**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

# FORM 8-K

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

Date of Report (Date of earliest event reported): **April 29, 2019**

**Nightfood Holdings, Inc.**
Exact name of registrant as specified in its charter)

| **Nevada** | **000-55406** | **46-3885019** |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (IRS Employer Identification No.) |

| **520 White Plains Road – Suite 500, Tarrytown, New York** | **10591** |
|---|---|
| (Address of principal executive offices) | (Zip Code) |

**888-888-6444**
Registrant's telephone number, including area code

**NA**
(Former name or former address, if changed since last report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company ☐

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

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

| **Title of Each Class** | **Trading Symbol(s)** | **Name of Each Exchange on Which Registered** |
|---|---|---|
| | | |

**Item 1.01 Entry Into a Material Definitive Agreement.**

Registrant entered into a Security Purchase Agreement and Convertible Promissory note dated April 29, 2019, and funded on April 29, 2019 in the net amount of $208,000. The lender was Eagle Equities, LLC. The new note carries an 8% interest rate, and has a maturity date of twelve (12) months from the date of execution. Should the Note not be paid in full prior to maturity, any remaining balance would be convertible into the Registrant's common stock at a discount to market.

Eagle has been providing similarly structured financing to registrant since September 8, 2017. The majority of these funds will go towards building Nightfood ice cream inventory required for distribution partnerships as well as marketing and brand awareness to support the national roll-out.

The forgoing is a summary of the note and securities purchase agreement and is qualified in its entirety by the note and security purchase agreement, which are exhibits hereto.

Also on April 29, 2019, Registrant entered into a Master Services Agreement with GoBrands, Inc., d/b/a goPuff. Nightfood Ice Cream will be available for purchase and delivery through the goPuff website and app, initially in approximately 35 delivery markets including Washington DC, Baltimore, Providence, Pittsburgh, Chicago starting May 2019. Over the coming months and quarters, the joint roll-out plan would have Nightfood in all markets where goPuff operates, such as Denver, Atlanta, Phoenix, Seattle, Portland, Austin, Houston, Dallas, Tampa, St. Louis, Kansas City, Indianapolis, Columbus, Lincoln, Minneapolis, Nashville, Orlando, and many others. goPuff currently operates in more than 75 delivery markets across the country, with plans to open more in 2019 and beyond.

**Item 9.01 Financial Statements and Exhibits**

**Financial Information**

**None**

**Exhibits:**

| | |
|---|---|
| **10.1** | Securities Purchase Agreement – Eagle Equities LLC |
| **10.2** | Note – Eagle Equities LLC |
| **10.3** | goPuff Master Services Agreement and Statement of Work |

**SIGNATURES**

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

**NIGHTFOOD HOLDINGS, INC.**

May 3, 2019

By: /s/ Sean Folkson
Sean Folkson
Chief Executive Officer

**Exhibit 10.1**

**SECURITIES PURCHASE AGREEMENT**

This **SECURITIES PURCHASE AGREEMENT** (the "Agreement"), dated as of **April 29, 2019**, by and between **Nightfood Holdings, Inc.**, a Nevada corporation, with headquarters located at 520 White Plains Road, Suite 500, Tarrytown, NY 10591, (the "Company"), and **EAGLE EQUITIES, LLC**, a Nevada limited liability company, with its address at 390 Whalley Avenue, New Haven, CT 06511 (the "Buyer").

**WHEREAS**:

A. The Company and the Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the rules and regulations as promulgated by the United States Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 Act");

B. Buyer desires to purchase and the Company desires to issue and sell, upon the terms and conditions set forth in this Agreement an 8% convertible note of the Company, in the form attached hereto as Exhibit A in the aggregate principal amount of **$208,000.00** (together with any note(s) issued in replacement thereof or as a dividend thereon or otherwise with respect thereto in accordance with the terms thereof, the "Note"), convertible into shares of common stock, of the Company (the "Common Stock"), upon the terms and subject to the limitations and conditions set forth in such Note. The Note shall be paid for by the Buyer as set forth herein.

C. The Buyer wishes to purchase, upon the terms and conditions stated in this Agreement, such principal amount of Note as is set forth immediately below its name on the signature pages hereto; and

**NOW THEREFORE**, the Company and the Buyer severally (and not jointly) hereby agree as follows:

1. Purchase and Sale of Note.

a. Purchase of Note. On each Closing Date (as defined below), the Company shall issue and sell to the Buyer and the Buyer agrees to purchase from the Company such principal amount of Note as is set forth immediately below the Buyer's name on the signature pages hereto.

b. Form of Payment. On the Closing Date (as defined below), (i) the Buyer shall pay the purchase price for the Note to be issued and sold to it at the Closing (as defined below) (the "Purchase Price") by wire transfer of immediately available funds to the Company, in accordance with the Company's written wiring instructions, against delivery of the Note in the principal amount equal to the Purchase Price as is set forth immediately below the Buyer's name on the signature pages hereto, and (ii) the Company shall deliver such duly executed Note on behalf of the Company, to the Buyer, against delivery of such Purchase Price.

c. Closing Date. The date and time of the first issuance and sale of the Note pursuant to this Agreement (the "Closing Date") shall be on or about April 29, 2019, or such other mutually agreed upon time. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on the Closing Date at such location as may be agreed to by the parties.

2. Buyer's Representations and Warranties. The Buyer represents and warrants to the Company that:

a. Investment Purpose. As of the date hereof, the Buyer is purchasing the Note and the shares of Common Stock issuable upon conversion of or otherwise pursuant to the Note, such shares of Common Stock being collectively referred to herein as the "Conversion Shares" and, collectively with the Note, the "Securities") for its own account and not with a present view towards the public sale or distribution thereof, except pursuant to sales registered or exempted from registration under the 1933 Act; provided, however, that by making the representations herein, the Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.

b. Accredited Investor Status. The Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D (an "Accredited Investor"). Any of Buyer's transferees, assignees, or purchasers must be "accredited investors" in order to qualify as prospective transferees, permitted assignees in the case of Buyer's or Holder's transfer, assignment or sale of the Note.

c. Reliance on Exemptions. The Buyer understands that the Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Securities.

d. Information. The Buyer and its advisors, if any, have been, and for so long as the Note remain outstanding will continue to be, furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by the Buyer or its advisors. The Buyer and its advisors, if any, have been, and for so long as the Note remain outstanding will continue to be, afforded the opportunity to ask questions of the Company. Notwithstanding the foregoing, the Company has not disclosed to the Buyer any material nonpublic information and will not disclose such information unless such information is disclosed to the public prior to or promptly following such disclosure to the Buyer. Neither such inquiries nor any other due diligence investigation conducted by Buyer or any of its advisors or representatives shall modify, amend or affect Buyer's right to rely on the Company's representations and warranties contained in Section 3 below. The Buyer understands that its investment in the Securities involves a significant degree of risk. The Buyer is not aware of any facts that may constitute a breach of any of the Company's representations and warranties made herein.

e. Governmental Review. The Buyer understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities.

f. Transfer or Re-sale. The Buyer understands that (i) the sale or re-sale of the Securities has not been and is not being registered under the 1933 Act or any applicable state securities laws, and the Securities may not be transferred unless (a) the Securities are sold pursuant to an effective registration statement under the 1933 Act, (b) in the case of subparagraphs (c), (d) and (e) below, the Buyer shall have delivered to the Company, at the cost of the Buyer, an opinion of counsel that shall be in form, substance and scope customary for opinions of counsel in comparable transactions to the effect that the Securities to be sold or transferred may be sold, or transferred pursuant to an exemption from such registration, including the removal of any restrictive legend which opinion shall be accepted by the Company, (c) the Securities are sold or transferred to an "affiliate" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule) ("Rule 144") of the Buyer who agrees to sell or otherwise transfer the Securities only in accordance with this Section 2(f) and who is an Accredited Investor, (d) the Securities are sold pursuant to Rule 144, or (e) the Securities are sold pursuant to Regulation S under the 1933 Act (or a successor rule) ("Regulation S"); (ii) any sale of such Securities made in reliance on Rule 144 may be made only in accordance with the terms of said Rule and further, if said Rule is not applicable, any re-sale of such Securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other person is under any obligation to register such Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder (in each case). Notwithstanding the foregoing or anything else contained herein to the contrary, the Securities may be pledged as collateral in connection with a bona fide margin account or other lending arrangement.

g. Legends. The Buyer understands that the Note and, until such time as the Conversion Shares have been registered under the 1933 Act will be sold pursuant to Rule 144 or Regulation S without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Conversion Shares may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such Securities):

**"NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL (WHICH COUNSEL SHALL BE SELECTED BY THE HOLDER), IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES."**

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of any Security upon which it is stamped, if, unless otherwise required by applicable state securities laws, (a) such Security is registered for sale under an effective registration statement filed under the 1933 Act or otherwise may be sold pursuant to Rule 144 or Regulation S without any restriction as to the number of securities as of a particular date that can then be immediately sold, and (b) such holder provides the Company with an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that a public sale or transfer of such Security may be made without registration under the 1933 Act, and that legend removal is appropriate, which opinion shall be accepted by the Company so that the sale or transfer is effected. The Buyer agrees to sell all Securities, including those represented by a certificate(s) from which the legend has been removed, in compliance with applicable prospectus delivery requirements, if any. In the event that the Company does not accept the opinion of counsel provided by the Buyer with respect to the transfer of Securities pursuant to an exemption from registration, such as Rule 144 or Regulation S, within 2 business days, it will be considered an Event of Default under the Note.

h. Authorization; Enforcement. This Agreement has been duly and validly authorized. This Agreement has been duly executed and delivered on behalf of the Buyer, and this Agreement constitutes a valid and binding agreement of the Buyer enforceable in accordance with its terms.

i. Residency. The Buyer is a resident of the jurisdiction set forth immediately below the Buyer's name on the signature pages hereto.

j. No Short Sales. Buyer/Holder, its successors and assigns, agrees that so long as the Note remains outstanding, neither the Buyer/Holder nor any of its affiliates shall not enter into or effect "short sales" of the Common Stock or hedging transaction which establishes a short position with respect to the Common Stock of the Company. The Company acknowledges and agrees that upon delivery of a Conversion Notice by the Buyer/Holder, the Buyer/Holder immediately owns the shares of Common Stock described in the Conversion Notice and any sale of those shares issuable under such Conversion Notice would not be considered short sales.

3. Representations and Warranties of the Company. The Company represents and warrants to the Buyer that:

a. Organization and Qualification. The Company and each of its subsidiaries, if any, is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, with full power and authority (corporate and other) to own, lease, use and operate its properties and to carry on its business as and where now owned, leased, used, operated and conducted.

b. Authorization; Enforcement. (i) The Company has all requisite corporate power and authority to enter into and perform this Agreement, the Note and to consummate the transactions contemplated hereby and thereby and to issue the Securities, in accordance with the terms hereof and thereof, (ii) the execution and delivery of this Agreement, the Note by the Company and the consummation by it of the transactions contemplated hereby and thereby (including without limitation, the issuance of the Note and the issuance and reservation for issuance of the Conversion Shares issuable upon conversion or exercise thereof) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its shareholders is required, (iii) this Agreement has been duly executed and delivered by the Company by its authorized representative, and such authorized representative is the true and official representative with authority to sign this Agreement and the other documents executed in connection herewith and bind the Company accordingly, and (iv) this Agreement constitutes, and upon execution and delivery by the Company of the Note, each of such instruments will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

c. Issuance of Shares. The Conversion Shares are duly authorized and reserved for issuance and, upon conversion of the Note in accordance with its respective terms, will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims and encumbrances with respect to the issue thereof and shall not be subject to preemptive rights or other similar rights of shareholders of the Company and will not impose personal liability upon the holder thereof.

d. Acknowledgment of Dilution. The Company understands and acknowledges the potentially dilutive effect to the Common Stock upon the issuance of the Conversion Shares upon conversion of the Note. The Company further acknowledges that its obligation to issue Conversion Shares upon conversion of the Note in accordance with this Agreement, the Note is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other shareholders of the Company.

e. No Conflicts. The execution, delivery and performance of this Agreement, the Note by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance and reservation for issuance of the Conversion Shares) will not (i) conflict with or result in a violation of any provision of the Certificate of Incorporation or By-laws, or (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both could become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture, patent, patent license or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect). All consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof. The Company is not in violation of the listing requirements of the OTC Markets Exchange (the "OTC MARKETS") and does not reasonably anticipate that the Common Stock will be delisted by the OTC MARKETS in the foreseeable future, nor are the Company's securities "chilled" by FINRA. The Company and its Subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing.

f. Absence of Litigation. Except as disclosed in the Company's Periodic Report filings with the SEC, there is no action, suit, claim, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company or any of its subsidiaries, threatened against or affecting the Company or any of its subsidiaries, or their officers or directors in their capacity as such, that could have a material adverse effect. Schedule 3(f) contains a complete list and summary description of any pending or, to the knowledge of the Company, threatened proceeding against or affecting the Company or any of its subsidiaries, without regard to whether it would have a material adverse effect. The Company and its subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing.

g. Acknowledgment Regarding Buyer' Purchase of Securities. The Company acknowledges and agrees that the Buyer is acting solely in the capacity of arm's length purchasers with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that the Buyer is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any statement made by the Buyer or any of its respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is not advice or a recommendation and is merely incidental to the Buyer' purchase of the Securities. The Company further represents to the Buyer that the Company's decision to enter into this Agreement has been based solely on the independent evaluation of the Company and its representatives.

h. No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has directly or indirectly made any offers or sales in any security or solicited any offers to buy any security under circumstances that would require registration under the 1933 Act of the issuance of the Securities to the Buyer.

i. Title to Property. The Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as are described in Schedule 3(i) or such as would not have a material adverse effect. Any real property and facilities held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as would not have a material adverse effect.

j. Bad Actor. No officer or director of the Company would be disqualified under Rule 506(d) of the Securities Act as amended on the basis of being a "bad actor" as that term is established in the September 19, 2013 Small Entity Compliance Guide published by the Securities and Exchange Commission.

k. Breach of Representations and Warranties by the Company. If the Company breaches any of the representations or warranties set forth in this Section 3, and in addition to any other remedies available to the Buyer pursuant to this Agreement, it will be considered an Event of default under the Note.

4. COVENANTS.

a. Expenses. At the Closing, the Company shall reimburse Buyer for expenses incurred by them in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other agreements to be executed in connection herewith ("Documents"), including, without limitation, reasonable attorneys' and consultants' fees and expenses, transfer agent fees, fees for stock quotation services, fees relating to any amendments or modifications of the Documents or any consents or waivers of provisions in the Documents, fees for the preparation of opinions of counsel, escrow fees, and costs of restructuring the transactions contemplated by the Documents. When possible, the Company must pay these fees directly, otherwise the Company must make immediate payment for reimbursement to the Buyer for all fees and expenses immediately upon written notice by the Buyer or the submission of an invoice by the Buyer.

b. Listing. The Company shall promptly secure the listing of the Conversion Shares upon each national securities exchange or automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and, so long as the Buyer owns any of the Note Securities, shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all Conversion Shares from time to time issuable upon conversion of the Note. The Company will obtain and, so long as the Buyer owns any of the Securities, maintain the listing and trading of its Common Stock on the OTC MARKETS or any equivalent replacement market, the Nasdaq stock market ("Nasdaq"), or the New York Stock Exchange ("NYSE"), and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Financial Industry Regulatory Authority ("FINRA") and such exchanges, as applicable. The Company shall promptly provide to the Buyer copies of any notices it receives from the OTC MARKETS and any other markets on which the Common Stock is then listed regarding the continued eligibility of the Common Stock for listing on such markets.

c. Corporate Existence. So long as the Buyer beneficially owns the Note, the Company shall maintain its corporate existence and shall not sell all or substantially all of the Company's assets, except in the event of a merger or consolidation or sale of all or substantially all of the Company's assets, where the surviving or successor entity in such transaction (i) assumes the Company's obligations hereunder and under the agreements and instruments entered into in connection herewith and (ii) is a publicly traded corporation whose Common Stock is listed for trading on the OTC MARKETS, Nasdaq or NYSE.

d. No Integration. The Company shall not make any offers or sales of any security (other than the Securities) under circumstances that would require registration of the Securities being offered or sold hereunder under the 1933 Act or cause the offering of the Securities to be integrated with any other offering of securities by the Company for the purpose of any stockholder approval provision applicable to the Company or its securities.

e. Breach of Covenants. If the Company breaches any of the covenants set forth in this Section 4, and in addition to any other remedies available to the Buyer pursuant to this Agreement, it will be considered an event of default under the Note.

5. Governing Law; Miscellaneous.

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada without regard to principles of conflicts of laws. Any action brought by either party against the other concerning the transactions contemplated by this Agreement shall be brought only in the state courts of New York or in the federal courts located in the state and county of New York. The parties to this Agreement hereby irrevocably waive any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon *forum non conveniens*. The Company and Buyer waive trial by jury. The prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs. In the event that any provision of this Agreement or any other agreement delivered in connection herewith is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of any agreement. Each party hereby irrevocably waives personal service of process and consents to process being served in any suit, action or proceeding in connection with this Agreement or any other Transaction Document by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law.

b. Counterparts; Signatures by Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

c. Headings. The headings of this Agreement are for convenience of reference only and shall not form part of, or affect the interpretation of, this Agreement.

d. Severability. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

e. Entire Agreement; Amendments. This Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by the majority in interest of the Buyer.

f. Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable air courier service with charges prepaid, (iv) via electronic mail or (v) transmitted by hand delivery, telegram, or facsimile, addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon hand delivery or delivery by facsimile, with accurate confirmation generated by the transmitting facsimile machine, at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received) or delivery via electronic mail, or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The addresses for such communications shall be:

If to the Company, to:
Nightfood Holdings, Inc.
520 White Plains Road, Suite 500
Tarrytown, NY 10591
Attn: Sean Folkson, CEO

And

Frank J. Hariton, Esq.
1065 Dobbs Ferry Road
White Plains, New York 10607

If to the Buyer:
EAGLE EQUITIES, LLC
390 Whalley Avenue
New Haven, CT 06511
Attn: Yakov Borenstein

Each party shall provide notice to the other party of any change in address.

g. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Neither the Company nor the Buyer shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other. Notwithstanding the foregoing, the Buyer may assign its rights hereunder to any "qualified person", any "permitted assigns", or "prospective transferee" that acquires or purchases Note Securities in a private transaction from the Buyer or to any of its "affiliates," as that term is defined under the 1934 Act, without the consent of the Company with Buyer's Opinion of Counsel. A qualified person is an "accredited investor" transferee, assignee, or purchaser of the Note who succeeds to the Holder's right, title and interest to all or a portion of the Note accompanied with an Opinion of Counsel as provided for in Section 2(f).

h. Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

i. Survival. The representations and warranties of the Company and the agreements and covenants set forth in this Agreement shall survive the closing hereunder notwithstanding any due diligence investigation conducted by or on behalf of the Buyer. The Company agrees to indemnify and hold harmless the Buyer and all their officers, directors, employees and agents for loss or damage arising as a result of or related to any breach or alleged breach by the Company of any of its representations, warranties and covenants set forth in this Agreement or any of its covenants and obligations under this Agreement, including advancement of expenses as they are incurred.

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

k. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

l. Remedies. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Buyer by vitiating the intent and purpose of the transaction contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Agreement will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Agreement, that the Buyer shall be entitled, in addition to all other available remedies at law or in equity, and in addition to the penalties assessable herein, to an injunction or injunctions restraining, preventing or curing any breach of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

IN WITNESS WHEREOF, the undersigned Buyer and the Company have caused this Agreement to be duly executed as of the date first above written.

**NIGHTFOOD HOLDINGS, INC.**

By: _____
Name: Sean Folkson, CEO

**EAGLE EQUITIES, LLC**

By: _____
Name: Yakov Borenstein
Title: Manager

| | | |
|---|---|---|
| AGGREGATE SUBSCRIPTION AMOUNT: | $ | 208,000.00 |
| Principal Amount of Note: | | |
| Aggregate Purchase Price: | $ | 208,000.00 |
| Note: $208,000.00, less $8,000.00 in legal fees | | |

**EXHIBIT A**
**144 NOTE - $208,000**

**Exhibit 10.2**

**THIS NOTE AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN AND WILL NOT BE REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER (THE "1933 ACT")**

**US $208,000.00**

NIGHTFOOD HOLDINGS, INC.
8% CONVERTIBLE REDEEMABLE NOTE
DUE APRIL 29, 2020

FOR VALUE RECEIVED, Nightfood Holdings, Inc. (the "Company") promises to pay to the order of EAGLE EQUITIES, LLC and its authorized successors and Permitted Assigns, defined below, ("Holder"), the aggregate principal face amount TWO HUNDRED EIGHT THOUSAND DOLLARS exactly (U.S. $208,000.00) on April 29, 2020 ("Maturity Date") and to pay interest on the principal amount outstanding hereunder at the rate of 8% per annum commencing on April 29, 2019. The interest will be paid to the Holder in whose name this Note is registered on the records of the Company regarding registration and transfers of this Note. The principal of, and interest on, this Note are payable at 390 Whalley Avenue, New Haven, CT 06511, initially, and if changed, last appearing on the records of the Company as designated in writing by the Holder hereof from time to time. The Company will pay each interest payment and the outstanding principal due upon this Note before or on the Maturity Date, less any amounts required by law to be deducted or withheld, to the Holder of this Note by check or wire transfer addressed to such Holder at the last address appearing on the records of the Company. The forwarding of such check or wire transfer shall constitute a payment of outstanding principal hereunder and shall satisfy and discharge the liability for principal on this Note to the extent of the sum represented by such check or wire transfer. Interest shall be payable in Common Stock (as defined below) pursuant to paragraph 4(b) herein. Permitted Assigns means any Holder assignment, transfer or sale of all or a portion of this Note accompanied by an Opinion of Counsel as provided for in Section 2(f) of the Securities Purchase Agreement.

This Note is subject to the following additional provisions:

1. This Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be made for such registration or transfer or exchange, except that Holder shall pay any tax or other governmental charges payable in connection therewith. To the extent that Holder subsequently transfers, assigns, sells or exchanges any of the multiple lesser denomination notes, Holder acknowledges that it will provide the Company with Opinions of Counsel as provided for in Section 2(f) of the Securities Purchase Agreement.

2. The Company shall be entitled to withhold from all payments any amounts required to be withheld under applicable laws.

3. This Note may be transferred or exchanged only in compliance with the Securities Act of 1933, as amended ("Act"), applicable state securities laws and Sections 2(f) and 5(f) of the Securities Purchase Agreement. Any attempted transfer to a non-qualifying party shall be treated by the Company as void. Prior to due presentment for transfer of this Note, the Company and any agent of the Company may treat the person in whose name this Note is duly registered on the Company's records as the owner hereof for all other purposes, whether or not this Note be overdue, and neither the Company nor any such agent shall be affected or bound by notice to the contrary. Any Holder of this Note electing to exercise the right of conversion set forth in Section 4(a) hereof, in addition to the requirements set forth in Section 4(a), and any prequalified prospective transferee of this Note, also is required to give the Company written confirmation that this Note is being converted ("Notice of Conversion") in the form annexed hereto as Exhibit A. The date of receipt (including receipt by telecopy) of such Notice of Conversion shall be the Conversion Date. All notices of conversion will be accompanied by an Opinion of Counsel.

4. (a) The Holder of this Note is entitled, at its option, at any time after 180 days, to convert all or any amount of the principal face amount of this Note then outstanding into shares of the Company's common stock (the "Common Stock") at a price ("Conversion Price") for each share of Common Stock equal to **70%** of the **lowest Closing bid price** of the Common Stock as reported on the National Quotations Bureau OTC Markets exchange which the Company's shares are traded or any exchange upon which the Common Stock may be traded in the future ("Exchange"), for the ***Fifteen*** prior trading days including the day upon which a Notice of Conversion is received by the Company (provided such Notice of Conversion is delivered together with an Opinion of Counsel, by fax or other electronic method of communication to the Company after 4 P.M. Eastern Standard or Daylight Savings Time if the Holder wishes to include the same day closing price). If the shares have not been delivered within 3 business days, the Notice of Conversion may be rescinded. Such conversion shall be effectuated by the Company delivering the shares of Common Stock to the Holder within 3 business days of receipt by the Company of the Notice of Conversion. Accrued, but unpaid interest shall be subject to conversion. No fractional shares or scrip representing fractions of shares will be issued on conversion, but the number of shares issuable shall be rounded to the nearest whole share. To the extent the Conversion Price of the Company's Common Stock closes below the par value per share, the Company will take all steps necessary to solicit the consent of the stockholders to reduce the par value to the lowest value possible under law. The Company agrees to honor all conversions submitted pending this increase. *In the event the Company experiences a DTC "Chill" on its shares, the conversion price shall be decreased to 50% instead of 30% while that "Chill" is in effect.* If the Company fails to maintain the share reserve at the 4xdiscount of the note 60 days after the issuance of the note, the conversion discount shall be increased by 10%. In no event shall the Holder be allowed to effect a conversion if such conversion, along with all other shares of Company Common Stock beneficially owned by the Holder and its affiliates would exceed 4.99% of the outstanding shares of the Common Stock of the Company (which may be increased up to 9.9% upon 60 days' prior written notice by the Investor).

(b) Interest on any unpaid principal balance of this Note shall be paid at the rate of 8% per annum. Interest shall be paid by the Company in Common Stock ("Interest Shares"). Holder may, at any time, send in a Notice of Conversion to the Company for Interest Shares based on the formula provided in Section 4(a) above. The dollar amount converted into Interest Shares shall be all or a portion of the accrued interest calculated on the unpaid principal balance of this Note to the date of such notice.

(c) During the first six months this Note is in effect, the Company may redeem this Note by paying to the Holder an amount as follows:

| Date | Amount |
|---|---|
| 0-30 days | 115% * (P+I) |
| 31-60 days | 120% * (P+I) |
| 61-90 days | 125% * (P+I) |
| 91-120 days | 130% * (P+I) |
| 121-180 days | 135% * (P+I) |

This Note may not be redeemed after 180 days. The redemption must be closed and paid for within 3 business days of the Company sending the redemption demand or the redemption will be invalid and the Company may not redeem this Note. Such redemption must be closed and funded within 3 days of giving notice of redemption of the right to redeem shall be null and void.

(d) Upon (i) a transfer of all or substantially all of the assets of the Company to any person in a single transaction or series of related transactions, (ii) a reclassification, capital reorganization (excluding an increase in authorized capital) or other change or exchange of outstanding shares of the Common Stock, other than a forward or reverse stock split or stock dividend, or (iii) any consolidation or merger of the Company with or into another person or entity in which the Company is not the surviving entity (other than a merger which is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock) (each of items (i), (ii) and (iii) being referred to as a "Sale Event"), then, in each case, the Company shall, upon request of the Holder, redeem this Note in cash for 150% of the principal amount, plus accrued but unpaid interest through the date of redemption, or at the election of the Holder, such Holder may convert the unpaid principal amount of this Note (together with the amount of accrued but unpaid interest) into shares of Common Stock immediately prior to such Sale Event at the Conversion Price.

(e) In case of any Sale Event (not to include a sale of all or substantially all of the Company's assets) in connection with which this Note is not redeemed or converted, the Company shall cause effective provision to be made so that the Holder of this Note shall have the right thereafter, by converting this Note, to purchase or convert this Note into the kind and number of shares of stock or other securities or property (including cash) receivable upon such reclassification, capital reorganization or other change, consolidation or merger by a holder of the number of shares of Common Stock that could have been purchased upon exercise of the Note and at the same Conversion Price, as defined in this Note, immediately prior to such Sale Event. The foregoing provisions shall similarly apply to successive Sale Events. If the consideration received by the holders of Common Stock is other than cash, the value shall be as determined by the Board of Directors of the Company or successor person or entity acting in good faith.

5. No provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, and interest on, this Note at the time, place, and rate, and in the form, herein prescribed.

6. The Company hereby expressly waives demand and presentment for payment, notice of non-payment, protest, notice of protest, notice of dishonor, notice of acceleration or intent to accelerate, and diligence in taking any action to collect amounts called for hereunder and shall be directly and primarily liable for the payment of all sums owing and to be owing hereto.

7. The Company agrees to pay all costs and expenses, including reasonable attorneys' fees and expenses, which may be incurred by the Holder in collecting any amount due under this Note.

8. If one or more of the following described "Events of Default" shall occur:

(a) The Company shall default in the payment of principal or interest on this Note or any other note issued to the Holder by the Company; or

(b) Any of the representations or warranties made by the Company herein or in any certificate or financial or other written statements heretofore or hereafter furnished by or on behalf of the Company in connection with the execution and delivery of this Note, or the Securities Purchase Agreement under which this note was issued shall be false or misleading in any respect; or

(c) The Company shall fail to perform or observe, in any respect, any covenant, term, provision, condition, agreement or obligation of the Company under this Note or any other note issued to the Holder; or

(d) The Company shall (1) become insolvent (which does not include a "going concern opinion); (2) admit in writing its inability to pay its debts generally as they mature; (3) make an assignment for the benefit of creditors or commence proceedings for its dissolution; (4) apply for or consent to the appointment of a trustee, liquidator or receiver for its or for a substantial part of its property or business; (5) file a petition for bankruptcy relief, consent to the filing of such petition or have filed against it an involuntary petition for bankruptcy relief, all under federal or state laws as applicable; or

(e) A trustee, liquidator or receiver shall be appointed for the Company or for a substantial part of its property or business without its consent and shall not be discharged within sixty (60) days after such appointment; or

(f) Any governmental agency or any court of competent jurisdiction at the instance of any governmental agency shall assume custody or control of the whole or any substantial portion of the properties or assets of the Company; or

(g) One or more money judgments, writs or warrants of attachment, or similar process, in excess of fifty thousand dollars ($50,000) in the aggregate, shall be entered or filed against the Company or any of its properties or other assets and shall remain unpaid, unvacated, unbonded or unstayed for a period of fifteen (15) days or in any event later than five (5) days prior to the date of any proposed sale thereunder; or

(h) Defaulted on or breached any term of any other note of similar debt instrument into which the Company has entered and failed to cure such default within the appropriate grace period; or

(i) The Company shall have its Common Stock delisted from an exchange (including the OTC Markets exchange) or, if the Common Stock trades on an exchange, then trading in the Common Stock shall be suspended for more than 10 consecutive days or ceases to file its 1934 act reports with the SEC;

(j) If a majority of the members of the Board of Directors of the Company on the date hereof are no longer serving as members of the Board;

(k) The Company shall not deliver to the Holder the Common Stock pursuant to paragraph 4 herein without restrictive legend within 3 business days of its receipt of a Notice of Conversion which includes an Opinion of Counsel expressing an opinion which supports the removal of a restrictive legend; or

(l) The Company shall not replenish the reserve set forth in Section 12, within 3 business days of the request of the Holder.

(m) The Company shall be delinquent in its periodic report filings with the Securities and Exchange Commission; or

(n) The Company shall cause to lose the “bid” price for its stock in a market (including the OTC marketplace or other exchange).

Then, or at any time thereafter, unless cured within 5 days, and in each and every such case, unless such Event of Default shall have been waived in writing by the Holder (which waiver shall not be deemed to be a waiver of any subsequent default) at the option of the Holder and in the Holder's sole discretion, the Holder may consider this Note immediately due and payable, without presentment, demand, protest or (further) notice of any kind (other than notice of acceleration), all of which are hereby expressly waived, anything herein or in any note or other instruments contained to the contrary notwithstanding, and the Holder may immediately, and without expiration of any period of grace, enforce any and all of the Holder's rights and remedies provided herein or any other rights or remedies afforded by law. Upon an Event of Default, interest shall accrue at a default interest rate of 24% per annum or, if such rate is usurious or not permitted by current law, then at the highest rate of interest permitted by law. In the event of a breach of Section 8(k) the parties agree that damages shall be difficult to determine and agree on liquidated damages in the amount of $250 per day the shares are not issued beginning on the 4th day after the conversion notice was delivered to the Company. The agreed liquidated damages shall increase to $500 per day beginning on the 10th day. In the event of a breach of Section 8(n), the parties agree that damages shall be difficult to determine and hereby agree to an increase of the outstanding principal amounts by 20% as a liquidated damages payment. In case of a breach of Section 8(i), the parties agree that damages will be difficult to determine and agree that the outstanding principal due under this Note shall increase by 50% as a liquidated damages payment. If this Note is not paid at maturity, or within 10 days thereof, the outstanding principal due under this Note shall increase by 10%. Further, if a breach of Section 8(m) occurs or is continuing after the 6 month anniversary of the Note, then the Holder shall be entitled to use the lowest closing bid price during the delinquency period as a base price for the conversion. For example, if the lowest closing bid price during the delinquency period is $0.01 per share and the conversion discount is 50% the Holder may elect to convert future conversions at $0.005 per share.

If the Holder shall commence an action or proceeding to enforce any provisions of this Note, including, without limitation, engaging an attorney, then if the Holder prevails in such action, the Holder shall be reimbursed by the Company for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

Make-Whole for Failure to Deliver Loss. At the Holder's election, if the Company fails for any reason to deliver to the Holder the conversion shares by the by the 3rd business day following the delivery of a Notice of Conversion to the Company and if the Holder incurs a Failure to Deliver Loss, then at any time the Holder may provide the Company written notice indicating the amounts payable to the Holder in respect of the Failure to Deliver Loss and the Company must make the Holder whole as follows:

Failure to Deliver Loss = [(Highest VWAP for the 30 trading days on or after the day of exercise) x (Number of conversion shares)]

The Company must pay the Failure to Deliver Loss by cash payment, and any such cash payment must be made by the third business day from the time of the Holder's written notice to the Company.

9. In case any provision of this Note is held by a court of competent jurisdiction to be excessive in scope or otherwise invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, so that it is enforceable to the maximum extent possible, and the validity and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

10. Neither this Note nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the Company and the Holder.

11. The Company represents that it is not a “shell” issuer and that if it previously has been a “shell” issuer that at least 12 months have passed since the Company has reported Form 10 type information indicating it is no longer a “shell issuer.

12. The Company shall issue irrevocable transfer agent instructions reserving sufficient shares of its Common Stock for conversions under this Note (the “Share Reserve”). Upon full conversion of this Note, any shares remaining in the Share Reserve shall be cancelled. The Company shall pay all transfer agent costs associated with issuing and delivering the share certificates to Holder. If such amounts are to be paid by the Holder, it may deduct such amounts from the Conversion Price. The company should at all times reserve a minimum of four times the amount of shares required if the note would be fully converted. The Holder may reasonably request increases from time to time to reserve such amounts. The Company will instruct its transfer agent to provide the outstanding share information to the Holder in connection with its conversions.

13. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable provision shall automatically be revised to equal the maximum rate of interest or other amount deemed interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it will not seek to claim or take advantage of any law that would prohibit or forgive the Company from paying all or a portion of the principal or interest on this Note.

14. This Note shall be governed by and construed in accordance with the laws of Nevada applicable to contracts made and wholly to be performed within the State of Nevada and shall be binding upon the successors and assigns of each party hereto. The Holder and the Company hereby mutually waive trial by jury and consent to exclusive jurisdiction and venue in the courts of the State of New York or in the Federal courts sitting in the county or city of New York. This Agreement may be executed in counterparts, and the facsimile transmission of an executed counterpart to this Agreement shall be effective as an original.

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by an officer thereunto duly authorized.

Dated: April 29, 2019

Nightfood Holdings, Inc.

By: _____
Name: _____
Title: _____

**EXHIBIT A**

NOTICE OF CONVERSION

(To be Executed by the Registered Holder in order to Convert the Note)

The undersigned hereby irrevocably elects to convert $_____ of the above Note into _____ Shares of Common Stock of Nightfood Holdings, Inc. ("Shares") according to the conditions set forth in such Note, as of the date written below.

If Shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer and other taxes and charges payable with respect thereto.

Date of Conversion: _____
Applicable Conversion Price: _____
Signature: _____
[Print Name of Holder and Title of Signer]
Address: _____

SSN or EIN: _____
Shares are to be registered in the following name: _____

Name: _____
Address: _____
Tel: _____
Fax: _____
SSN or EIN: _____

Shares are to be sent or delivered to the following account:

Account Name: _____
Address: _____

# MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement"), effective as of the date of the later signature below ("Effective Date"), is entered into by and between GoBrands, Inc., d/b/a goPuff ("goPuff"), and the entity set forth below ("Partner").

WHEREAS, (i) goPuff is in the business of selling and distributing convenience items, (ii) Partner offers certain convenience items sold and distributed by goPuff; (iii) Partner wishes for GoPuff to engage in certain Promotional Activities (defined below); and (iv) goPuff agrees to engage in same.

NOW, THEREFORE, the parties agree as follows:

1. Promotional Activities.

1.1. Promotional Activities. Subject to the terms and conditions of this Agreement, during the Term, goPuff shall engage in the promotional activities, for the benefit of Partner, set forth in any applicable Statement of Work (the "Promotional Activities").

1.2. Order of Precedence. The parties intend for the express terms and conditions contained in this Agreement (including schedules and exhibits hereto) and in each statement of work executed by authorized representatives of each party ("Statement(s) of Work") to exclusively govern and control each party's respective rights and obligations regarding the provision of Promotional Activities, and the parties' agreement is expressly limited to such terms and conditions. From time to time during the Term, the parties may enter into one or more Statements of Work. The provisions set forth in each Statement of Work are incorporated by reference into this Agreement for all purposes hereunder. Notwithstanding the foregoing, if any provisions contained in a Statement of Work directly conflict with any terms and conditions contained in this Agreement, the applicable provision of this Agreement will prevail and such conflicting provision(s) in the Statement of Work will have no force or effect.

1.3. Promotional Materials. Partner shall provide all materials, content, trademarks, and information, including photographs, videos, product descriptions and information ("Promotional Materials") to be used by goPuff in connection with the Promotional Activities for Partner. Such Promotional Materials will be in the format reasonably requested by goPuff. Partner shall deliver all Promotional Materials to goPuff by the date specified in the applicable Statement of Work.

2. Fees. Each party shall pay to the other any fees or other amounts specified in a Statement of Work. The party to which such fees or other amounts are owed will invoice the other party on the schedule set forth in the applicable Statement of Work and the party receiving such invoice shall pay such amounts, in U.S. dollars, within 30 days of the invoice date. Any late payment shall require the delinquent party to pay, in addition to the amount due, interest accruing at the time such obligation was first owed at the rate of 1.5% per month, on the amounts delinquent for the period of the delinquency, without prejudice to any other rights of the other party in connection therewith; provided, however, that in no event shall the interest rate be greater than the maximum permitted under applicable law

3. Term; Termination.

3.1. Term. The term of this Agreement commences on the Effective Date hereof and continues until mutually terminated in writing by the parties or otherwise terminated pursuant to the terms of this Agreement ("Term").

3.2. Mutual Termination Right. Either party may terminate this Agreement upon 30 days' written notice in the event that no Statement of Work then remains in effect.

3.3. Termination for Breach. A party may terminate this Agreement and/or any or all Statements of Work by providing written notice to the other party if such other party in breach of any representation, warranty or covenant of such party under this Agreement or any Statement of Work and either the breach cannot be cured or, if the breach can be cured, it is not cured by such party within a commercially reasonable period of time under the circumstances, in no case more than 30 days following such party's receipt of written notice of such breach.

3.4. Termination for Bankruptcy/Insolvency. A party may terminate this Agreement and/or any or all Statements of Work immediately upon written notice following the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement.

3.5. Effect of Expiration or Termination. Immediately upon the effectiveness of a notice of termination delivered by a party hereunder, goPuff shall promptly terminate all performance under each applicable Statement of Work. Any expiration or termination of this Agreement will not affect any rights or obligations of the parties that (a) come into effect upon or after such expiration or termination, or (b) otherwise survive expiration or termination. Upon the expiration or any termination of this Agreement, each party shall: (i) return to the other party or destroy all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information (defined below); (ii) permanently erase all of the other party's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems (and each party shall destroy any such copies upon the normal expiration of its backup files); and (iii) upon the other party's written request, certify in writing to such other party that it has complied with the requirements of this Section 3.5. Neither party will be liable to the other party for any damage of any kind incurred by the other party solely by reason of the termination of this Agreement. Termination of this Agreement will not, however, constitute a waiver of any of either party's rights, remedies or defenses under this Agreement, at law, in equity or otherwise.

4. Representations and Warranties.

4.1. Formation; Authority. Partner represents, warrants, and covenants that, as of the Effective Date and continuing throughout the Term: it is and shall continue to be duly formed, validly existing and in good standing under the laws of its jurisdiction of organization; it has and shall continue to have all requisite power and authority to execute, deliver and perform its obligations under this Agreement and each Statement of Work; the execution, delivery, and performance of this Agreement and each Statement of Work have been duly authorized by all requisite corporate action; and this Agreement and each Statement of Work together constitute the legal, valid and binding agreement of Partner, enforceable against it in accordance with their applicable terms.

4.2. Compliance with Laws. Partner represents, warrants and covenants that it shall comply at all times, at its own expense, with the provisions of all applicable federal, state, county and local laws, ordinances, regulations, and codes, as well as all non-U.S. laws, applicable to Partner's performance of this Agreement and shall at all times refrain from engaging in any illegal, unfair, unethical or deceptive business practices.

5. Indemnification.

5.1. By Partner. Partner shall indemnify, defend and hold harmless goPuff, its respective successors and permitted assigns (collectively, "goPuff Indemnified Party(ies)") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification under this Agreement (collectively, " Losses"), incurred by any goPuff Indemnified Party as a result of, arising from or related to (a) the breach or non-fulfillment of any term or condition of this Agreement by Partner, (b) any Promotional Materials of Partner provided to goPuff, (c) any claim of infringement of third-party rights arising out of goPuff's use of Partner's intellectual property in accordance with this Agreement, (d) any unauthorized use or disclosure of goPuff's Confidential Information that is attributable to Partner or Partner's employees, contractors, agents or representatives and/or (e) any Partner products or services, including, without limitation, any such Partner products or services sold or otherwise distributed by GoPuff.

5.2. By goPuff. goPuff shall indemnify, defend and hold harmless Partner, its respective successors and permitted assigns (collectively, "Partner Indemnified Parties") from and against any and all Losses incurred by any Partner Indemnified Party as a result of, arising from or related to (a) the breach or non-fulfillment of any term or condition of this Agreement by goPuff, (b) any claim of infringement of third-party rights arising out of Partner's use of goPuff's intellectual property in accordance with this Agreement, or (c) any unauthorized use or disclosure of Partner's Confidential Information that is attributable to goPuff or goPuff's employees, contractors, agents or representatives.

5.3. Exclusions. Notwithstanding anything to the contrary in this Agreement, an indemnifying party is not obligated to indemnify any indemnified party to the extent that any Losses arise from an indemnified party's breach of any term or condition of this Agreement.

5.4. Cooperation. In the event that any claim for Losses is brought against an indemnified party, the indemnified party agrees (a) to promptly provide the indemnifying party with written notice of such claim, (b) to provide the indemnifying party the option to control the defense and settlement of any claim solely for monetary damages provided that (i) the indemnifying party diligently defends such claim with counsel reasonably satisfactory to the indemnified party and (ii) the indemnifying party agrees to fully indemnify the indemnified party for all Losses arising from such claim, and (c) cooperate in the defense of such claim or proceeding. The indemnifying party shall not settle any such claim without the indemnified party's prior written consent, such consent not to be unreasonably withheld.

6. LIMITATION OF LIABILITY; DISCLAIMER.

6.1. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR LOSSES ATTRIBUTABLE TO GROSS NEGLIGENCE, WILLFUL MISCONDUCT, THIRD PARTY CLAIMS SUBJECT TO INDEMNIFICATION UNDER SECTION 4 OF THIS AGREEMENT, OR BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8 OF THIS AGREEMENT, (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE HEREUNDER FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, INCLUDING LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY STATEMENT OF WORK, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, WHETHER PARTNER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR WHETHER THE CLAIM WAS BASED IN CONTRACT, TORT OR OTHER LEGAL OR EQUITABLE THEORY AND (B) THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT OR ANY STATEMENT OF WORK, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID FOR THE PROMOTIONAL ACTIVITIES THAT ARE THE SUBJECT OF THE BREACH UNDER THE APPLICABLE STATEMENT OF WORK. PARTNER AGREES THAT THIS LIMITATION OF LIABILITY IS AN AGREED ALLOCATION OF RISK CONSTITUTING PART OF THE CONSIDERATION FOR GOPUFF PROVIDING THE PROMOTIONAL ACTIVITIES.

6.2. DISCLAIMER. ANY WARRANTIES AND REMEDIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY EITHER PARTY HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE.

7. Intellectual Property. Each of the parties acknowledges and agrees that:

7.1. Each party retains exclusive ownership of its Intellectual Property Rights. The term "Intellectual Property Rights" shall mean: all industrial and other intellectual property rights comprising or relating to: (a) patents; (b) trademarks; (c) internet domain names, whether or not trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, data, data files, and databases and other specifications and documentation; (e) trade secrets; and (f) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world.

7.2. Partner does not transfer to goPuff any right, title or interest, including any Intellectual Property Rights, in or to any Partner intellectual property, and goPuff may not use any of Partner's intellectual property except that Partner grants to goPuff a non-exclusive, worldwide, royalty-free license to use Partner's intellectual property to market Partner's products to goPuff's customers;

7.3. goPuff does not transfer to Partner any right, title or interest, including any Intellectual Property Rights, in or to any GoPuff intellectual property (including, without limitation, any intellectual property developed by or on behalf of GoPuff in connection with the Promotional Activities hereunder, which, for the avoidance of doubt, shall remain the sole and exclusive property of GoPuff), except that goPuff grants to Partner a non-exclusive, worldwide, royalty-free license to use information regarding the results of Promotional Activities set forth in reports provided by goPuff, solely for Partner's internal business purposes, to market and sell Partner's products to Partner's customers during the term of this Agreement and any applicable Statement of Work; provided that (i) Partner is not in breach of any term or condition of this Agreement or any Statement of Work and (ii) Partner agrees that its collection, access, use, storage, disposal and disclosure of such information (including, without limitation, securing such information from unauthorized access or use) will comply with best industry standards, all applicable federal, state, and foreign privacy and data protection laws, rules and regulations, and any other applicable regulations and directives.

8. Confidentiality.

8.1. From time to time during the Term, either party ("Disclosing Party") may disclose or make available to the other party ("Receiving Party") information about its business affairs, goods and Promotional Activities, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, customer and other third-party confidential information and other sensitive or proprietary information. Such information, as well as the terms of this Agreement, whether oral or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" constitutes "Confidential Information" hereunder. Without limiting the foregoing and for the avoidance of doubt, Partner acknowledges and agrees that if and to the extent that Partner accesses any data or information hosted, processed, or collected by or on behalf of goPuff, such data or information shall constitute goPuff's Confidential Information. Confidential Information does not include information that: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 8 by the Receiving Party or any of its representatives; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party prior to being disclosed by or on behalf of the Disclosing Party; (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (e) is required to be disclosed pursuant to applicable law.

8.2. The Receiving Party shall, at all times after receipt of such Confidential Information: (a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; (c) not disclose any such Confidential Information to any third party, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement; and (d) immediately, upon discovery, notify the Disclosing Party of any unauthorized access to the Disclosing Party's Confidential Information and promptly (at the Receiving Party's expense) take actions, including those reasonably requested by the Disclosing Party, to comply with applicable laws governing data breaches and related matters.

8.3. The Receiving Party shall be responsible for any breach of this Section 8 caused by any of its representatives. On the expiration or any termination of this Agreement, at the Disclosing Party's written request, the Receiving Party shall, pursuant to Section 3.5, promptly return or destroy all Confidential Information and copies thereof that it has received under this Agreement.

9. Miscellaneous.

9.1. Further Assurances. Upon a party's reasonable request, the other party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

9.2. Relationship of the Parties. The relationship between goPuff and Partner is solely that of independent contracting parties. For the avoidance of doubt, notwithstanding the use of the defined term "Partner" herein, nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

9.3. Entire Agreement. This Agreement, including and together with any related exhibits, schedules and Statements of Work, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

9.4. Survival. The following provisions will survive the expiration or any termination of this Agreement: 3.5; 4; 5; 6; 7; 8; and 9.

9.5. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and addressed to the signatory to this Agreement for the other party at its address set forth below via nationally recognized overnight courier.

9.6. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

9.7. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the court may modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

9.8. Amendment and Modification. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

9.9. Waiver. (a) No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the party waiving its right; (b) any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion and (c) none of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement: (i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or (ii) any act, omission or course of dealing between the parties.

9.10. Cumulative Remedies. Except as expressly provided to the contrary herein, all rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

9.11. Equitable Remedies. Each party acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under Section 8 would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party shall, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy.

9.12. Assignment; Successors; No Beneficiaries. Partner may not assign this Agreement, in whole or in part, by operation of law or otherwise, or any of its rights or obligations hereunder, without the prior written consent of goPuff. Any purported assignment or delegation in violation of this Section is null and void. Subject to the foregoing, this Agreement is binding on and inures to the benefit of the parties and their respective successors and permitted assigns. This Agreement benefits solely the parties to this Agreement, their respective successors and permitted assigns, and the indemnified parties, and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.13. Force Majeure. A party shall not be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is attributable to a force majeure event, including without limitation: (i) weather, fire, storms, elements of nature, flood, earthquakes and other natural disasters or acts of God; (ii) wars (declared and undeclared), acts of terrorism, sabotage, riots, civil disorders, blockades, embargoes, rebellions, revolutions, epidemics or quarantines; (iii) power or telecommunications failures or outages, hardware failures, software defects or malicious damage; (iv) industry-wide shortages of labor or materials, work stoppages, strikes or other similar events, labor disputes or accidents; (v) acts of any governmental authority with respect to any of the foregoing, prohibitions or restrictions or changes in applicable law or delays arising from compliance with any law or government regulation; or (vi) other similar causes beyond its control and without the fault or negligence of such party.

9.14. Governing Law. This Agreement, including all Statements of Work and all exhibits, schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to the foregoing, are governed by, and construed in accordance with, the laws of the State of New York, United States of America, without regard to the conflict of laws provisions thereof.

9.15. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement, if the party sending such facsimile, e-mail or other means of electronic transmission has received express confirmation that the recipient party received the Agreement (not merely an electronic facsimile confirmation or automatic email reply).

9.16. No Public Announcements or Trademark Use. Partner shall not: (a) make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotional materials regarding the subject matter of this Agreement, goPuff or its business unless (i) Partner has received the express written consent of goPuff in each instance, or (ii) Partner is required to do so by law; (b) use any of goPuff's trademarks without the prior written consent of goPuff.

IN WITNESS WHEREOF, the parties hereto have executed this Master Services Agreement as of the Effective Date.

| GOBRANDS, INC. D/B/A GOPUFF | | PARTNER: | |
|---|---|---|---|
| By: | _____ | By: | _____ |
| Name: | _____ | Name: | _____ |
| Title: | _____ | Title: | _____ |
| Date: | _____ | Date: | _____ |

**GOBRANDS, INC.**
**STATEMENT OF WORK**

**Nightfood**

## I. Introduction

This Statement of Work made by and between GoBrands, Inc. d/b/a goPuff ("***goPuff***"), and Nightfood, Inc. ("***Partner***") is issued pursuant to Section 1.2 of that certain Master Services Agreement by and between the parties dated April 22, 2019 (the "***MSA***").

This Statement of Work and all Services performed hereunder shall be subject to the terms, conditions, and limitations set forth in the MSA. In the event of a conflict between the terms of the MSA and the terms of this Statement of Work, this Statement of Work shall control solely with respect to the matters expressly referenced herein. Capitalized terms used but not defined in this Statement of Work shall have the meanings set forth in the MSA. This Statement of Work shall not affect the validity of the MSA.

This Statement of Work shall be effective as of the Effective Date (defined below) and continue until December 31, 2019 unless sooner terminated under any applicable provision of the MSA (the "***Term***").

## II. Principal Contacts

| *Partner* | *goPuff* |
|---|---|
| Sean Folkson | Daniel Folkman |
| (Name) | (Name) |
| 212-828-8275 | (856) 745-9042 |
| (Phone) | (Phone) |
| sean@nightfood.com | daniel.folkman@gopuff.com |
| (Email) | (Email) |

## III. Scope of Services

**(a)** ***Product Introduction.***

1. *Available for Purchase.* goPuff agrees to introduce and make Partner brand products available for retail purchase through goPuff's online distribution service beginning as soon as commercially possible and throughout 2019. goPuff will offer Partner brand in all goPuff markets serviced by the Vistar OpCo's in Illinois, Mid-Atlantic, and New England. This represents distribution in approximately half of existing goPuff markets. In June 2019, goPuff will use reasonable efforts to introduce the Partner brand in all goPuff markets serviced by Vistar OpCo's in North Carolina and Ohio. In addition, goPuff will use reasonable efforts to offer Partner brand in approximately 15 facilities in Texas in 2019. goPuff will use reasonable efforts to make Partner brand available in all goPuff markets by December 31, 2019. Both Parties anticipate that it might be mutually beneficial to complete the roll-out sooner than that, and agree to work together to do so, at goPuff's discretion.

2. *Product Launch*. goPuff will support the launch of Partner brand products on the goPuff platform ("***Product Launch***"). A Product Launch will include, as mutually agreed upon:

    i. *In-App Promotion*. To promote the Product Launch, goPuff will leverage in-app merchandising capabilities.
    ii. *Media*. To promote the Product Launch, goPuff may leverage in-app messaging, emails, and paid digital advertising.
    iii. *Digital Surveying*. To support the Product Launch, goPuff may survey customers who have purchased Partner brand products.
    iv. *Reporting*. goPuff will report on the performance of the Product Launch in the Quarterly Report.

(b) ***Ancillary Services***

1. *Reporting*. goPuff shall provide three (3) quarterly Preferred Reports , which shall include the following data analyses:

    i. Sales and percent change for Partner brand products broken out on a monthly basis;
    ii. Shopper basket analysis;
    iii. Customer loyalty matrix;
    iv. Multiple purchase incidence;
    v. Customer location, day, part, and gender analysis;
    vi. Category growth and percent share change; and
    vii. Competitive analysis.
    viii. Campaign Results
    ix. Promo code redemptions

2. *In-App Promotion*. With the intent to get customers to make an order on goPuff and purchase Partner brand products, goPuff will leverage in-app merchandising capabilities which will include featured placement and inclusion in digital end caps. The Promotion Period will begin upon the execution of this agreement and will run until December 31, 2019 (the ***"Promotion Period"***). During the Promotion Period, goPuff shall provide the Partner with at least the following:

    i. *Digital End Caps*. goPuff shall include Partner brand products in at least six (6) weekly Digital End Caps (individually, a ***"Digital End Cap"***). A Digital End Cap shall include, as mutually agreed upon by goPuff and the Partner, at least one (1) Partner brand products "above the fold" within the "All" subcategory of the "Pints on Pints" category.
    *ii.* *Featured Placement.* goPuff shall provide Partner with six (6) monthly digital shelves (individually, a "***Digital Shelf***"). A Digital Shelf shall include, as mutually agreed upon by goPuff and the Partner, at least three (3) Partner brand products "above the fold" within the "Low Cal" subcategory of the "Pints on Pints" category.

3. *Partner Success Manager*. goPuff will provide the Buyer with a dedicated Partner Success Manager who will communicate with the Partner on a regular cadence as mutually agreed upon by goPuff and the Partner

(c) ***Partner Requirements***. The Partner will:

1. Announce the availability of Partner brand products on the goPuff platform through a formal co-branded press release.
2. Include goPuff as a retailer option for customers on the Partner website.
3. Create at least one (1) post with five (5) different influencers announcing the availability of Partner brand products on the goPuff platform. The exact influencers will be mutually agreed upon by goPuff and the Partner.
4. Promote a goPuff New User Promo Code. goPuff shall create and provide to Partner a New User Promo Code that, when successfully applied and used by a New User may garner up to $4 off such New User's initial goPuff order. The New User Promo Code will be valid only during the duration of this Statement of Work.
    i. goPuff agrees and commits to pay the Partner $10 (a "Referral Fee") for each New goPuff User who applies the New User Promo Code and completes their initial goPuff order.

5. Provide goPuff with category advisement and insights to help drive growth for the associated categories on the goPuff platform
6. Provide goPuff with audience insights to help optimize the Partner's inclusion in goPuff's paid digital marketing efforts
7. Provide the following Promotional Materials: suggested in-app content, high-resolution product images, trademark and logo usage rights, and any other media or promotional materials necessary to carry out the services. Promotional Materials shall be provided to goPuff within 30 days of the Effective Date and supplemental Promotional Materials may be provided at such time(s) as mutually agreed upon by the Parties.

(d) Partner acknowledges that all information provided by goPuff pursuant to this Statement of Work shall constitute goPuff's Confidential Information.

(e) Partner acknowledges that any Intellectual Property provided pursuant to this Statement of Work shall constitute goPuff's Intellectual Property and Confidential Information

**IV. Fees**

(a) *Partnership Fee.* Partner shall pay goPuff five hundred and eighty-five thousand dollars ($585,000) (the "***Partnership Fee***"). The Partnership Fee will be earned upon the execution of this Agreement and MSA. The Partnership Fee shall be invoiced by goPuff in six equal installments. The first invoice will be sent upon the execution of this Agreement and the MSA. The second invoice we be sent 30 days after the execution of this Agreement and MSA. The third invoice will be sent 60 days after the execution of this Agreement and MSA. The fourth invoice will be sent 90 days after the execution of this Agreement and MSA. The fifth invoice will be sent 120 days after the execution of this Agreement and MSA. The sixth invoice will be sent 150 days after the execution of this Agreement and MSA.

*(b) Referral Fee.* goPuff shall pay to Partner $10 for each successful application and use of the New User Promo Code. The referral fees shall be paid out in three (3) installments. The first installment shall equal the aggregate sum of successful applications and uses of the New User Promo Code x $10 attributable to the period of April 22, 2019 to June 30, 2019. The second installment shall equal the aggregate sum of successful applications and uses of the New User Promo Code x $10 attributable to the period of July 1, 2019 to September 30, 2019. The third installment shall equal the aggregate sum of successful applications and uses of the New User Promo Code x $10 attributable to the period of October 1, 2019 to December 31, 2019. All invoices will be payable 30 days after receipt.

(c) *Additional Services.* During the course of the project, it may become necessary to complete Change Order(s) for additional services that are not addressed in this Statement of Work. Once agreed upon between the parties, Change Orders for additional services shall be made in writing and signed by both parties. Any additional services shall be subject to additional fees mutually agreed upon by goPuff and Buyer and shall be billed prior to the delivery of such additional services.

**V. Authorization to Begin Work**

The signatures below represent the Buyer approval for goPuff to commence work on this project as currently defined, with an agreement to pay all fees, expenses and applicable taxes incurred in the delivery of such work. By executing below, that parties, intending to be legally bound, have entered into this Statement of Work as of the date last written below (the "***Effective Date***").

**GoBrands, Inc. d/b/a goPuff**

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

**Nightfood, Inc.**

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____

Date: _____