Printed Name

Signature

Typed or Printed Name

Rev. 061518



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62878045;3

EXHIBIT H-2

TOTALLY NUTZ FRANCHISE

SAMPLE SYSTEM PROTECTION AGREEMENT

This System Protection Agreement (“Agreement”) is entered into by the undersigned (“you” or “your”) in favor of Totally Nutz Franchise, LLC, a Utah limited liability company, and its successors and assigns (“us”, “we” or “our”), upon the terms and conditions set forth in this Agreement.

1. Definitions. For purposes of this Agreement, the following terms have the meanings given to them below:

“*Competitive Business*” means any business that: (i) sells or offers to sell products the same as or similar to the type of products sold by you in and/or from the Totally Nutz business (including, but not limited to, the products we authorize); or (ii) provides or offers to provide services the same as or similar to the type of services sold by you in and/or from the Totally Nutz business (including, but not limited to, the services we authorize), but excludes a Totally Nutz business operating pursuant to a franchise agreement with us.

“*Copyrights*” means all works and materials for which we or our affiliate have secured common law or registered copyright protection and that we allow franchisees to use, sell, or display in connection with the marketing and/or operation of a Totally Nutz business or the solicitation or offer of a Totally Nutz franchise, whether now in existence or created in the future.

“*Franchisee*” means the Totally Nutz franchisee for which you are a manager or officer.

“*Intellectual Property*” means, collectively or individually, our Marks, Copyrights, Know-how, and System.

“*Know-how*” means all of our trade secrets and other proprietary information relating to the development, construction, marketing, and/or operation of a Totally Nutz business, including, but not limited to, methods, techniques, specifications, proprietary practices and procedures, policies, marketing strategies, and information comprising the System and the Manual.

“*Manual*” means our confidential operations manual for the operation of a Totally Nutz business, which may be periodically modified by us.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Totally Nutz business, including “TOTALLY NUTZ,” and any other trademarks, service marks, or trade names that we designate for use by a Totally Nutz business. The term “Marks” also includes any distinctive trade dress used to identify a Totally Nutz business, whether now in existence or hereafter created.

“*Prohibited Activities*” means any or all of the following: (i) owning, operating, or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent, or in any similar capacity) in a Competitive Business (other than owning an interest of five percent (5%) or less in a publicly-traded company that is a Competitive Business); (ii) diverting or attempting to divert any business from us (or one of our affiliates or franchisees); and/or (iii)



inducing or attempting to induce any customer of ours (or of one of our affiliates or franchisees) to transfer their business to you or to any other person that is not then a franchisee of ours.

“*Restricted Period*” means the 2-year period after you cease to be a manager or officer of Franchisee’s Totally Nutz business; provided, however, that if a court of competent jurisdiction determines that this period of time is too long to be enforceable, then the “*Restricted Period*” means the nine (9) month period after you cease to be a manager or officer of Franchisee’s Totally Nutz business.

“*Restricted Territory*” means the geographic area within: (i) a 25-mile radius from Franchisee’s Totally Nutz business (and including the premises of the approved location of Franchisee) or of any Franchisee-owned, franchised or company-owned Totally Nutz Business; and (ii) a 25-mile radius of any location or site that Franchisee held a mobile based event during the term of the Franchise Agreement. If a court of competent jurisdiction determines that the foregoing Restricted Territory is too broad to be enforceable, then the “*Restricted Territory*” shall be reduced by the court to the largest permissible radius determined by such court.

“*System*” means our system for the establishment, development, operation, and management of a Totally Nutz business, including Know-how, proprietary programs and products, Manual, and operating system.

2. Background. You are a manager or officer of Franchisee. As a result of this relationship, you may gain knowledge of our System. You understand that protecting the Intellectual Property and our System are vital to our success and that of our franchisees and that you could seriously jeopardize our entire System if you were to unfairly compete with us. In order to avoid such damage, you agree to comply with the terms of this Agreement.

3. Know-How and Intellectual Property. You agree: (i) you will not use the Know-how in any business or capacity other than the Totally Nutz business operated by Franchisee; (ii) you will maintain the confidentiality of the Know-how at all times; (iii) you will not make unauthorized copies of documents containing any Know-how; (iv) you will take such reasonable steps as we may ask of you from time to time to prevent unauthorized use or disclosure of the Know-how; and (v) you will stop using the Know-how immediately if you are no longer a manager or officer of Franchisee’s Totally Nutz business. You further agree that you will not use all or part of the Intellectual Property or all or part of the System for any purpose other than the performance of your duties for Franchisee and within the scope of your employment or other engagement with Franchisee. These restrictions on Know-how, Intellectual Property and the System shall not apply to any information which is information publicly known or becomes lawfully known in the public domain other than through a breach of this Agreement or is required or compelled by law to be disclosed, provided that you will give reasonable notice to us to allow us to seek protective or other court orders.

4. Unfair Competition During Relationship. You agree not to unfairly compete with us at any time while you are a manager or officer of Franchisee’s Totally Nutz business by engaging in any Prohibited Activities.

5. Unfair Competition After Relationship. You agree not to unfairly compete with us during the Restricted Period by engaging in any Prohibited Activities; provided, however, that the Prohibited Activity relating to having an interest in a Competitive Business will only apply with respect to a Competitive Business that is located within or provides competitive goods or services to customers who are located within the Restricted Territory. If you engage in any Prohibited Activities during the



Restricted Period, then you agree that your Restricted Period will be extended by the period of time during which you were engaging in the Prohibited Activity.

6. Immediate Family Members. You acknowledge that you could circumvent the purpose of this Agreement by disclosing Know-how to an immediate family member (i.e., spouse, parent, sibling, child, grandparent or grandchild). You also acknowledge that it would be difficult for us to prove whether you disclosed the Know-how to family members. Therefore, you agree that you will be presumed to have violated the terms of this Agreement if any member of your immediate family: (i) engages in any Prohibited Activities during any period of time during which you are prohibited from engaging in the Prohibited Activities; or (ii) uses or discloses the Know-how. However, you may rebut this presumption by furnishing evidence conclusively showing that you did not disclose the Know-how to the family member.

7. Covenants Reasonable. You acknowledge and agree that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) you have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE, OR OTHERWISE UNENFORCEABLE.**

8. Breach. You agree that failure to comply with the terms of this Agreement will cause substantial and irreparable damage to us and/or other Totally Nutz franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of the terms of this Agreement will entitle us to injunctive relief. You agree that we may apply for such injunctive relief without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and the sole remedy of yours in the event of the entry of such injunction will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance, and recovery of monetary damages. Any claim, defense, or cause of action that you may have against us, our owners or our affiliates, or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

9. Miscellaneous.

a. If we pursue legal remedies against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorneys' fees and costs in doing so.

b. This Agreement will be governed by, construed, and enforced under the laws of Utah, and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.

c. Each section of this Agreement, including each subsection and portion thereof, is severable. If any section, subsection, or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection, or portion; and each party to this Agreement agrees that



the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms reasonable in scope, duration, and geographic area.

d. You and we both believe that the covenants in this Agreement are reasonable in terms of scope, duration, and geographic area. However, we may at any time unilaterally modify the terms of this Agreement upon written notice to you by limiting the scope of the Prohibited Activities, narrowing the definition of a Competitive Business, shortening the duration of the Restricted Period, reducing the geographic scope of the Restricted Territory, and/or reducing the scope of any other covenant imposed upon you under this Agreement to ensure that the terms and covenants in this Agreement are enforceable under applicable law.

EXECUTED on the date stated below.

Date _____

Signature

Typed or Printed Name



EXHIBIT H-3

TOTALLY NUTZ FRANCHISE

SAMPLE CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is entered into by the undersigned (“you”) in favor of Totally Nutz Franchise, LLC, a limited liability company, and its successors and assigns (“us”), upon the terms and conditions set forth in this Agreement.

1. Definitions. For purposes of this Agreement, the following terms have the meanings given to them below:

“*Copyrights*” means all works and materials for which we or our affiliate(s) have secured common law or registered copyright protection and that we allow Totally Nutz franchisees to use, sell, or display in connection with the marketing and/or operation of a Totally Nutz Business, whether now in existence or created in the future.

“*Franchisee*” means the Totally Nutz franchisee for which you are an employee, independent contractor, agent, representative, or supplier.

“*Intellectual Property*” means, collectively or individually, our Marks, Copyrights, Know-how, Manual, and System.

“*Know-how*” means all of our trade secrets and other proprietary information relating to the development, construction, marketing, and/or operation of a Totally Nutz Business, including, but not limited to, methods, techniques, specifications, proprietary practices and procedures, policies, marketing strategies, and information comprising the System and the Manual.

“*Manual*” means our confidential operations manual for the operation of a Totally Nutz Business.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Totally Nutz Business, including “TOTALLY NUTZ” and any other trademarks, service marks, or trade names that we designate for use by a Totally Nutz Business. The term “Marks” also includes any distinctive trade dress used to identify a Totally Nutz Business, whether now in existence or hereafter created.

“*System*” means our system for the establishment, development, operation, and management of a Totally Nutz Business, including Know-how, proprietary programs and products, confidential operations manuals, and operating system.

“*Totally Nutz Business*” means a business that sells fresh roasted cinnamon glazed nuts at various venues, events, and mall locations and other related services and products using our intellectual property and other related products and services using our Intellectual Property.

2. Background. You are an employee, independent contractor, agent, representative, or supplier of Franchisee. Because of this relationship, you may gain knowledge of our Intellectual Property. You understand that protecting the Intellectual Property is vital to our success and that of our



franchisees, and that you could seriously jeopardize our entire Franchise System if you were to use such Intellectual Property in any way other than as described in this Agreement. In order to avoid such damage, you agree to comply with this Agreement.

3. Know-How and Intellectual Property: Nondisclosure and Ownership. You agree: (i) you will not use the Intellectual Property in any business or capacity other than for the benefit of the Totally Nutz Business operated by Franchisee or in any way detrimental to us or to the Franchisee; (ii) you will maintain the confidentiality of the Intellectual Property at all times; (iii) you will not make unauthorized copies of documents containing any Intellectual Property; (iv) you will take such reasonable steps as we may ask of you from time to time to prevent unauthorized use or disclosure of the Intellectual Property; and (v) you will stop using the Intellectual Property immediately if you are no longer an employee, independent contractor, agent, representative, or supplier of Franchisee. You further agree that you will not use the Intellectual Property for any purpose other than the performing your duties for Franchisee and within the scope of your employment or other engagement with Franchisee.

The Intellectual Property is and shall continue to be the sole property of Totally Nutz Franchise, LLC. You hereby assign and agree to assign to us any rights you may have or may acquire in such Intellectual Property. Upon the termination of your employment or engagement with Franchisee, or at any time upon our or Franchisee's request, you will deliver to us or to Franchisee all documents and data of any nature pertaining to the Intellectual Property, and you will not take with you any documents or data or copies containing or pertaining to any Intellectual Property.

4. Immediate Family Members. You acknowledge you could circumvent the purpose of this Agreement by disclosing Intellectual Property to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). You also acknowledge that it would be difficult for us to prove whether you disclosed the Intellectual Property to family members. Therefore, you agree you will be presumed to have violated the terms of this Agreement if any member of your immediate family uses or discloses the Intellectual Property. However, you may rebut this presumption by furnishing evidence conclusively showing you did not disclose the Intellectual Property to the family member.

5. Covenants Reasonable. You acknowledge and agree that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) you have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE, OR OTHERWISE UNENFORCEABLE.**

6. Breach. You agree that failure to comply with this Agreement will cause substantial and irreparable damage to us and/or other Totally Nutz franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of this Agreement will entitle us to injunctive relief. You agree that we may apply for such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and the sole remedy of yours, in the event of the entry of such injunction, will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance, and recovery of monetary



damages. Any claim, defense, or cause of action you may have against us or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

7. Miscellaneous.

a. Although this Agreement is entered into in favor of Totally Nutz Franchise, LLC, you understand and acknowledge that your employer/employee, independent contractor, agent, representative, or supplier relationship is with Franchisee and not with us, and for all purposes in connection with such relationship, you will look to Franchisee and not to us.

b. If we pursue legal remedies against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorney fees and costs in doing so.

c. This Agreement will be governed by, construed, and enforced under the laws of Utah, and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.

d. Each section of this Agreement, including each subsection and portion, is severable. If any section, subsection, or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection, or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms enforceable.

Date _____

Signature

Typed or Printed Name



EXHIBIT H-4

AUTOMATED CLEARING HOUSE PAYMENT AUTHORIZATION FORM

<u>Franchisee Information:</u>	
Franchisee Name	Business No.
Franchisee Mailing Address (street)	Franchisee Phone No.
Franchisee Mailing Address (city, state, zip)	
Contact Name, Address and Phone number (if different from above)	
Franchisee Fax No.	Franchisee E-mail Address
<u>Bank Account Information:</u>	
Bank Name	
Bank Mailing Address (street, city, state, zip)	
<input type="checkbox"/> Checking <input type="checkbox"/> Savings	
Bank Account No. (check one)	Bank Routing No. (9 digits)
Bank Mailing Address (city, state, zip)	Bank Phone No.

Authorization:

Franchisee hereby authorizes Totally Nutz Franchise, LLC (“Franchisor”) to initiate debit entries to Franchisee’s account with the Bank listed above, and Franchisee authorizes the Bank to accept and to debit the amount of such entries to Franchisee’s account. Each debit shall be made from time to time in an amount sufficient to cover any fees payable to Franchisor pursuant to any agreement between Franchisor and Franchisee as well as to cover any purchases of goods or services from Franchisor or any affiliate of Franchisor. Franchisee agrees to be bound by the National Automated Clearing House Association (NACHA) rules in the administration of these debit entries. Debit entries will be initiated only as authorized above. This authorization is to remain in full force and effect until Franchisor has received written notification from Franchisee of its termination in such time and in such manner as to afford Franchisor and the Bank a reasonable opportunity to act on it. Franchisee shall notify Franchisor of any changes to any of the information contained in this authorization form at least 30 days before such change becomes effective.

Signature: _____

Date: _____

Name: _____



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Its: _____

Federal Tax ID Number: _____

NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.



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EXHIBIT H-5

TOTALLY NUTZ FRANCHISE

SAMPLE APPROVAL OF REQUESTED ASSIGNMENT

This Approval of Requested Assignment (“**Agreement**”) is entered into this ____ day of _____, 20____, between Totally Nutz Franchise, LLC (“**Franchisor**”), a Utah limited liability company, _____ (“**Former Franchisee**”), the undersigned owners of Former Franchisee (“**Owners**”) and _____, a [State] [corporation/limited liability company] (“**New Franchisee**”).

RECITALS

WHEREAS, Franchisor and Former Franchisee entered into that certain franchise agreement dated _____, 20____ (“**Former Franchise Agreement**”), in which Franchisor granted Former Franchisee the right to operate a Totally Nutz franchise located at _____ (“**Franchised Business**”); and

WHEREAS, Former Franchisee desires to assign (“**Requested Assignment**”) the Franchised Business to New Franchisee, New Franchisee desires to accept the Requested Assignment of the Franchised Business from Former Franchisee, and Franchisor desires to approve the Requested Assignment of the Franchised Business from Former Franchisee to New Franchisee upon the terms and conditions contained in this Agreement, including that New Franchisee sign Franchisor’s current form of franchise agreement together with all exhibits and attachments thereto (“**New Franchise Agreement**”), contemporaneously herewith.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto hereby covenant, promise, and agree as follows:

1. Payment of Fees. In consideration for the Requested Assignment, Former Franchisee acknowledges and agrees to pay Franchisor the Transfer Fee, as required under the Franchise Agreement (“**Franchisor’s Assignment Fee**”).

2. Assignment and Assumption. Former Franchisee hereby consents to assign all of its rights and delegate its duties with regard to the Former Franchise Agreement and all exhibits and attachments thereto from Former Franchisee to New Franchisee, subject to the terms and conditions of this Agreement, and conditioned upon New Franchisee’s signing the New Franchise Agreement pursuant to Section 5 of this Agreement.

3. Consent to Requested Assignment of Franchised Business. Franchisor hereby consents to the Requested Assignment of the Franchised Business from Former Franchisee to New Franchisee upon receipt of the Franchisor’s Assignment Fee from Former Franchisee and the mutual execution of this Agreement by all parties. Franchisor waives its right of first refusal set forth in the Former Franchise Agreement and waives any obligation for Former Franchisee to enter into a subordination agreement pursuant to the Former Franchise Agreement.

4. Termination of Rights to the Franchised Business. The parties acknowledge and agree that effective upon the date of this Agreement, the Former Franchise Agreement shall terminate and all of



Former Franchisee's rights to operate the Franchised Business are terminated and that from the date of this Agreement only New Franchisee shall have the sole right to operate the Franchised Business under the New Franchise Agreement. Former Franchisee and the undersigned Owners agree to comply with all of the covenants in the Former Franchise Agreement that expressly or by implication survive the termination, expiration, or transfer of the Former Franchise Agreement. Unless otherwise precluded by state law, Former Franchisee shall execute Franchisor's current form of General Release Agreement.

5. New Franchise Agreement. New Franchisee shall execute the New Franchise Agreement for the Franchised Business (as amended by the form of Addendum prescribed by Franchisor, if applicable), and any other required contracts for the operation of a Totally Nutz franchise as stated in Franchisor's Franchise Disclosure Document.

6. Former Franchisee's Contact Information. Former Franchisee agrees to keep Franchisor informed of its current address and telephone number at all times during the three-year period following the execution of this Agreement.

7. Acknowledgement by New Franchisee. New Franchisee acknowledges and agrees that the purchase of the rights to the Franchised Business ("**Transaction**") occurred solely between Former Franchisee and New Franchisee. New Franchisee also acknowledges and agrees that Franchisor played no role in the Transaction and that Franchisor's involvement was limited to the approval of Requested Assignment and any required actions regarding New Franchisee's signing of the New Franchise Agreement for the Franchised Business. New Franchisee agrees that any claims, disputes, or issues relating New Franchisee's acquisition of the Franchised Business from Franchisee are between New Franchisee and Former Franchisee, and shall not involve Franchisor.

8. Representation. Former Franchisee warrants and represents that it has not heretofore assigned, conveyed, or disposed of any interest in the Former Franchise Agreement or Franchised Business. New Franchisee hereby represents that it received Franchisor's Franchise Disclosure Document and did not sign the New Franchise Agreement or pay any money to Franchisor or its affiliate for a period of at least 14 calendar days after receipt of the Franchise Disclosure Document.

9. Notices. Any notices given under this Agreement shall be in writing, and if delivered by hand, or transmitted by U.S. certified mail, return receipt requested, postage prepaid, or via telegram or telefax, shall be deemed to have been given on the date so delivered or transmitted, if sent to the recipient at its address or telefax number appearing on the records of the sending party.

10. Further Actions. Former Franchisee and New Franchisee each agree to take such further actions as may be required to effectuate the terms and conditions of this Agreement, including any and all actions that may be required or contemplated by the Former Franchise Agreement.

11. Affiliates. When used in this Agreement, the term "**Affiliates**" has the meaning as given in Rule 144 under the Securities Act of 1933.

12. Miscellaneous. This Agreement may not be changed or modified except in a writing signed by all of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.



13. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal, with the intent that this be a sealed instrument, as of the day and year first above written.

FRANCHISOR:

TOTALLY NUTZ FRANCHISE, LLC

By: _____

Printed Name: _____

Title: _____

FORMER FRANCHISEE:

By: _____

Printed Name: _____

Title: _____

NEW FRANCHISEE:

By: _____

Printed Name: _____

Title: _____

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EXHIBIT H-6

LEASE ADDENDUM

This Addendum to Lease (“**Addendum**”), dated _____, 20____, is entered into by and between _____ (“**Landlord**”), _____ (“**Tenant**”) and Totally Nutz Franchise, LLC (“**Franchisor**”), collectively referred to herein as the “**Parties**”.

A. Landlord and Tenant have entered into a certain Lease Agreement dated _____, 20____, and pertaining to the premises located at _____ (“**Lease**”).

B. Landlord acknowledges that Tenant intends to operate a franchised business from the leased premises (“**Premises**”) pursuant to a Franchise Agreement (“**Franchise Agreement**”) with Franchisor under Franchisor’s trademarks and other names designated by Franchisor (herein referred to as “**Franchised Business**” or “**Franchise Business**”).

C. The parties now desire to supplement the terms of the Lease in accordance with the terms and conditions contained herein.

NOW, THEREFORE, it is hereby mutually covenanted and agreed among the Parties as follows:

1. Use of the Premises. During the term of the Franchise Agreement, the Premises shall be used only for the operation of the Franchised Business.

2. Franchise System. Landlord hereby consents to Tenant’s use of such proprietary marks, signs, interior and exterior décor items, color schemes and related components of the Franchised Business required by Franchisor. Tenant’s use of such items shall at all times be in compliance with all applicable laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Premises.

3. Assignment. Tenant shall have the right, without further consent from Landlord, to sublease or assign all of Tenant’s right, title, and interest in the Lease to a Franchise Assignee at any time during the term of the Lease, including any extensions or renewals thereof. If Tenant fails to timely cure any default under either the Lease or the Franchise Agreement, Franchisor or a Franchise Assignee that Franchisor designates, will, at its option, have the right, but not the obligation, to take an assignment of Tenant’s interest under the Collateral Assignment of Lease or other form of assignment and assumption document reasonably acceptable to Landlord, provided such Franchise Assignee cures a default of the Lease no later than ten (10) days following the end of Tenant’s cure period. No assignment shall be effective until: (i) a Franchise Assignee gives Landlord written notice of its acceptance of the assignment and assumption of the Lease; and (ii) Tenant or the Franchise Assignee has cured all material defaults of the Lease for which it has received notice from Landlord. Nothing contained herein or in any other document shall create any obligation or liability of Franchisor, any Franchise Assignee, or guarantor thereof under the Lease unless and until the Lease is assigned to, and accepted in writing by a Franchise Assignee. In the event of any assignment or purported assignment under this Addendum, Tenant shall remain liable under the terms of the Lease and the assignee or subtenant shall retain all of the Tenant’s rights granted in the Lease including without limitation: (x) any grant of a protected territory or use



exclusivity; and (y) the renewal or extension of the Lease term. With respect to any assignment proposed or consummated under this Addendum, Landlord hereby waives any rights it may have to: (A) recapture the Premises; (B) terminate the Lease; or (C) modify any terms or conditions of the Lease. If Franchisor accepts an assignment and assumes the Lease under this section, Franchisor shall have the right to further sublet or reassign the Lease to another Franchise Assignee without Landlord's consent in which event Franchisor shall be released from any obligation or liability under the Lease. As used in this Addendum, "**Franchise Assignee**" means: (i) Franchisor or Franchisor's parent, subsidiary, or affiliate; or (ii) any franchisee of Franchisor or of Franchisor's parent, subsidiary, or affiliate.

4. Default and Notice.

a. If Tenant defaults on or breaches the Lease and Landlord delivers a notice of default to Tenant, Landlord shall contemporaneously send a copy of such default notice to Franchisor. Franchisor shall have the right, but not the obligation, to cure the default during Tenant's cure period plus an additional ten (10) day period. Franchisor will notify Landlord whether it intends to cure the default prior to the end of Tenant's cure period.

b. All notices to Franchisor shall be sent by registered or certified mail, postage prepaid, to the following address:

Totally Nutz Franchise, LLC
69 E. 2580 S.
St. George, Utah 84790

Franchisor may change its address for receiving notices by giving Landlord written notice of the new address. Landlord agrees that it will notify both Tenant and Franchisor of any change in Landlord's mailing address to which notices should be sent.

c. Tenant and Landlord agree not to terminate, or materially amend the Lease during the term of the Franchise Agreement or any renewal thereof without Franchisor's prior written consent. Any attempted termination, or material amendment shall be null and void and have no effect as to Franchisor's interests thereunder; and a clause to the effect shall be included in the Lease.

5. Termination or Expiration.

a. If Franchisor does not elect to take an assignment of the Tenant's interest, Landlord will allow Franchisor to enter the Premises, without being guilty of trespass and without incurring any liability to Landlord, to remove all signs, awnings, and all other items identifying the Premises as a Franchised Business and to make other modifications (such as repainting) as are reasonably necessary to protect the Franchisor's trademarks and Franchise System and to distinguish the Premises from a Franchised Business provided that Franchisor repairs any damage caused to the Premises by exercise of its rights hereunder.

b. If any Franchise Assignee purchases any assets of Tenant, Landlord shall permit such Franchise Assignee to remove all the assets being purchased, and Landlord waives any lien rights that Landlord may have on such assets.

6. Consideration; No Liability.



a. Landlord acknowledges that the Franchise Agreement requires Tenant to receive Franchisor's approval of the Lease prior to Tenant executing the Lease and that this Addendum is a material requirement for Franchisor to approve the Lease. Landlord acknowledges Tenant would not lease the Premises without this Addendum. Landlord also hereby consents to the Collateral Assignment of Lease from Tenant to Franchisor as evidenced by Attachment 1.

b. Landlord further acknowledges that Tenant is not an agent or employee of Franchisor, and Tenant has no authority or power to act for, or to create any liability on behalf of, or to in any way bind Franchisor or any Franchise Assignee, and that Landlord has entered into this with full understanding that it creates no duties, obligations, or liabilities of or against any Franchise Assignee.

7. Amendments. No amendment or variation of this Addendum shall be valid unless made in writing and signed by the Parties hereto.

8. Reaffirmation of Lease. Except as amended or modified herein, all of the terms, conditions, and covenants of the Lease shall remain in full force and effect and are incorporated herein by reference and made a part of this Agreement as though copies herein in full.

IN TESTIMONY WHEREOF, witness the signatures of the Parties hereto as of the day, month, and year first written above.

LANDLORD:

TENANT:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

FRANCHISOR:

By: _____

Printed Name: _____

Title: _____

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EXHIBIT H-6 Attachment 1

ATTACHMENT 1 TO LEASE ADDENDUM

COLLATERAL ASSIGNMENT OF LEASE

FOR VALUE RECEIVED, as of the ___ day of _____, 20__ (“**Effective Date**”), the undersigned, _____ (“**Assignor**”) hereby assigns, transfers and sets over unto _____ (“**Assignee**”) all of Assignor’s right, title, and interest as tenant, in, to and under that certain lease, a copy of which is attached hereto as Exhibit A (“**Lease**”) with respect to the premises located at _____ . This Collateral Assignment of Lease (“**Assignment**”) is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment unless Assignee expressly assume the obligations of Assignor thereunder.

Assignor represents and warrants to Assignee that it has full power and authority to so assign the Lease and its interest therein, and that Assignor has not previously, and is not obligated to, assign or transfer any of its interest in the Lease or the premises demised thereby.

Upon a default by Assignor under the Lease or under that certain franchise agreement for a franchise between Assignee and Assignor (“**Franchise Agreement**”), or in the event of a default by Assignor under any document or instrument securing the Franchise Agreement, Assignee shall have the right and is hereby empowered, in Assignee’s sole discretion, to: (i) cure Assignor’s default of the Lease; (ii) take possession of the premises demised by the Lease; (iii) expel Assignor from the premises, either temporarily or permanently; (iv) terminate Assignee’s rights, title, and interest in the Lease; and/or (v) assume the Lease. If Assignee expends sums to cure a default of the Lease, Assignor shall promptly reimburse Assignee for the cost incurred by Assignee in connection with such performance, together with interest thereon at the rate of two percent (2%) per month, or the highest rate allowed by law.

Assignor agrees it will not suffer or permit any surrender, termination, amendment, or modification of the Lease without the prior written consent of Assignee. Through the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days before the last day that said option must be exercised, unless Assignee otherwise agrees in writing. Upon failure of Assignee to otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as stated herein, Assignor hereby irrevocably appoints Assignee as its true and lawful attorney-in-fact, which appointment is coupled with an interest to exercise the extension or renewal options in the name, place, and stead of Assignor for the sole purpose of effecting the extension or renewal.

(Signatures on following page)



IN WITNESS WHEREOF, Assignor and Assignee have signed this Collateral Assignment of Lease as of the Effective Date first above written.

ASSIGNOR:

By: _____

Printed Name: _____

Its: _____

ASSIGNEE:

By: _____

Printed Name: _____

Its: _____

Rev. 021219



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EXHIBIT I

STATE EFFECTIVE DATES AND RECEIPTS



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STATE EFFECTIVE DATES

The following states require the disclosure document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This disclosure document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

STATE	EFFECTIVE DATE
CALIFORNIA	JANUARY 28, 2022
HAWAII	NOT REGISTERED
ILLINOIS	JUNE 17, 2021
INDIANA	MAY 6, 2021
MARYLAND	AUGUST 27, 2021
MICHIGAN	APRIL 23, 2021
MINNESOTA	JULY 9, 2021
NEW YORK	MARCH 2, 2022
NORTH DAKOTA	JUNE 3, 2021
RHODE ISLAND	MAY 6, 2021
SOUTH DAKOTA	MAY 6, 2021
VIRGINIA	AUGUST 16, 2021
WASHINGTON	JANUARY 18, 2022
WISCONSIN	APRIL 21, 2021

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.



PLEASE RETAIN THIS COPY FOR YOUR RECORDS.



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Please sign this copy of the receipt, date your signature, and return it to Totally Nutz Franchise, LLC, 69 E. 2580 S., St. George, UT 84790.



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Document comparison by Workshare Compare on Wednesday, April 20, 2022
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Rendering set	REGULAR

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Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

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