

## Mars Chocolate North America, LLC

### Standard Foodservice Licensing Terms and Conditions

- 1. License Grant.** Subject to these Terms and Conditions, Mars hereby grants to Company a limited, nonexclusive, royalty-free, nontransferable license to use the Mars Marks solely upon and in connection with the sale, offer for sale, advertisement, marketing, and promotion of the Company Product.
- 2.** The Company Product will be sold exclusively at retail or franchise outlets of the Company in the United States of America and only direct to individual consumers, in single-serving containers, and for immediate consumption. Company will not re-sell or otherwise distribute the Company Product to other retailers, wholesalers, distributors or any other entities. The Company Product will not include any third party chocolate confectionery product or other nationally branded third party food product. Company will not use the Mars Marks in a manner which is or may be detrimental to Mars' interest. Company will market the Company Product only to adults who make household purchasing decisions (gatekeepers) and to children at least twelve (12) years old. Company will not market, promote, or advertise the Company Product directly to children under the age of twelve (12), or market or distribute the Company Product to schools at or below the high school level or to educators serving children in such schools. This restriction is a material requirement of this Letter Agreement and may not be circumvented or violated in any respect.
- 3. Mars Marks.** All uses of the Mars Marks (including all containers, packaging, labeling, point-of-sale, advertising and promotion materials bearing the Mars Marks) will be subject to Mars' prior written approval. All items are to be submitted via e-mail to [mfs@realtime-solutions.com](mailto:mfs@realtime-solutions.com) and will fully comply with the [Usage Guidelines](#) attached as **Exhibit A** to these Terms and Conditions in all applicable respects. Mars may issue reasonable instructions to Company concerning the manner in which Company may continue to use the Mars Marks. Company will promptly comply with such instructions or cease the use or display in question. Any and all benefit derived from Company's use of the Mars Marks will inure to Mars. There will be no implication that Mars endorses the Company Product or Company. Company's use of the Mars Marks will be limited to the Company Product. Company will not acquire any ownership or other interest in the Mars Marks as a result of such use.
- 4. Defense of Mars Marks.** Mars will have the exclusive right to assume the defense of any third party action challenging Company's right to display the Mars Marks in connection with the Company Product. Mars and/or its affiliates will have the sole right to determine whether to institute litigation to prosecute any claims for violation of their rights in the Mars Marks in their own name and/or, subject to Company's consent (such consent not to be unreasonably withheld, delayed, or conditioned), that of Company. At Mars' request, Company will cooperate with Mars and/or its affiliates and any action related to this Agreement. Any recovery in such litigation or proceeding will belong solely to Mars and/or its affiliates. Mars will bear the reasonable legal expenses and costs incurred by Company in connection with its participation in any such action (excluding costs and expenses of Company's employees and legal counsel). Company will promptly notify Mars of any infringement of the Mars Marks which may come to its attention.

5. **Mars Products.** Company will purchase all Mars Product used in the Company Product (a) from an authorized Mars Product distributor, upon terms and conditions to be agreed upon by Company and the distributor or (b) directly from Mars at the applicable Mars standard list price and upon Mars' Standard Terms and Conditions of Sale. Company will use the Mars Product as a material ingredient in each individual serving and/or package of the Company Product. Mars disclaims all express and implied warranties concerning fitness of the Mars Product for inclusion in the Company Product.

6. **Quality Control.** Company will comply with the [Quality Control Standards](#) attached as **Exhibit B** to these Terms and Conditions. Mars will have the right, but not the obligation, to inspect any facilities where the Company Product will be produced, stored, offered for sale and/or served. In the event Company learns of any safety, quality, or other issue with respect to the Company Product, or with respect to any other finished product or component thereof that is stored, produced, or sold in a facility where Company Product is stored, produced, or sold, Company will immediately notify Mars by telephone, and will consult with Mars with respect to the appropriate response to such issue.

7. **Termination.** The License Agreement to which these Terms and Conditions relate (the "Agreement") will remain in effect until terminated as provided herein. The Agreement may be terminated by Mars on written notice to Company (a) in the event of a material breach of this Agreement by Company, (b) in the event of any change of control of Company or sale of substantially all of its assets, (c) in the event of the introduction by Mars or a Mars business partner of a product substantially similar to the Company Product, and (d) in the event Mars, in its sole discretion, makes the reasonable determination that the Mars Product does not constitute a material ingredient in each individual serving and/or package of the Company Product. The Agreement may also be terminated by either party, in its sole discretion, without cause, upon at least sixty (60) days advance written notice of termination to the other party. In the event the Agreement is terminated by Mars without cause, Company may continue to sell its inventory of Company Product in existence at Company's facilities as of the date of termination for a period of sixty (60) days (the "Sell-Off Period") provided that all relevant provisions of the Agreement will continue to apply during the Sell-Off Period. Within thirty (30) days after the expiration of the Sell-Off Period, Company will destroy any and all remaining Company Product and all containers, packaging, labeling, point-of-sale, advertising and promotion materials bearing the Mars Marks, and will furnish Mars with written certification of such destruction. All relevant provisions of this Agreement will continue to apply during the Sell-Off Period.

8. **Insurance.** Company will, at its own expense, obtain and maintain throughout the term of sale of the Company Product insurance issued by reputable insurers, such insurance to include (a) product liability insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence, against any claims, suits, losses or damages based upon any alleged defect in, or otherwise caused by, the Company Product, and (b) general liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence against any claims, suits, losses or damages based upon any actual or alleged act or failure to act of Company in connection with the Agreement. Mars, Incorporated and its subsidiaries and affiliates will be named as additional insureds on all such insurance. At Mars' request, Company will supply Mars with a certificate of insurance evidencing compliance with this Paragraph 8.

9. **Indemnity.** Company will at all times during the term of this Agreement and thereafter defend, indemnify and hold Mars and its officers, directors, agents, employees, affiliates and assigns, harmless from and against any and all claims, suits, damages, liabilities, costs and expenses (whether based on tort, breach of contract, patent infringement, product liability or otherwise), including, but not limited to court costs and reasonable attorney fees, arising out of or based on (a) the breach of any representation, warranty or obligation of Company under this Agreement; (b) any defect or alleged defect in the Company Product (excluding any defect in the Mars Product existing at the time of Mars' shipment of the Mars Product to Company); and/or (c) any act, omission or negligence of Company with respect to the performance of its obligations to Mars or other third parties arising in connection with the activities contemplated under this Agreement. This indemnity will not be limited in any manner whatsoever by insurance required hereunder or other insurance coverage maintained by Company.

10. **Confidentiality.** From time to time, either party may disclose or make available to the other party, either directly or through one or more third parties, whether orally or in physical form, confidential or proprietary information concerning the disclosing party and/or its business, products or services (together, "Confidential Information") in connection with the transactions contemplated hereunder. Each party agrees that during the term of this Agreement and thereafter (a) it will use Confidential Information belonging to the other party solely for the purpose(s) of this Agreement and (b) it will not disclose Confidential Information belonging to the other party to any third party (other than the receiving party's employees, consultants and/or professional advisors on a need-to-know basis who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein). For purposes hereof, "Confidential Information" will not include information which the receiving party can establish by convincing written evidence (i) is independently developed by the receiving party without use of or reference to any Confidential Information belonging to the other party as evidenced by appropriate written documentation; (ii) is acquired by the receiving party from a third party having the legal right to furnish same to the receiving party; or (iii) is at the time in question (whether at disclosure or thereafter) generally known by or available to the public or in the public domain (through no fault of the receiving party). In the event either party is requested or ordered by a court of competent jurisdiction to disclose Confidential Information belonging to the other party, such party will give the other party immediate notice of such request or order and, at the other party's request and expense, resist such request or order to the fullest extent permitted by law. If a final order is issued by such court, the disclosure of such Confidential Information will be limited solely to comply with the final order. Each party will promptly return to the other upon request any or all Confidential Information of the other then in its possession or under its control.

11. **Company's Representations and Warranties.** Company hereby represents and warrants to Mars as follows:

(a) This Agreement is Company's valid and binding obligation enforceable in accordance with its terms. Company has the unencumbered right to enter into this Agreement and to fulfill its duties hereunder. It is not and will not become party to any agreement in conflict herewith.

(b) The Company Product, and all advertising, promotional and sales materials relating to the Company Product, if any, produced by or on behalf of Company, will not infringe any intellectual property or other right of any third party, provided that no

representation or warranty is made with respect to Mars Marks used in accordance with this Agreement.

(c) Company will assume all responsibility and costs associated with, and will fully comply with, all laws and regulations applicable to the Company Product. All Company Product will be packaged, labeled, marketed and sold in compliance with all applicable laws and regulations, including, but not limited to, local, state, federal and foreign laws and regulations relating to labor and employment, safety and environmental matters. Without limiting the foregoing, at each facility at which the Company Products are stored or handled (a) no child, slave or prison labor will be used; (b) all hazardous or flammable materials will be properly and safely handled stored and disposed of; (c) adequate fire fighting equipment will be available; (d) all safety equipment will be properly maintained; (e) adequate clear fire escapes will be available and no fire exit will be locked or blocked while the facility is occupied; (f) all machinery will have proper guards and other appropriate safety features; and (g) all employees will be provided with necessary and appropriate safety equipment and clothing.

(d) All Company Product will be merchantable, of good commercial quality and fit for use and/or consumption by children and adults.

12. **Governing Law.** The Agreement will be governed by and construed in accordance with the internal laws of the State of Delaware and to the extent applicable, the laws of the United States of America, applicable to contracts made and to be performed in such state and country. The courts of and in the State of Delaware will have nonexclusive jurisdiction over any disputes arising under or in connection with this Agreement. Company hereby consents to the jurisdiction of such courts.

13. **Miscellaneous.** Company may not transfer or encumber its rights under the Agreement, in whole or in part, without the express prior written consent of Mars, which consent may be withheld by Mars in its sole discretion. The Agreement represents Mars' and Company's entire agreement concerning its subject matter and supersedes any and all prior and contemporaneous oral and written agreements between Company and Mars relating to such subject matter. Mars' delay or failure to enforce any of its rights will not be deemed a continuing waiver of such rights. The Agreement may be amended only by written agreement of Mars and Company. In the event of any breach by Company of the Agreement, in addition to any other rights or remedies which may be available to Mars, Mars will be entitled to seek equitable relief without the posting of any bond.

## **Usage Guidelines - Exhibit A**

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### **Company's usage of the Mars Marks is limited to the following:**

a. The Mars Marks may appear solely on the Company Product's front and side packaging panels, if any, (ii) within its ingredient deck and (iii) on menus, table tents, coupons, and such other point-of-sale materials as may be approved in advance in writing by Mars.

b. The Mars Marks will appear in upper case block letters followed by the registration symbol ®.

c.No Mars characters may be used. In addition, there will be no picture, illustration, photograph or any other representation of the Mars Product showing the letter 'M' trademark or other Mars, Incorporated trademark as appropriate.

d.The Mars Marks will not be in primary position on any Company Product packaging and will be secondary relative to the Company Product name:

- i. The Mars Marks must be a smaller size than the other words in the Company Product name, i.e., it will be in smaller size and will not appear in bolder type.
- ii. The Mars Marks will only be used following a "made with" (or similar) claim, e.g.: Made with M&M'S® MINIS® Milk Chocolate Candies
- iii. The Mars Marks will not be part of the name of the Company Product.

e.The Mars Marks must not appear in the ingredient listing. Company will list the ingredients of the Mars Product itself.

f.Upon request and as applicable, Company will submit a sample of the Company Product and its packaging, if any, both pre- and post-production to ensure compliance with these guidelines.

g.Company will include the following allergen statement clearly on the Company Product packaging, if any: M&M'S® candies may contain peanuts.

h.Company must include an affiliation disclaimer on packaging as follows: Mars Chocolate North America, LLC does not manufacture, distribute or sell this product and has no affiliation with its maker.

i.Company will use colors on packaging of the Company Product that are complementary to the color of the Mars Product used therein.

### **Approved Legal Acknowledgements for Food Service Customers**

**No use of the the M&M'S Characters is permitted.**

**For use in the United States only:**

#### **M&M'S® Brand Chocolate Candies**

®/™ M&M'S and the letter M are registered trademarks of Mars, Inc. ©Mars, Incorporated. Used under license by (insert name of licensee).

#### **M&M'S® Brand MINIS Chocolate Candies**

®/™ M&M'S, the letter M and M&M'S MINIS are registered trademarks of Mars, Inc. ©Mars, Incorporated. Used under license by (insert name of licensee).

#### **SNICKERS® Brand**

®/™ SNICKERS and the SNICKERS Parallelogram are registered trademarks of Mars, Inc. ©Mars, Incorporated. Used under license by (insert name of licensee).

**MILKY WAY® Brand**

®/™ MILKY WAY is a registered trademarks of Mars, Inc. ©Mars, Incorporated. Used under license by (insert name of licensee).

**TWIX® Brand**

®/™ TWIX is a registered trademarks of Mars, Inc. ©Mars, Incorporated. Used under license by (insert name of licensee).

**3 MUSKETEERS® Brand**

®/™ 3 MUSKETEERS is a registered trademark of Mars, Inc. ©Mars, Incorporated. Used under license by (insert name of licensee).

*If more than one Brand is to be used, you may modify to include multiple Brands, e.g.*

®/™ 3 MUSKETEERS and SNICKERS are registered trademark of Mars, Inc. ©Mars, Incorporated. Used under license by (insert name of licensee).

***When space constraints exist:***

®/™/©Mars, Inc. Used under license.

**QUALITY CONTROL STANDARDS - Exhibit B**

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Mars Chocolate North America, LLC ("Mars") quality control standards are as follows:

(a)**Product Packaging:** As inks used on Mars flexible wrapping material exteriors are NOT FDA approved for direct food contact, Mars' Products cannot be in direct contact with any unwrapped food products.

(b)**Warehouse or Storeroom:**

Controlled Temperature and Relative Humidity: Temperatures should be maintained at 70°F ± 5° (21°C ± 3°). Relative humidity should be maintained 45% and 55%. Unless continuous recording of temperature and relative humidity are maintained, manual readings should be taken and recorded twice daily, morning and mid-afternoon. These requirements apply to inbound Mars products and all related finished goods.

Stock Rotation: Product with the first expiring Best Before or earliest Code Date should be used first. (ex. Best Before Aug 2008 should be used before Best Before Dec 2008, Code Date – 633XX expires before 702XX)

Exposure to strong/off odors: Off-flavors are caused by the absorption of odors which adversely affect product flavor. Chocolate readily absorbs odors and must be stored away from strong-smelling products. **NEVER** store or transport Mars products with solvents, polishes, waxes, cleaning agents,

soaps, perfumed products, tobacco, petroleum or raw agricultural products.

Sanitation and Pest Management: Storage areas and production areas should have adequate lighting and be well ventilated. Production packaging and storage areas must be well maintained and secure from the entry of potential pests. ALL areas should be kept clean and have refuse disposal performed on a regular basis. Any product infestation must be immediately destroyed with corrective action documented and in place to prevent future instances. Incidents of any infestation must be communicated in writing to Mars Quality Services Licensing Support Manager. All pesticides and cleaning chemicals must conform to EPA regulations, approved for food plant application and be used in accordance with their label restrictions.

**(c) Building Integrity – Production Areas:**

All buildings must be in good structural conditions. All doors, windows and openings should be in sound condition to prevent contamination from the environment.

There must be a program in place to ensure production areas are kept clean and maintained appropriately. Satisfactory lighting must be in place for production and materials storage areas.

There must be detailed procedures to ensure that wet and dry areas are defined with control measures to reduce the risk of cross-contamination. Production areas must be segregated to avoid any cross-contamination from strong odors, chemicals or no-like products.

There must be a pro-active pest management program covering all areas of the production areas, material storage areas and the environment. The Pest Management Program must include a regular monitoring/auditing process with corrective actions and feedback.

There must be an operational procedure for glass breakage to include analysis and follow-up.

**(d) GMPs – Good Manufacturing Practices- Personnel:**

Personnel should wear clean clothing to ensure that environmental contamination is minimized.

There must be no jewelry allowed. This includes watches, rings, chains or ear rings which may fall off and contaminate products.

There must be a policy in place to ensure that smoking, eating and drinking is defined to specific non production areas.

Personnel not use strong lotions or perfumes and following good hand washing practices.

Hair covering is required to minimize the contamination of loose hair.

Primary (naked) product copacking or manufacturing: Dedicated smocks or uniforms with metal buttons should be used in exposed contact zones. Hand sanitizing stations must easily assessable to personnel. No false fingernail or eyelashes are permitted. Restroom and toilet facility doors must be closed and segregated from the production and storage areas.

**(e)Product Traceability:**

Finished Products must be coded by batch or production code to enable product tracing to retail. Raw material usage, WIP and product shipment logs must be adequate to assure product traceability from receipt to customer shipment. Procedures and logs must be in place for handling and recording the usage of rework. Any substandard product must be designated as such and segregated from standard production.

**(f)Process/Recipe/Equipment Changes:**

Any change to the product, process or production location must be communicated to Mars R&D Quality Services contact in writing within 30 days of change. This includes any processing on common equipment to Mars products which may impact labeling requirements, e.g. Allergen Statement. A follow-up assessment/audit by R&D Quality Services will be conducted.

**(g)Product Testing/Auditing:**

Periodic microbiological sampling and testing of the environment as well as finished products must be completed by Licensee to assure ongoing quality.

**(h)Consumer Protection Devices:**

Metal detectors must be in place for all finished product operations unless the risk is removed by other means (i.e. fine filtration). All metal detection systems must meet Mars minimum requirements of 1.5mm ferrous and 2.0mm non-ferrous.

**(i)Hold Management:**

A Hold Management or Positive Release system must be available for all raw materials and finished products.

**(j)Security and Facility Access:**

Security at the facility should include restrictions to personnel via badges, entry keys or signing in/out at all times. There should be a system to distinguish visitors from employees. Defective finished units containing Mars products and branded packaging must be rendered unfit for purpose or land-filled and witnessed. Licensees, manufacturers or copackers using Mars products and trademarks shall permit Mars quality auditors' access to facilities used to manufacture, package or hold such products or ingredients.