

## MASTER SUPPLY AND SERVICES AGREEMENT

(Name of Products)

THIS SUPPLY AND SERVICES AGREEMENT (the "Agreement") is made this [redacted] day of [redacted], 20[redacted] (the "Effective Date"), by and between Barilla America, Inc. ("Barilla"), having a place of business at 885 Sunset Ridge Road Northbrook, IL 60062, and [redacted] ("Supplier"), an [redacted] (state) corporation, with an office and principal place of business at [redacted].

### WITNESSETH

WHEREAS, Barilla desires to purchase a supply of [redacted] (add summary of type of product) as more specifically described on Exhibit A attached hereto (collectively the "Products") from Supplier; and

WHEREAS, Supplier desires to assist Barilla in the development of, and the manufacture and supply of, the Products to Barilla, and guarantees to have the capacity, technical know-how and capability to produce the Products, as outlined in the Agreement and the Supply Quality Requirements (as defined in Section 1.3).

NOW, THEREFORE, in consideration of the premises and agreements set forth herein, the parties, each intending to be legally bound hereby, promise and agree as follows:

### SECTION 1 GENERAL OBLIGATIONS

1.1 Manufacture, Development and Supply of Products. Subject to the terms and conditions of this Agreement, Barilla shall purchase from Supplier, and Supplier shall manufacture and supply to Barilla, the Products and as may be specified or contemplated on Exhibit A, provide services to assist Barilla in the development of custom Products (collectively, "Services").

1.2 Compliance with Laws and Regulations. Supplier shall be fully responsible for sanitary, hygienic and storage conditions of the raw materials, packaging materials and Products. Supplier guarantees, as of the time Products are delivered to Barilla, Barilla's manufacturer (the "Co-Packer") or Barilla's carrier by Supplier hereunder, full compliance with all Federal, state and local statutes, laws, rules, regulations, treaty provisions, ordinances and governmental orders now or hereinafter in effect, including the United States Federal Food, Drug and Cosmetic Act ("FFDCA"), and the regulations of the Food and Drug Administration ("FDA") (collectively, "Laws"), applicable, with respect to sales in the United States, to the raw materials, packaging materials, the Products and Supplier's and its Subvendors' (as defined in Section 2.1.2) activities in connection with this Agreement. In furtherance of the foregoing, Supplier guarantees that each shipment or other delivery of Products, as of the date and time such deliver or shipment is received by Barilla, its Buyer or its carrier (if selected), will not be adulterated or misbranded within the meaning of the FFDCA, and that the Products are articles that may be introduced into interstate commerce under the provisions of FFDCA Articles 404, 505 or 512. Supplier shall immediately notify Barilla: (i) of any potential violations, investigations, sanctions, notices, warnings or infractions or any other action by regulators, related to the Products, which comes to its attention, and will promptly inform Barilla of any developments with regard to any of the foregoing when Supplier becomes aware of such developments; and (ii) if

Supplier becomes aware that the Supply Quality Requirements (defined in Section 1.3) or procedures set forth in or required by this Agreement violates any applicable Laws. Supplier shall apply for, obtain and maintain for the entire duration of the Agreement all requisite consents, authorizations, permits and approvals for the performance of its obligations under this Agreement from each applicable governmental or regulatory authority. Supplier shall cooperate with all governmental and regulatory authorities having jurisdiction over Supplier's activities under this Agreement and the transactions contemplated hereby so as to ensure full performance of Supplier's obligations under this Agreement. Barilla and Supplier shall keep all records maintained pursuant to this Agreement for a period of at least two years after the final shipment or other delivery of any Products by Supplier to Barilla, its Co-Packer or its carrier. Each party will make this Agreement and any documents related hereto available for inspection, at any reasonable hour, to any FDA officer or employee upon request or to the extent required under any applicable Laws.

1.3 Compliance with Supply Quality Requirements. Supplier guarantees: (a) full compliance with the quality specifications contained on Exhibit C (the "**Supply Quality Requirements**"); Supplier acknowledges that the Supply Quality Requirements are the exclusive property of Barilla. Supplier acknowledges and recognizes that the Products and Supply Quality Requirements may be modified from time to time by Barilla. In the case of modification, the parties shall meet and define in good faith the new cost of the product (higher/lower), taking into account any modification; and (b) Supplier shall manufacture and supply the Products described herein from its (add locations) manufacturing facility (the "**Supplier Facility**"), which Products shall meet the Supply Quality Requirements and Barilla's service standards, and shall be in full compliance with this Agreement.

1.4 Non-Exclusive. The Agreement will not grant any right of exclusivity to Supplier. Barilla may manufacture the Products itself or enter into an agreement with other parties for the manufacture of the Products.

1.5 GMO Facts. Supplier shall ensure the absence of GMO (as defined on Exhibit B) ingredients in the production of the Products. Supplier shall provide Barilla both appropriate documentation and periodical analytical results on all raw materials of GMO risk. Criteria relating to GMO risk shall be agreed upon by Barilla and Supplier.

## **SECTION 2**

### **SUPPLY, DEVELOPMENT AND OWNERSHIP OF PRODUCTS**

#### 2.1 Supply Procedure.

2.1.1 Supply Obligation. Supplier will manufacture and sell to Barilla, and Barilla will purchase from Supplier, the Products which will be stored and managed at Supplier's Facility as described in this Agreement and in Exhibit (C). Nothing contained herein shall require Barilla to purchase any set amount or minimum quantity and Barilla shall only be responsible for payment of the amount actually ordered from Supplier in the process described herein.

#### 2.1.2 Raw Materials, Components and Packaging.

(a) Supplier will be responsible for contracting, delivery, inventory management, inspection and control associated with any and all raw materials, components, and packaging materials to be used in manufacturing the Products. Without limiting the foregoing, and notwithstanding Supplier's use of any Subvendors (as defined in this Section 2.1.2), Supplier will be solely responsible to Barilla for all

aspects of the manufacture and timely supply of conforming Products in all respects in accordance with this Agreement.

(b) Supplier agrees to obtain all raw materials, components and packaging only from suppliers (“**Subvendors**”) approved by Barilla in writing and who have contractually agreed in writing to the provisions set forth on Exhibit D. Barilla will have the right to revoke its approval of any Subvendors at any time without cost to Barilla. Supplier agrees that Barilla has an absolute right to participate in the negotiations respecting the purchase of raw materials, components, or packaging materials with all Subvendors and to determine, in conjunction with Supplier, an appropriate cost for the raw materials, components, and any other materials required for the Products. Supplier will advise Barilla of all such negotiations with reasonable advance notice so Barilla can participate.

(c) Notwithstanding anything to the contrary herein, Barilla reserves the right to, at any time and in its sole and absolute discretion, itself directly purchase from one or more third parties any or all raw materials, components, or packaging materials, necessary for the Products, and require Supplier to purchase such raw materials, components, and packaging materials for the Products exclusively from Barilla [at its cost].

(d) Supplier will acquire sufficient raw materials, components, and packaging to cover production of the specified quantity of Products provided by Barilla that it estimates it will require.

2.2 Warehousing. Supplier shall store all finished Products, raw materials, components and packaging materials in a safe and secure manner and in compliance with all applicable Laws, the Supply Quality Requirements, and any instructions provided by Barilla, without charge to Barilla; provided, however, Barilla shall not require Supplier to inventory, store or warehouse more than a two week inventory of the ordered Products. If more than this becomes necessary, then Barilla and Supplier shall work together in good faith to develop special storage pricing terms to cover any added expense. Supplier may, on its own initiative, warehouse or inventory the Products for a short period of time in excess of two weeks as part of Supplier’s manufacturing strategy for scheduling or cost-savings reasons without charge to Barilla. Unless agreed in writing by both parties, Supplier shall not carry in Supplier’s possession, at any one time, a Product inventory exceeding a four-week usage by Barilla.

2.3 Non-Conforming Products and Right to Cure: Any Products, if received and accepted by Barilla, its Co-Packer or its carriers, or if received and accepted by customers of Barilla (if picked up directly by such customers at Barilla’s request), which fail to conform to the requirements of this Agreement, the Supply Quality Requirements or the applicable Purchase Order, or which a governmental agency declares to be unfit or otherwise unsafe for their intended use or in violation of any Laws, will be considered non-conforming (“**Non-Conforming Products**”). Damaged Products are considered Non-Conforming Products if the damage renders them unsuitable for Barilla’s intended purposes. Supplier will promptly furnish to Barilla all information and copies of all documents (including any complaints, inquiries, test or inspection results, internal reviews, warnings, declarations or notices) that Supplier receives that suggest or indicate that the Products, or any material included in, any of the Products, or any packaging or supplies used in connection with the Products, may be Non-Conforming Products.

2.3.1 Rights with respect to Non-Conforming Products:

(a) Barilla will have the right to reject any Non-Conforming Products. Barilla will provide Supplier with written notice of its rejection of any Non-Conforming Products as soon as reasonably practicable after Barilla discovers the nonconformity. Any notice of rejection will specify the reasons for such rejection.

(b) Upon Supplier's request, all such rejected Non-Conforming Products will be returned to Supplier by Barilla or be disposed of by Barilla as instructed by Supplier, at Supplier's risk and expense, and Supplier will reimburse Barilla for all commercially reasonable charges, expenses or commissions incurred in the inspection, receipt, transportation, care, custody and disposal of the Non-Conforming Products. Any Non-Conforming Products returned to Supplier which bear the name, trademark, trade name, trade dress, logo or other identifying marks owned by or licensed to Barilla (or its parent company or any affiliate thereof) may not be disposed of by Supplier without the prior written approval of Barilla. Upon Barilla's request, Supplier will provide Barilla with a certificate of disposal signed by an authorized representative of Supplier.

(c) Barilla may require Supplier to replace the rejected Non-Conforming Products as soon as possible, cancel the applicable Purchase Order for the rejected Non-Conforming Products or terminate the Purchase Order pertaining to the Non-Conforming Products for cause pursuant hereto. If payment has already been made for the rejected Non-Conforming Products, then Barilla will be entitled to a credit or refund of that payment, and Supplier will reimburse Barilla for all commercially reasonable charges, expenses or commissions incurred in the inspection, receipt, transportation, care, custody and disposal of the Non-Conforming Products. If Barilla requests Supplier to cure, and if Supplier fails to cure such non compliance within a reasonable period of time (no more than 10 days) following its receipt of written notice from Barilla, Barilla may, in addition to the rights above, produce such Products at another third party and Supplier will reimburse Barilla for any damages including the cost of procuring the replacement Products from that third party.

(d) For any rejected Non-Conforming Products, and any products into which Non-Conforming Products have been incorporated, that are no longer in Barilla's possession or control, Barilla will have the right to field correct, withdraw, recall or repurchase any or all of the Non-Conforming Products, and any products made with or produced using the Non-Conforming Products, from any third party in possession or control of such Non-Conforming Products or products and Supplier will reimburse Barilla for all reasonable costs incurred by Barilla in connection therewith, including all commercially reasonable charges, expenses or commissions incurred in the inspection, receipt, transportation, care, custody and disposal of the Non-Conforming Products net of any salvage value received in connection with such disposal, if any and if can be reasonably obtained. Upon Barilla's request, Supplier will assist Barilla in any or all reasonable aspects of a field correction, withdrawal, recall or repurchase, including developing a plan therefore and preparing and furnishing any required reports, records and other information. If Barilla is subject to any penalty, fine, assessment or any other charge as a result of its shipment and use of the Non-Conforming Product, Supplier shall indemnify Barilla in full for these charges, including attorney fee's if Barilla reasonably hires an attorney in defense of such charge or claim.

2.3.2 Non-Conforming Products – Termination and Suspension Rights:  
Notwithstanding anything to the contrary in Sections 5 or 6, in the event that Non-Conforming Products are received by Barilla, its Co-Packers, or customers of Barilla more

than two times in the same calendar year (hereafter a "Year"), Barilla shall have the right to immediately terminate this Agreement for cause.

2.3.3 Consequences of Termination/Expiration: Without impairing any remedy conferred upon the parties by law or equity, upon termination of this Agreement, all unshipped Purchase Orders shall be canceled, unless otherwise requested by Barilla in writing, without liability of Barilla to Supplier for such cancellation, and Supplier shall promptly make available for pick up by Barilla, or at Barilla request and expense Supplier shall ship, all Products and packaging materials in Supplier's possession.

2.4 Non-Delivery. Subject to Section 7.19 of this Agreement, if Supplier is unable to make any delivery of the Products to Barilla or the Co-Packer within three business days of the delivery date stated by Barilla in its Purchase Order, then Barilla and Supplier may agree on an alternative solution; provided, however, Barilla shall have the right to cover such amount of Product which Supplier is obligated to produce thereunder, but fails to do so, by using one or more alternative suppliers for such Products. Should Barilla exercise its right to cover, Supplier shall be liable to Barilla for Barilla's documented charges related to acquiring such Products in whole or in part from an alternative source, including differential in unit pricing and increased or expected shipping charges. Such responsibility of Supplier shall apply only to the charges incurred by Barilla or the Co-Packer in excess of the charges they would have incurred had Barilla or the Co-Packer procured such Products from Supplier under this Agreement. In the event of any recurring (more than two in the same Year) inability to timely deliver Products, or if the Supplier is in material breach of any other term of this Agreement, Barilla shall have the right to immediately terminate this Agreement notwithstanding anything to the contrary contained herein.

2.5 Alternate Supply Locations The parties agree that in major emergency situations, Barilla shipping containers may be manufactured at sites other than the currently agreed upon Supplier Facility.

2.6 Technical Characteristics/Specifications The Products shall correspond to Barilla specifications, the Supply Quality Requirements, printing and size dimensions, and all other technical features shall correspond to the Barilla drawings and standards, and shall be initially approved by Barilla technicians after machine run tests. Supplier acknowledges that all such technical and quality specifications are the exclusive property of Barilla. No changes, modifications, deviations or alterations shall be made by Supplier from the approved quality and technical specifications without the advance written approval of Barilla.

2.7 Quality Control Process. Supplier agrees to provide Barilla with 60 days prior notice of any change in its production process and quality control practices and procedures. Supplier shall not change its production process or quality control practices or procedures without first providing Barilla's technicians an opportunity to evaluate such changes, and then only upon the prior written consent of Barilla. Supplier shall control and be solely responsible to Barilla for the raw materials, components, packaging materials, Products and the manufacturing, packaging, storage and delivery process in accordance with the Supply Quality Requirements, including any and all such activities conducted for Supplier by Subvendors. Supplier shall take records of all its analyses related to Products and allow Barilla to inspect any such records at any time upon Barilla's request. Notwithstanding the foregoing, Supplier shall be able to make any change to its quality control practices and procedures immediately and without Barilla's consent if such change is required by any Laws, immediately informing Barilla of the modification made by Supplier.

2.8 Rights in Work Product and Intellectual Property.

2.8.1 Work Product Definition. For purposes of this Agreement, the term "**Work Product**" shall mean all materials, deliverables, designs, ideas, concepts, research and development, qualitative and quantitative studies, reports and interviews, discoveries, specifications, formulations, documentation, recipes, inventions (whether or not patentable or reduced to practice) and invention disclosures, know-how, methods, processes, analysis, programs, technologies, techniques, templates, and any other confidential or proprietary material or Developed Works (as defined in the parties Confidentiality Agreement) conceived, developed or reduced to practice by Supplier during Supplier's performance of Services for Barilla, as a contractor of Barilla or otherwise, including but not limited to any and all original works, modifications, derivative works, enhancements, improvements, alterations of or revisions thereto and all drafts, notes, concepts, ideas, suggestions and approaches related thereto or contained therein including written and oral information concerning any of the preceding. Partial or incomplete versions of Work Product will be deemed Work Product. Upon Barilla's request or upon termination of this Agreement, Supplier will immediately provide Barilla with the then-current version of any Work Product in the possession or under the control of Supplier or any of its employees or personnel.

2.8.2 Work-Made-For-Hire. Supplier acknowledges and agrees that Barilla shall exclusively own the copyright, trademark, trade secrets, patent, proprietary, industrial, intellectual property and use rights and any and all other right, title and interest in and to the Work Product. Without limiting the foregoing, Supplier hereby acknowledges and agrees that Supplier's creation of Work Product is done under Barilla's direction and control within the scope of the Supplier's engagement by Barilla for use by Barilla at Barilla's sole discretion and that all such Work Product shall be considered a work made for hire and Barilla shall own all right, title and interest therein. Barilla shall be considered the author of the Work Product for purposes of copyright and thus shall own all the rights in and to the copyright of the Work Product and only Barilla shall have the right to copyright the same which Barilla may do in its name or in such name as Barilla may choose. To the extent that all intellectual property rights in the Work Product or the copyrights therein do not automatically vest in Barilla, Supplier hereby grants, assigns and transfers to Barilla, without further consideration, perpetually and irrevocably, any and all worldwide right, title or interest that Supplier may now or hereafter possess in or to the Work Product and Barilla accepts such assignment. Barilla shall have the sole and exclusive rights to all the Work Product throughout the world and may use the Work Product throughout the world, without further costs or approvals, whether such rights currently exist or are recognized in the future, and in all media and languages, whether now or subsequently existing, including but not limited to: (a) all technical data or other written or oral disclosures concerning any Work Product and/or the design, functionality and specifications of any Work Product; (b) all know-how, techniques or processes concerning the Work Product; (c) all future modifications to or improvements of Work Product; (d) all derivative works based on or know-how, inventions or technology developed from any Work Product and/or information derived from the Work Product; and (e) all rights to exploit Work Product commercially. Without limiting the foregoing, Supplier hereby waives any and all claims that Supplier may now or hereafter have in any jurisdiction to so-called "moral rights" or other similar concepts with respect to the Work Product. Supplier shall execute such further instruments as Barilla may request to evidence, establish, maintain or protect Barilla's rights in and ownership of the Work Product.

2.8.3 Outside Materials. Notwithstanding the foregoing, Supplier will retain ownership of all materials developed or owned by Supplier prior to the Effective Date or developed by Supplier wholly independently of its performance under this Agreement, together with all related intellectual property rights therein (collectively, "**Outside Materials**"). Other than generalized techniques and processes that Supplier can show, by

written documentation, to fit within the foregoing exception, Supplier shall obtain Barilla's written approval before using any materials it would consider to be Outside Materials in the development, preparation, storing, manufacturing or processing of the Products or embedding in any Work Product or Product, or otherwise providing, any materials it would consider to be Outside Materials.

2.8.4 License to Outside Materials. Notwithstanding Section 2.8.2, to the extent that Outside Materials are embedded in or otherwise provided with any Work Product, Supplier shall not be deemed to have assigned its intellectual property rights in such Outside Materials to Barilla; provided, however, that Supplier hereby grants to Barilla, as a licensed person, and its respective parent company, affiliates, successors and assigns (each, a "**Licensed Person**"), a perpetual, irrevocable, fully-paid up, worldwide, non-exclusive right and royalty-free license to all intellectual property rights in all such Outside Materials to the extent required to fully and completely use, commercially exploit and/or enjoy the Work Product. The parties acknowledge and agree that the foregoing right and license includes the right for each Licensed Person to: (i) use, copy, reproduce, modify, enhance, develop derivative works, sublicense, distribute, display and perform or use the Outside Materials, and (ii) sublicense, transfer or assign its right and license in connection with any assignment of the copyright in the associated Work Product.

2.8.5 Third Party Materials. The ownership of enhancements, modifications and derivative works of third party owned materials licensed or otherwise used by Supplier in connection with its performance under this Agreement shall, as between Supplier and Barilla, be considered owned by Barilla. Barilla's ownership of such enhancements, modifications and derivative works may be subject to or limited by the terms of the underlying agreement with the owner of the underlying third party materials; provided, that Supplier shall notify Barilla, in writing and in advance if the terms of any such agreement will preclude or limit Barilla's ownership of any enhancement, modifications or derivative work and shall obtain Barilla's written consent prior to proceeding with such enhancement or derivative work.

2.8.6 Intellectual Property Rights. Nothing herein shall give a party any right, title or interest in the intellectual property of the other party, by implication, estoppel or otherwise, except the right to use the intellectual property in accordance with the terms of this Agreement. Neither party shall act, directly or indirectly, in a manner which might lead a third party to believe that the intellectual property of the other party is owned by it. Notwithstanding the generality of the foregoing, Supplier acknowledges and agrees that the Supply Quality Requirements, manufacturing know-how, recipes, utilization rates, packaging design and all other intellectual property rights and Barilla's Confidential Information utilized in the supply and manufacture of the finished Products by Supplier shall be deemed Barilla-owned materials and/or Work Product (excepting Outside Materials as addressed above) and may not be used by Supplier for its own production purposes or for third party production.

2.8.7 Confusingly Similar or Competing Marks. Neither Party shall adopt or use any intellectual property which incorporates or is confusingly similar to, or is a simulation or colorable imitation of, the other Party's intellectual property, or which unfairly competes with such intellectual property, whether during or after termination of this Agreement, nor apply anywhere in the world to register any trademarks identical to or so nearly resembling the other Party's intellectual property as to be likely to deceive or cause confusion. Neither Party shall, at any time, whether during or after termination of this Agreement, use the intellectual property of the other Party as part of its corporate business or trading name or style unless agreed to in writing or as part of this Agreement.

### **SECTION 3** **INSURANCE.**

Supplier agrees, at all times during this Agreement, to carry and maintain: (i) comprehensive general liability insurance, including product liability insurance, with coverage not less than \$10,000,000 per occurrence, \$10,000,000 per Product occurrence and \$20,000,000 in the aggregate combined limits of liability; (ii) property/stock coverage for Barilla property in Supplier's care, custody, and control with a minimum policy limit of \$1,000,000. This policy shall be primary and non-contributory and include a loss payee provision in favor of Barilla; (iii) casualty insurance with respect to Supplier's business and the Supplier Facility in such amounts and covering such risks as may be customary for companies in a business similar to Supplier's business; (iv) Statutory Workers' Compensation and Employer's Liability as required by state law and with minimum limits of \$1,000,000 each accident / \$1,000,000 each disease / \$1,000,000 policy limit as it relates to Employers Liability; (v) Crime Insurance (also known as Employee Dishonesty insurance/ Fidelity Bond) in an amount of not less than One Million dollars (\$1,000,000), covering all Supplier personnel and subcontractors, which includes a Property endorsement or Insuring Agreement specifying that Employee Theft coverage extends to Barilla's property in the event of any theft of Barilla's money or property or Product for which the Supplier is responsible. Verification that Barilla has been included as a Joint Loss payee under the policy must be provided; and (vi) Product Recall Insurance with limits of at least \$20,000,000 per occurrence covering recall events resulting from an act or omission of Supplier.

All policies must be placed with a reputable insurer with a minimum AM Best rating of A- VII, or S&P A, or better and licensed to provide insurance in the jurisdiction in which work is to be performed.

Supplier shall furnish original certificates of insurance to Barilla evidencing the above insurance coverages upon the execution of this Agreement and these certificates will be attached hereto as Exhibit E. Supplier and its carrier shall provide Barilla with 30 days notice of any change in or to these coverages. Supplier acknowledges that such insurance shall not modify or eliminate its responsibility in any way under this Agreement. "Barilla America, Inc., its subsidiaries, affiliates, directors, officers, agents and employees shall be named as additional insureds" under the policies of insurance set forth above, for any and all purposes. Supplier shall secure endorsements to this effect from all insurers of such policies. It is the intent of both parties to this Agreement that all insurance purchased by Supplier in compliance with this Agreement, will be primary to any other insurance owned, secured, or in place by Barilla, which insurance shall not be called upon by Supplier's insurer to contribute in any way. Supplier shall secure endorsements to this effect from all insurers of such policies. Supplier hereby waives any right of recovery against Barilla and Barilla's insurers for any loss or damage that is covered by any insurance policy maintained or required to be maintained under this Agreement. Supplier shall inform all its insurers about this waiver of subrogation, and shall secure from such insurers any necessary amendments to the policies recognizing and providing for such waiver.

### **SECTION 4** **PRICES, PAYMENTS, RISK OF LOSS AND DELIVERY**

4.1 Purchase and Sale/Prices. Subject to the terms and conditions of this Agreement, Supplier agrees to sell to Barilla, and Barilla agrees to buy the Products described on Exhibit A, that it orders from Supplier in the manner stated in Section 4.5, for the prices set forth on the "**Supplier Price List**", which is effective XXX, 2018, and attached hereto and made a part of this Agreement as Exhibit G. Prices are subject to



adjustment, as outlined below in Section 4.2. In the event it becomes necessary for Supplier to change supply locations, to maintain good faith and a good supplier relationship, Supplier agrees to provide Barilla written notification for such a change. The Products shall be in full compliance with this Agreement.

#### 4.2 Pricing, Delivery and Risk of Loss

4.2.1 Prices are based on Supplier supplying Barilla's facilities at Ames, Iowa and Avon, New York or to its Co-Packer as designated by Barilla.

4.2.2 Barilla will pay Supplier, as reflected on Supplier's Price List, for the Products equal to: (i) Supplier's actual cost for the raw materials and packaging materials, plus (ii) a conversion fee equal to \$\_\_\_\_ per unit based on the quantity of finished Products purchased during each week of the Term. The conversion fee will cover all Supplier's costs, expenses, and profit and Barilla will pay no further charges associated with the finished Products. Supplier's raw material, component, and packaging costs will be agreed upon in writing prior to the scheduled production date and will be in accordance with Article 4. Barilla will not be responsible for any additional costs incurred or related to the raw materials, components, packaging, or the production or sale of the Products.

The prices on Supplier's Price List shall also be inclusive of all delivery costs for the Products and shall be on terms FOB Destination (Barilla's Ames, IA or Avon, NY facility as specified by Barilla or to its Co-Packer), freight prepaid. Supplier shall be solely responsible for the prompt payment of any freight charges and any other fees and expenses to its carriers. If Barilla requests expedited delivery, Barilla shall pay the expedited freight charges unless it is due to Supplier's late delivery, in which case Supplier shall pay. Supplier shall choose its own carriers from among those of proven reliability and experience; provided, however, Barilla shall have the option to pick-up boxes at Supplier's plant with a deduction to its price for the freight charges that Supplier did not incur when any such pick-up occurs.

4.2.3 During the Term, the pricing set forth in this Section 4, may be adjusted as a result of a change in (To be described)

4.2.4 The following is the procedure to calculate a price change based upon (Process to be defined)

4.2.5 Supplier shall bear all risk of loss to the Products until the same has been delivered FOB Destination (as stated above) and accepted by Barilla or its Co-Packer (or delivered and accepted by Barilla's carrier if Barilla picks up Products from Supplier), at which point in time risk of loss and title to the Products shall pass to Barilla (or its carrier); provided, the passage of risk of loss shall not serve in any way to negate or abridge the parties stated obligations under this Agreement

4.3 Payment Terms. All undisputed payments for Products by Barilla under the Agreement shall be in United States Dollars and shall be by wire transfer to an account designated by Supplier, payable within 30 days from the receipt of invoice. Either party shall have the right to set off against any amounts owed by the other party to it as agreed between the parties. If an invoice is in dispute, Barilla shall only be required to pay the amount of the invoice that is not in dispute according to this Section and shall work with Supplier, in good faith, to resolve the disputed portion of the invoice.

4.4 Credit Terms Credit terms are 1% if paid in 10 days ADI, net 30 days ADI. A

service charge of 1 ½% per month on the unpaid balance on all past due accounts applies. Supplier will work diligently to resolve any disputes on unpaid balances.

4.5 Purchase Orders. Barilla utilizes a computer accounts payable system ("SAP") initiated by the Bannockburn Purchasing Manager, who shall issue a specific purchase contract governed by this Agreement. Then, based on plant container supply requirements, the Barilla plant shall issue one or more Purchase Order(s) ("P.O.") against this contract to the Customer Service representative at Supplier's plant locations. These P.O.s shall be for no less than one full truckload of the with a specific delivery date of seven (7) days or more from the P.O. issue date. Supplier agrees to follow the instructions set forth in such P.O. for the quantity, and to deliver the Products on the delivery dates specified in the P.O. Occasionally, Barilla may need to place an order on an expedited basis or change a delivery date to less than seven (7) days from the issue date of the P.O., and Supplier agrees to use its best efforts, in these cases, to accommodate Barilla's delivery requirements. Upon the delivery of the Products to the plant, the P.O. and the delivery quantity shall be entered into Barilla's computer accounts payable system. Supplier shall issue its invoice to Barilla for Products delivered, showing the P.O. number, the bill of lading number, the Barilla Box Code number and the delivery quantity and pricing on their invoice. Supplier shall mail any such invoices to Accounts Payable, Barilla America, Inc., 1200 Lakeside Drive, Bannockburn, IL 60015-1243. Each invoice shall be matched with the information contained in Barilla accounts payable computer system and, if the invoice matches that information, the invoice shall be paid according to the terms stated in this Agreement. If the quantities of the Products delivered do not match (i.e. if there is a discrepancy in invoice detail versus the inputted computer detail), then Barilla shall resolve any such discrepancy directly with Supplier. If the pricing does not match, then the Bannockburn Purchasing Manager shall resolve any such discrepancy directly with Supplier. If pricing or quantity discrepancies are due to a Supplier error, once resolved, Supplier shall allow Barilla to take a credit discount if the invoice date has passed. Moreover, Supplier shall make every effort to deliver invoices promptly to Barilla so that the invoice may be processed in time for Barilla to take the credit discount. Barilla shall use its best efforts to make invoice payments in accordance with the terms of Supplier's invoices.

4.6 Most Favored Customer. Supplier will guarantee a "most favored customer" treatment ensuring Barilla is treated fairly and consistent with Supplier's other major clients. The parties agree on the necessity to lower the production costs as much as possible with the objective of making the Products as competitive as possible.

4.7 Cost Assumptions. If the Supply Quality Requirements change, Supplier shall give Barilla 30 day's notice of any adjustment to pricing which pricing adjustment will be made in good faith based on the changed Supply Quality Requirements. If Barilla does not approve such adjustment within such 30 day period, all pricing terms shall remain the same until an agreement is reached between Barilla and Supplier as to the Supply Quality Requirements and applicable pricing.

4.8 Cost Savings. Supplier will work with Barilla to establish a value improvement program that is designed to achieve the lowest cost of ownership to Barilla for the Products by identifying, qualifying, testing, evaluating and implementing value improvement projects that fulfill the following criteria: (i) reduce Product costs without impairing or putting at risk the quality, performance or timely delivery of the Products, (ii) improve existing manufacturing, warehousing and distribution practices and processes for the Products and for Barilla products in which the Products are used in a manner that is compatible with existing practices and processes, (iii) take advantage of any of any new technologies which enable Supplier to reduce its costs and/or improve the quality,

performance or delivery of its products, and (iv) return any required capital expenditure within a mutually agreed upon time period.

Supplier will be responsible for identifying potential projects, qualifying the expected cost savings and proposing such projects to Barilla. Each party will establish a team to review, test, evaluate and determine the feasibility and viability of each project. The teams will meet regularly and Supplier will present progress reports on a periodic basis to Barilla regarding the status of each project. The parties will evaluate and determine the feasibility, viability and expected costs savings for each project in a manner consistent with Barilla's own internal procedures for evaluating and determining cost savings and productivity initiatives. If a project is determined to be feasible and is accepted as viable by the teams, then the scope of the project, its expected cost savings and the timing for such savings will be agreed upon in writing by the teams prior to the parties initiating the project.

## **SECTION 5**

### **WARRANTY, INSPECTION, INDEMNITY AND LIABILITY**

#### **5.1 Representation and Warranty.**

(a) Supplier guarantees that the Products shall comply with the Supply Quality Requirements at all times, through and including the date of delivery. Furthermore, Supplier guarantees the quality of the Products as determined in accordance with Section 1 and Section 2.

(b) Supplier represents and warrants that each Product delivered under this Agreement: (i) shall be manufactured, processed, packaged and labeled in conformity with applicable sanitation standards set forth in the rules and regulations of the FDA, and under the FFDCa and any other similar applicable federal, state or local rules, regulations and Laws; (ii) shall conform to all applicable specifications approved by or required by Barilla, including the Supply Quality Requirements; (iii) except with respect to equipment, formulas and intellectual property, such as trademarks and trade dress provided by Barilla, shall not infringe the patents, technical know-how or other intellectual property rights of third parties; and (iv) shall be free and clear of all liens and other encumbrances. Without limitation of any other damages and as stated in Section 2.3, Barilla shall have the right to return to Supplier for full refund or credit, any and all Non-Conforming Products that do not conform to the Supply Quality Requirements, or to the then existing specifications or samples, or specifications subsequently mutually agreed upon. All reasonable costs and expenses associated with the return of such Products (and the replacement thereof with conforming Products) shall be borne by Supplier.

(c) Supplier represents and warrants that its organizational and industrial structure will be maintained at high levels so as to allow it to perform all of its obligations hereunder.

(d) Supplier represents and warrants that all Services shall be rendered with promptness, due care, skill and diligence, and in a workmanlike manner, in accordance with the best practices of its industry.

(e) Supplier represents and warrants that upon termination of this Agreement for any reason that Supplier will, upon request from Barilla, continue to manufacture, produce or supply the Products in order to ensure no disruption or loss of business to Barilla; provided, however, that this obligation shall in no event exceed

six (6) months post termination and Barilla shall be obligated to pay for the Products at the prices in effect at notice of termination.

5.2 Inspection/Rejection. Barilla may inspect Products in a commercially reasonable time, place and manner and will have the right to reject Non-Conforming Products in accordance with Section 2.3.1(a). The inspection may include Supplier's manufacturing techniques, quality control, sanitation procedures and records. Supplier shall make available to Barilla upon request all records of chemical, physical, microbiological and process tests of the basic ingredients and packaging materials, intermediate products and finished products that Supplier conducts or that it requires from its suppliers. Supplier shall furnish samples to Barilla for quality control testing and evaluation, at Barilla's request and expense.

5.3 Remedy. Barilla shall afford Supplier a prompt and reasonable opportunity to inspect and test Products rejected or as to which any claim is made. Barilla's non-exclusive remedy for breach of the warranties contained herein or any commercial or quality claims arising out of or related to the Products shall be for Supplier, at its option, to replace or provide financial accommodations on account of any Products which fail to meet the warranties contained herein.

5.4 Indemnity. Barilla shall indemnify, defend and hold harmless Supplier, each of its affiliates, and each of its and their respective officers, directors, employees and agents; and Supplier shall indemnify, defend and hold harmless Barilla, each of its affiliates, and its parent company and each of its and their respective officers, directors, employees and agents (individually and collectively, all such indemnified parties are referred to in this Section as "**Indemnified Party**") against and in respect of claims, demands, losses, obligations, liabilities, damages, deficiencies, actions, settlements, judgments, costs, penalties, fines and expenses which an Indemnified Party may incur or suffer (including reasonable costs and legal fees and expenses incident thereto or in investigating or seeking indemnification therefore and expert witness fees) (collectively "Claims"), arising out of or based upon: (i) the breach by the other party of this Agreement including, but not limited to, any of its representations, warranties, covenants, obligations or commitments contained in this Agreement, including those warranties made by Supplier; (ii) any claim of infringement or misappropriation of any intellectual property rights covering the Products supplied hereunder, or any process or Services necessary or included in or for the manufacture thereof; and/or (iii) negligence or intentional or willful misconduct, which results in bodily or personal injury or property damage or loss.

If a claim by a third party is made against Indemnified Party, and if Indemnified Party intends to seek indemnity with respect thereto under this Section, Indemnified Party shall promptly notify the other party to this Agreement (the "**Indemnifying Party**") of such claim; provided that Indemnified Party's failure to give timely notice shall not affect the rights of Indemnified Party to indemnification hereunder except and only to the extent that such failure to give notice materially adversely affects Indemnifying Party's ability to defend such claim.

Indemnifying Party shall be entitled to settle or assume the defense of such claim, including the employment of counsel reasonably satisfactory to Indemnified Party. If Indemnifying Party elects to settle or defend such claim, Indemnifying Party shall notify Indemnified Party within 30 days (but in no event less than 20 days before any pleading, filing or response on behalf of Indemnified Party is due) of Indemnifying Party's intent to do so. If Indemnifying Party elects not to settle or defend such claim or fails to notify Indemnified Party of the election within 30 days (or such shorter period provided above) after receipt of Indemnified Party's notice of a claim of indemnity hereunder, Indemnified Party shall have the right to

contest, settle or compromise the claim without prejudice to any rights to indemnification hereunder.

Regardless of which party is controlling the settlement or defense of any claim: (i) both Indemnified Party and Indemnifying Party shall act in good faith, (ii) Indemnifying Party shall not thereby permit to exist any lien, encumbrance or other adverse charge upon any asset of Indemnified Party, (iii) Indemnifying Party shall permit Indemnified Party to participate in such settlement or defense through counsel chosen by Indemnified Party, with all fees, costs and expenses of such counsel borne by Indemnified Party, (iv) no entry of judgment or settlement of a claim may be agreed to without the written consent of Indemnified Party which consent may not be unreasonably withheld, (v) any such settlement must provide for the full release of Indemnified Party from such claim, and (vi) Indemnifying Party shall agree to promptly reimburse Indemnified Party for the full amount of such claim and the related expenses as incurred by Indemnified Party pursuant to this Section. So long as Indemnifying Party is reasonably contesting any such third party claim in good faith, Indemnified Party shall not pay or settle any such claim.

The controlling party shall upon request deliver, or cause to be delivered, to the other party copies of all correspondence, pleadings, motions, briefs, appeals or other written statements relating to or submitted in connection with the settlement or defense of any such claim, and timely notices of, any hearing or other court proceeding relating to such claim.

## **SECTION 6**

### **TERM AND TERMINATION**

6.1 Term and Termination. The initial term of this Agreement shall begin on **XXX** and expire on **XXX** ("**Initial Term**"). Upon the expiration of the Initial Term, Barilla shall have the right to renew the Agreement for additional periods of one year each, by giving written notice to Supplier before January 1 or the respective year (i.e. by January 1, 2018 for the first Renewal Term) (the Initial Term and any Renewal Term are referred to collectively throughout as "Term"). Barilla retains the right to terminate this Agreement, without penalty, by giving Supplier at least 120 days' advance written notice. Notwithstanding the foregoing, Barilla may terminate Supplier's performance of any Services at any time for its convenience upon written notice to Supplier.

6.2 Termination. Notwithstanding the provisions of Section 6.1, either party may terminate this Agreement, in whole or in part, as of the date specified in a termination notice if the other party: (i) files for bankruptcy, (ii) becomes or is declared insolvent, (iii) is the subject of any proceedings (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer for that party, (iv) makes an assignment for the benefit of all or substantially all of its creditors, (v) takes any corporate action for its winding-up, dissolution or administration, (vi) enters into an agreement for the extension or readjustment of substantially all of its obligations, (vii) recklessly or intentionally makes any material misstatement as to financial condition, (viii) is in material breach of any representation, warranty or covenant of this Agreement and shall have failed to cure such breach within 30 days of receipt of written notice thereof from the first party or (ix) violates or is charged with violating anything contained within Barilla's Code of Ethics as discussed below.

6.3 Effect of Expiration or Termination. The expiration or termination of this Agreement for any reason shall not in any way affect or be deemed to affect any obligation of either party having accrued prior to the expiration or termination of this Agreement or any right or obligation which, by its terms, is to survive the expiration or termination of this Agreement.

## **SECTION 7 MISCELLANEOUS**

7.1 Documents/Communications. The provisions of this Agreement, including all Exhibits, supersede and shall prevail over the provisions of any other document delivered by either party regarding the matters set forth herein. Supplier agrees to provide to Barilla regular updates of Supplier's production schedules and progress with respect to Products which have been ordered by Barilla.

7.2 Authority/No Conflicts. Each party hereto represents and warrants that: (i) it has full power and authority and legal right to execute and deliver this Agreement; (ii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary action; (iii) this Agreement has been duly executed and delivered by it; and (iv) this Agreement constitutes a legal, valid and binding obligation, enforceable in accordance with its terms.

7.3 Applicable Law. This Agreement will be exclusively governed by and construed in accordance with the domestic laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Illinois. The Parties shall submit all disputes which arise under this Agreement to the state or federal courts located solely in the City of Chicago, Illinois for resolution. The Parties acknowledge and irrevocably agree that the aforesaid courts have exclusive jurisdiction over this Agreement, and specifically waive any claims they may have which involve jurisdiction or venue, including but not limited to *forum non conveniens*. Service of process for any claim which arises under this Agreement shall be valid if mailed to the party being served, by first-class air mail, Federal Express, or another overnight carrier to the other party. If service of process is made as aforesaid, the party served agrees that such service shall constitute valid service, and specifically waives and agrees not to plead any objections the party served may have under any law or rule of any governmental authority concerning service of process. Service of process in accord with this paragraph shall be in addition to and not to the exclusion of any other service of process method legally available.

7.4 Survival. All of the representations, warranties, and covenants made in this Agreement, and all terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such termination and continue thereafter in full force and effect, subject to applicable statutes of limitations.

7.5 Waiver, Discharge, Etc. This Agreement may not be released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties to this Agreement by their duly authorized representatives. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part of it or the right of either party after any such failure to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

7.6 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service with signature required, by facsimile (followed by delivery of a copy via overnight courier service), by email (with confirmation of receipt by the recipient) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following

addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

(a) if to Barilla:

Barilla America, Inc.  
1200 Lakeside Drive  
Bannockburn, IL 60015-1243  
Attention: Vice President, Operations  
Telecopier No.: (847) 405-7505

with copies to:  
Barilla America, Inc.  
(Same Address Stated Above)  
Attention: General Counsel

(b) if to Supplier:

7.7 Assignment/Binding Effect. Except as set forth below, this Agreement shall not be assigned or delegated by operation of law or otherwise, except that Barilla and Supplier may assign any or all of their rights and obligations under this Agreement to any one or more of their affiliates, without the prior written consent of the other party. The affiliates of Barilla shall include, but are not limited to, Barilla G. e R. Fratelli Spa and Barilla America NY, Inc. Except as stated below, this Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns, including any affiliate of either party which succeeds in whole or in part to the business of Supplier or Barilla, as the case may be. In the event of the sale of substantially all of the assets or more than 50% of the stock of either party, each party shall: (a) assign all rights in this Agreement to the buyer of such stock or assets; and (b) cause any agreement relating to such sale to provide as a condition precedent that such proposed assignee shall assume all obligations under this Agreement. Notwithstanding the foregoing, either party shall have the right to terminate the Agreement in its sole discretion upon 30 days' notice if it does not approve of the buyer of such stock or assets; provided further that Barilla has the option to require Supplier to manufacture additional quantities of the Products to assure Barilla of a continuous supply of the Products until Barilla enters into an agreement with another supplier.

7.8 Entire Agreement; Amendment. This Agreement, along with the Exhibits, constitutes the entire agreement of the parties hereto with respect to the specific subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof, except as expressly provided herein. This Agreement may not be amended or modified except by an instrument in writing signed by Supplier and Barilla.

7.9 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or e-mail shall be effective as delivery of a manually executed counterpart of this Agreement.

7.10 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.11 No Third-Party. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and affiliates and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

7.12 Independent Contractors. The parties hereto are independent contractors and nothing contained in this Agreement shall be deemed or construed to create the relationship of a partnership or joint venture or of any association or relationship between the parties. Barilla and Supplier acknowledge that they do not have the authority to make and shall not make any representation to any third party, either directly or indirectly, indicating that they have the authority to act for or on behalf of the other party or to obligate the other party in any manner whatsoever.

7.13 Expenses. Except as may be otherwise specified herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

7.14 Auditors. For a period of at least three (3) years from the date of sale of the Products to Barilla, Supplier shall keep accurate and complete records of all transactions and activities of Supplier that relate to Supplier's production, manufacture, storage, delivery and sale (as applicable) of Products including, but not limited to, complete and accurate manufacturing, processing, packaging, and quality control records that: (i) show the complete history of the Products, including lot numbers and production dates, (ii) facilitate the identification of each lot, batch, unit production run and any other applicable groupings, and (iii) any other information reasonably requested by Barilla. Upon reasonable written notice to Supplier, the employees and representatives of Barilla shall have the right at any time to inspect and copy the books and records of Supplier relating to these matters (not to include Supplier's financial records), and to interview Supplier's personnel, for purposes of verifying compliance with this Agreement. Barilla will have free and full access thereto subject to reasonable restrictions related to confidentiality considerations for such purposes and for the purpose of making copies thereof.

7.15 Severability. If any term or other provision of this Agreement is held invalid, illegal or incapable of being enforced by any law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

7.16 Broker's Fees. Each party warrants to the other that it has not incurred, nor will it incur, any liability for brokerage fees, finder's fees, or other similar forms of compensation in connection with this Agreement.

7.17 Public Announcements. No party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the consent of the other party. With



respect to any such public announcement, the parties shall cooperate as to the timing and contents of any such announcement.

7.18 Recall. If any governmental or regulatory authority with jurisdiction over the Products requests either party to recall any of the Products, or if Barilla determines that it wishes to conduct a retrieval of Products (collectively, a "**Recall**"), to preserve the reputation of its Products, ensure the safety of consumers or avoid possible regulatory action, such party shall immediately give notice to the other party of such requirement and review with the other party the proposed manner in which the Recall will be put into effect.

(a) If a Recall is due to: (i) any inaccuracy in, or breach or nonperformance of, any of the representations, warranties, covenants, agreements or guaranties made by Barilla pursuant to this Agreement; or (ii) any negligence or willful misconduct by Barilla, then Barilla shall be solely liable for all costs and expenses incurred in connection with such Recall.

(b) If a Recall is due to: (i) any inaccuracy in, or breach or nonperformance of, any of the representations, warranties, covenants, agreements or guaranties made by Supplier pursuant to this Agreement; or (ii) any negligence or willful misconduct by Supplier, then Supplier shall be solely liable for all costs and expenses incurred in connection with such Recall.

(c) If a Recall is due to any reason other than as set forth in clauses (a) or (b) above, each party shall be liable for the costs and expenses incurred in connection with such Recall based upon the relative responsibility of such party hereunder.

(d) If either party brings a claim under this Section, the parties shall bear the costs and expenses incurred in connection with such Recall equally until such claim is resolved.

Supplier shall perform any such Recall in an expeditious manner, cause the least disruption possible to the sales of the Products and preserve the goodwill of each party associated with the Products.

7.19 Force Majeure. Neither party shall be liable to the other in any manner for failure to fulfill all or part of this Agreement, directly or indirectly, due to acts of God, governmental orders or restriction, war, sanctions, mobilization, blockade, embargo, detention, revolution, riot, looting, labor strikes or any other causes or circumstances to the extent such events: (i) are beyond the reasonable control of such party or its affiliates, officers, directors, agents and representatives; and (ii) would not reasonably be expected to have been known by the applicable party on the date hereof; provided, however, that the party so prevented from complying herewith shall immediately give notice thereof to the other party and shall continue to take all reasonable actions within its power to comply herewith and promptly resume performance of its responsibilities the moment such cause or causes are removed; Notwithstanding the foregoing, Barilla may terminate this Agreement if any act or condition contained in this Section shall continue for 30 days, and such termination shall not be deemed a breach of this Agreement.

7.20 Mutual Confidentiality. Barilla and Supplier entered into a Confidentiality and Non-Disclosure Agreement ("**Confidentiality Agreement**") on [REDACTED] The Confidentiality Agreement shall remain in effect during the term of this Agreement and after the termination of this Agreement according to its terms. The Confidentiality Agreement shall also cover any confidential information

disclosed or learned during the term of this Agreement. The Confidentiality Agreement is attached as Exhibit F. Nothing contained in this Agreement will alter, minimize or supersede any of the obligations contained in the Confidentiality Agreement and the two documents will be read, to the greatest extent possible, as consistent with each other; but if there is a direct conflict between them, then the provision that is more protective of such Confidential Information will control.

#### 7.21 Code of Ethical Conduct and Anti-corruption

[CONTRACTING PARTY] acknowledges that performance of the Agreement assumes - to the extent applicable - full compliance with the principles contained in the Code of Ethical Conduct adopted by Barilla Group (the “Code”), which apply to all employees of the Barilla Group as well as to its contracting parties. [CONTRACTING PARTY] declares to have taken full knowledge of the Code as edited in the Internet website [www.barillagroup.it](http://www.barillagroup.it). [CONTRACTING PARTY] undertakes to fully comply with the Code.

In addition, [CONTRACTING PARTY] hereby specifically undertakes that, at the time of entering into the Agreement and throughout its entire duration, itself, its directors, officers or employees shall not offer, promise, give, authorize, solicit or accept any undue pecuniary or other advantage of any kind in any way connected with the Agreement and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

In the event that [CONTRACTING PARTY] fails to comply with any of the provisions above, Barilla reserves the right, at its sole discretion, to either suspend the Agreement or immediately terminate it, by simple notice in writing to [CONTRACTING PARTY], without prejudice to Barilla’s right to claim any damages incurred in relation therewith.

#### 7.22 Right to Audit Supplier Facility.

7.22.1 Supplier will permit Barilla and its internal and external auditors and personnel, including independent food consultants or inspectors, at Barilla’s cost and expense, to enter the Supplier Facility at any time and from time to time upon reasonable prior notice to inspect, audit and/or test the Supplier Facility, including the equipment used to manufacture or process Products for Barilla, Supplier’s process of manufacturing, processing, packaging and storing such goods, any ingredients, packaging, materials or supplies that are to be used by Supplier in the production or processing of the Products and Supplier’s operations generally, for the purpose of determining whether Supplier and the Products are and will be in compliance with Supplier’s obligations under this Agreement. Supplier will provide Barilla with unrestricted access to all areas of the Supplier Facility where the Products are manufactured, processed, packaged or stored and Supplier’s employees will cooperate fully with Barilla in connection with any such inspection, audit or test. Any such inspection, audit or test will be conducted in a manner so as not to unreasonably interfere with Supplier’s business operations and may include organoleptic (sensory) evaluations of the Products. If such inspection, audit or test reveals that Supplier is not in compliance with its obligations under this Agreement, Supplier agrees to immediately take such action as is appropriate given the circumstances to correct any deficiencies identified thereby, and Barilla may, at its cost and expense, conduct such additional inspections, audits and tests of the Supplier Facility until such time as any such non-compliance is remedied to the reasonable satisfaction of Barilla. If any inspection, audit or test of the Supplier Facility or any evaluation of the goods indicates the presence of any pathogenic contamination or foreign material, or any action is taken by a governmental agency against the goods to be delivered under this Agreement or against Supplier relating to the food safety of the Supplier Facility, Supplier will immediately notify Barilla thereof and

will provide Barilla, without charge to Barilla, with copies of all relevant documentation and information.

7.22.2 Supplier will be solely responsible for performing all such inspections of the facilities of its Subvendors as are necessary to assure the Subvendors' full compliance with Barilla's Supply Quality Requirements and all other requirements of Subvendor. Without limiting the foregoing responsibility of Supplier, Supplier will perform any inspections of a Subvendor as may be reasonably requested by Barilla. In addition, the Subvendor terms shall include a right for Barilla, in its sole and absolute discretion, to inspect Subvendor's production facilities, but any such inspection by Barilla will not limit the sole responsibility of Supplier to assure the Subvendor's full compliance with Barilla's Supply Quality Requirements and all other requirements of Subvendor.

7.23 Exclusivity: Supplier will not manufacture, produce, supply, market, promote or sell, under its own proprietary brand or to or for any other entity other than Barilla, any products incorporating, embodying, using or derived from any Intellectual Property or Confidential Information of Barilla.

7.24 Relationship Management.

7.24.1 Relationship Managers. The parties have each designated the relationship managers set forth below for purposes of this Agreement. A party may change its relationship manager with prior written notice to the other party.

<b>BARILLA Relationship Manager</b>	<b>Supplier Relationship Manager</b>
Name:	Name:
Title:	Title:
Telephone Number:	Telephone Number:
E-mail:	E-mail:

7.24.2 Additional Relationship Management Requirements. The parties will meet and conduct business reviews at a mutually agreeable time and location (the "**Business Reviews**") during the Agreement Term. The Business Reviews will be attended by representatives from various functional areas of each party's business mutually agreed upon by the parties, which representatives may vary from meeting to meeting. Prior to the initial Business Review, a kickoff meeting will be held at a mutually agreeable time and location with each party's representatives to discuss the process and the expectations for Business Reviews. At the Business Reviews, the parties will review: (i) Supplier's performance against the performance metrics established by Barilla from time to time in consultation with Supplier, which will include things such as, by way of example only, raw and packaging material KPI and non-conformity management of Subvendor ("**Performance Metrics**"), (ii) Barilla's business processes and practices in connection with the Products and any Supplier recommendations for improvements. In addition, at the Business Reviews, the parties will review and may, to the extent mutually agreed upon, adjust the terms of Supplier's compensation for the Products and the Performance Metrics if such adjustment is well supported by Supplier. Any such adjustments will be mutually agreed upon in writing by the parties. In connection with any such review, each party will make available to the other party copies of those books and records that are necessary to determine whether an adjustment should be made.

7.24.3 Supplier will provide Barilla Relationship Manager with monthly status reports for the Products purchased by Barilla, which will include the description, part number or

other identifier, the quantity, the unit price and the total dollar amount of the Products purchased by Barilla during such period.

7.25 Incorporation of Exhibits. Exhibits [REDACTED] and amendments thereto as agreed upon by the parties from time to time in writing, will be and are deemed to be included and incorporated by reference into this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

BARILLA AMERICA, INC.

[REDACTED]

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

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

Name:

Name:

Title:

Title:

Date:

Date:

## EXHIBIT A

### PRODUCTS AND SERVICES

**Services** shall be defined to include the providing of any technical expertise, ideas, formulations, advancements, innovations, technology and/or any other information, know-how, knowledge or expertise which is required in order to manufacture, supply, process, package and/or commercialize the Products **and/or which is provided in connection with the development of any Work Product.**

## **EXHIBIT B**

### **DEFINITIONS**

GMO. "GMO" means genetically modified organism. Every organism has its own genome, made by natural crossing or recombination of the genetic material. In the GMO, the genetic set has been modified not by nature, but through a lab's techniques that can transfer the selected genetic material from an organism to another one.

**EXHIBIT C**

**SUPPLY QUALITY REQUIREMENTS**

## EXHIBIT D

### SUBCONTRACTOR CONTRACT REQUIREMENTS

1. Representations and Warranties.

(a) Subvendor shall be fully responsible for sanitary, hygienic and storage conditions of the goods supplied hereunder. Subvendor guarantees, as of the time goods are delivered to Supplier or Supplier's carrier by Subvendor hereunder, full compliance with all Federal, state and local statutes, laws, rules, regulations, treaty provisions, ordinances and governmental orders now or hereinafter in effect, including the United States Federal Food, Drug and Cosmetic Act ("**FFDCA**"), and the regulations of the Food and Drug Administration ("**FDA**") (collectively, "**Laws**"), applicable, with respect to sales in the United States, to the goods supplied hereunder and Subvendor's activities in connection with this Agreement. Subvendor represents and warrants that the goods supplied under this agreement: (i) shall be manufactured, processed, packaged and labeled in conformity with applicable sanitation standards set forth in the rules and regulations of the FDA, and under the FFDCA and any other similar applicable federal, state or local rules, regulations and Laws; (ii) shall conform to all applicable specifications approved by or required by Supplier or Barilla, including the Supply Quality Requirements, which are the exclusive property of Barilla and are confidential and must not be disclosed; (iii) except with respect to equipment, formulas and intellectual property, such as trademarks and trade dress provided by Supplier or Barilla, shall not infringe the patents, technical know-how or other intellectual property rights of third parties; and (iv) shall be free and clear of all liens and other encumbrances.

(b) Subvendor represents and warrants that any services rendered to Supplier or Barilla shall be rendered with promptness, due care, skill and diligence, and in a workmanlike manner, in accordance with the best practices of its industry.

(c) Subvendor represents and warrants that upon termination of this Agreement for any reason that Subvendor will, upon request from Supplier or Barilla, continue to manufacture, produce or supply the goods supplied hereunder in order to ensure no disruption or loss of business to Barilla; provided, however, that this obligation shall in no event exceed six (6) months post termination and Supplier and/or Barilla shall be obligated to pay for the goods at the prices in effect at notice of termination.

2. GMO. Subvendor shall ensure the absence of GMO ingredients in the production of the goods supplied hereunder. Subvendor shall provide Supplier and Barilla both appropriate documentation and periodical analytical results on all raw materials of GMO risk. Criteria relating to GMO risk shall be agreed upon by Supplier and Subvendor.

3. Insurance. Subvendor agrees, at all times during this Agreement, to carry and maintain: (i) comprehensive general liability insurance, including product liability insurance, with coverage not less than \$ [REDACTED] per occurrence, \$ [REDACTED] per product occurrence and \$ [REDACTED] in the aggregate combined limits of liability; (ii) property/stock coverage for Barilla property in Subvendor's care, custody, and control with a minimum policy limit of \$ [REDACTED]. This policy shall be primary and non-contributory and include a loss payee provision in favor of Barilla; (iii) casualty insurance with respect to Subvendor's business and the Subvendor's production facility in such amounts and covering such risks as may be customary for companies in a business similar to Subvendor's business; (iv) Statutory



Workers' Compensation and Employer's Liability as required by state law and with minimum limits of \$1,000,000 each accident / \$1,000,000 each disease / \$1,000,000 policy limit as it relates to Employers Liability; and (v) Crime Insurance (also known as Employee Dishonesty insurance/ Fidelity Bond) in an amount of not less than One Million Dollars (\$1,000,000), covering all Subvendor personnel and subcontractors, which includes a property endorsement or insuring agreement specifying that Employee Theft coverage extends to Barilla's property in the event of any theft of Barilla's money or property or product for which the Subvendor is responsible. Verification that Barilla has been included as a Joint Loss payee under the policy must be provided. All policies must be placed with a reputable insurer with a minimum AM Best rating of A- VII, or S&P A, or better and licensed to provide insurance in the jurisdiction in which work is to be performed.

Subvendor shall furnish original certificates of insurance to Barilla evidencing the above insurance coverages upon the execution of this Agreement. Subvendor and its carrier shall provide Barilla with 30 days notice of any change in or to these coverages. Subvendor acknowledges that such insurance shall not modify or eliminate its responsibility in any way under this Agreement. "Barilla America, Inc., its subsidiaries, affiliates, directors, officers, agents and employees shall be named as additional insureds" under the policies of insurance set forth above, for any and all purposes. Subvendor shall secure endorsements to this effect from all insurers of such policies. It is the intent of both parties to this Agreement that all insurance purchased by Subvendor in compliance with this Agreement, will be primary to any other insurance owned, secured, or in place by Barilla, which insurance shall not be called upon by Subvendor's insurer to contribute in any way. Subvendor shall secure endorsements to this effect from all insurers of such policies. Subvendor hereby waives any right of recovery against Barilla and Barilla's insurers for any loss or damage that is covered by any insurance policy maintained or required to be maintained under this Agreement. Subvendor shall inform all its insurers about this waiver of subrogation, and shall secure from such insurers any necessary amendments to the policies recognizing and providing for such waiver

4. Indemnity. Subvendor shall indemnify, defend and hold harmless Barilla, each of its affiliates, and its parent company and each of its and their respective officers, directors, employees and agents (individually and collectively, all such indemnified parties are referred to in this Section as "**Indemnified Party**") against and in respect of claims, demands, losses, obligations, liabilities, damages, deficiencies, actions, settlements, judgments, costs, penalties, fines and expenses which an Indemnified Party may incur or suffer (including reasonable costs and legal fees and expenses incident thereto or in investigating or seeking indemnification therefore and expert witness fees) (collectively "**Claims**"), arising out of or based upon: (i) the breach by Subvendor of this Agreement including, but not limited to, any of its representations, warranties, covenants, obligations or commitments contained herein; (ii) any claim of infringement or misappropriation of any intellectual property rights covering the goods supplied hereunder, or any process or services necessary or included in or for the manufacture thereof; and/or (iii) negligence or intentional or willful misconduct of Subvendor, which results in bodily or personal injury or property damage or loss.

5. Confidentiality. Barilla and Supplier are parties to a Confidentiality and Non-Disclosure Agreement ("Confidentiality Agreement"). The Confidentiality Agreement pertains to the disclosure of information under the parties Supply Agreement and such Confidentiality Agreement will remain in effect during the term of this Agreement and after the termination of this Agreement according to its terms. The Confidentiality Agreement shall also cover any confidential information disclosed or learned during the term of this Agreement. In performing services or providing goods under this Agreement, Subvendor acknowledges that its employees will have access to and be provided with proprietary and confidential information of Barilla (including the Supply Quality Requirements, if applicable), which Barilla

considers valuable trade secrets and/or proprietary information. This proprietary and confidential information of Barilla is herein referred to as “Confidential Information.” Subvendor covenants and agrees that, during the term of its agreement with Supplier and thereafter, it: (a) will keep and maintain all Confidential Information in strict confidence, and (b) will not, directly or indirectly, disclose any Confidential Information to any third party; provided, that Subvendor shall be permitted to disclose the Confidential Information (i) to its employees only as necessary to perform the Services and (ii) if disclosure is required by law, but in such event Subvendor shall notify Barilla in writing promptly upon receipt of notice of such requirement, so that Barilla may determine whether to take appropriate action to protect the Confidential Information. Confidential Information shall not include information that (i) is or becomes generally known to the public otherwise than as a result of a disclosure by Subvendor or its employees; (ii) is rightfully in the possession of Subvendor or its employees prior to disclosure by Barilla or Supplier, or (iii) is received by Subvendor or its employees in good faith without restriction from a third party not under a confidentiality agreement to Barilla and having the right to make such disclosure. Subvendor acknowledges that the disclosure of Confidential Information may cause irreparable harm to Barilla and damages that may be difficult to ascertain. Barilla shall, therefore, be entitled to seek injunctive relief upon a disclosure or threatened disclosure of any Barilla Confidential Information in addition to such other remedies as may be available in law or in equity.

## 6. **Code of Ethical Conduct and Anti-corruption**

[CONTRACTING PARTY] acknowledges that performance of the Agreement assumes - to the extent applicable - full compliance with the principles contained in the Code of Ethical Conduct adopted by Barilla Group (the “**Code**”), which apply to all employees of the Barilla Group as well as to its contracting parties. [CONTRACTING PARTY] declares to have taken full knowledge of the Code as edited in the Internet website [www.barillagroup.it](http://www.barillagroup.it). [CONTRACTING PARTY] undertakes to fully comply with the Code.

In addition, [CONTRACTING PARTY] hereby specifically undertakes that, at the time of entering into the Agreement and throughout its entire duration, itself, its directors, officers or employees shall not offer, promise, give, authorize, solicit or accept any undue pecuniary or other advantage of any kind in any way connected with the Agreement and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

In the event that [CONTRACTING PARTY] fails to comply with any of the provisions above, Barilla reserves the right, at its sole discretion, to either suspend the Agreement or immediately terminate it, by simple notice in writing to [CONTRACTING PARTY], without prejudice to Barilla’s right to claim any damages incurred in relation therewith.

7. **Auditors.** For a period of at least three (3) years from the date of sale of goods hereunder, Subvendor shall keep accurate and complete records of all transactions and activities of Subvendor that relate to Subvendor’s production, manufacture, storage, delivery and sale (as applicable) of the goods supplied hereunder including, but not limited to, complete and accurate manufacturing, processing, packaging, and quality control records that: (i) show the complete history of the goods, including lot numbers and production dates, if any; (ii) facilitate the identification of each lot, batch, unit production run and any other applicable groupings, if applicable and (iii) any other information reasonably requested by Supplier or Barilla. Upon reasonable written notice to Subvendor, the employees and representatives of Supplier and/or Barilla shall have the right at any time to inspect and copy the books and records of Subvendor relating to these matters (not to include Subvendor’s financial records), and to interview Subvendor’s personnel, for purposes of verifying compliance with this agreement. Supplier and Barilla will have free and full access thereto

subject to reasonable restrictions related to confidentiality considerations for such purposes and for the purpose of making copies thereof.

8. Right to Audit Supplier Facility. Subvendor will permit Supplier and/or Barilla and its internal and external auditors and personnel, including independent food consultants or inspectors, at Supplier's or Barilla's, as applicable, cost and expense, to enter Subvendor's production facility to inspect, audit and/or test Subvendor's production facility, including the equipment used to manufacture or process goods for Supplier, Subvendor's process of manufacturing, processing, packaging and storing such goods, any ingredients, packaging, materials or supplies that are to be used by Subvendor in the production or processing of the goods for Supplier and Subvendor's operations generally, for the purpose of determining whether Subvendor and the goods are and will be in compliance with Subvendor's obligations under this agreement. Subvendor will provide Supplier and/or Barilla with unrestricted access to all areas of Subvendor's facility where the goods are manufactured, processed, packaged or stored and Subvendor's employees will cooperate fully with

Supplier and/or Barilla in connection with any such inspection, audit or test. Any such inspection, audit or test will be conducted in a manner so as not to unreasonably interfere with Subvendor's business operations and may include organoleptic (sensory) evaluations of the goods. If such inspection, audit or test reveals that Subvendor is not in compliance with its obligations under this Agreement, Subvendor agrees to immediately take such action as is appropriate given the circumstances to correct any deficiencies identified thereby, and Supplier and/or Barilla may, at its cost and expense, conduct such additional inspections, audits and tests of Subvendor's facility until such time as any such non-compliance is remedied to the reasonable satisfaction of Supplier and/or Barilla. If any inspection, audit or test of Subvendor's facility or any evaluation of the goods indicates the presence of any pathogenic contamination or foreign material, or any action is taken by a governmental agency against the goods to be delivered under this agreement or against Subvendor relating to the food safety of Subvendor's facility, Subvendor will immediately notify Supplier and Barilla thereof and will provide Supplier and Barilla, without charge, with copies of all relevant documentation and information.

9. Barilla as Third Party Beneficiary. In addition to the express rights granted Barilla hereunder, it is expressly understood and agreed between the parties hereto that Barilla, for whose benefit this agreement is also being entered into, is and shall be deemed an intended third party beneficiary of this agreement, holding all rights and remedies contained herein. As such, Barilla is entitled to rely on all the rights, remedies, representations, warranties and covenants of Subvendor contained herein and to enforce this agreement in the same manner, and to the same extent, as if named expressly herein.

**EXHIBIT E**

**CERTIFICATES OF INSURANCE**

**EXHIBIT F**

**CONFIDENTIALITY AGREEMENT**

**EXHIBIT G**

**Supplier's Price List**  
(effective XXX, 2018)